

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2019-RTD-02 and H2019-RTD-01

June 7, 2019

ALBERTA HEALTH SERVICES

Case File Numbers 009726, 009850 and 009852

**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
and under section 87(1) of the
Health Information Act

Alberta Health Services
(OIPC File References 009726, 009850, 009852)

June 7, 2019

[1] Alberta Health Services requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) and under section 87(1) of the *Health Information Act* (HIA) to disregard a number of access requests (described in more detail below) received between August 15, 2018 and August 28, 2018 from an individual whom I will refer to as the Applicant.

Commissioner's authority

[2] Section 55(1) of the FOIP Act and section 87(1) of the HIA give me the power to authorize a public body and a custodian, respectively, to disregard certain requests.

[3] Section 55(1) of the FOIP Act reads:

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] Section 87(1) of the HIA reads:

87(1) At the request of a custodian, the Commissioner may authorize the custodian to disregard one or more requests under section 8(1) or 13(1) if

- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the custodian 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

[5] On September 14, 2018, Alberta Health Services (AHS or the Public Body/Custodian) requested authorization to disregard the following:

- Part of an access request made by the Applicant on August 15, 2018. AHS assigned reference number 2018-P-180 to that access request.
- Two access requests made by the Applicant on August 28, 2018. AHS assigned reference numbers 2018-P-190 and 2018-P-191 to those two access requests.

[6] The Applicant's August 15, 2018 access request stated:

I would like to request any and all emails (to and/or from), texts (to and/or from) bbm (to and/or from), iMessages (to and/or from) audio and/or video, records of any phone calls and/or other verbal means of communication, briefings, transcripts, diaries, alerts of any kind (and corresponding codes, notes, explanations, and/or the like of any kind), chat room (to and/or from), messenger service communication in any third party app (to and/or from), faxes, written correspondence of any kind (including drafts of any and all kind), files of any kind, written material of any kind, letters, attachments to emails or any other type of attachments, PDFs, report of any kind, reportings; consultations, interpretations of any kind, reviews, written summaries of any kind, analyses of any kind, assessments of any kind, entries/updates and/or notes of any kind in any type of Alberta Health Services ("AHS") system (electronic and/or other – including date stamps and terminal/computer location of any such entries; including remotely entered information, if any), notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication and/or material of any kind in any type of format of the following individual at the Sheldon M. Chumir Health Centre located at 1213 – 4 Street SW, Calgary, Alberta:...

[7] Then followed the name of the individual with whom the Applicant had an altercation at the Sheldon M. Chumir Health Centre on August 9, 2018. The Applicant requested records involving himself "and/or either of [his] minor children", between "January 4, 2016 to the present".

[8] AHS asked to disregard that part of the August 15, 2018 request for records that pre-dated August 9, 2018. My office opened Case File 009726 for AHS's request to disregard.

[9] The Applicant's two August 28, 2018 access requests were worded similar to the August 15, 2018 access request, except that those access requests named two other administrative staff and asked for records concerning "any and all administrative/reception staff". The Applicant also named a physician. Again, the Applicant requested records involving himself "and/or either of [his] minor children", between "January 4, 2016 to the present" for records concerning the named and unnamed administrative/reception staff, and between "October 1, 2015 to the present" for records concerning the physician.

[10] AHS asked to disregard both of the August 28, 2018 access requests. My office included AHS's requests in Case File 009726.

[11] Along with its requests to disregard, AHS provided me with three *in camera* affidavits, which it did not exchange with the Applicant. AHS asked that I accept those three affidavits *in camera*. As part of its exchangeable written submission, AHS provided two other affidavits to me and to the Applicant.

[12] On September 25, 2018, AHS requested authorization to disregard another access request that had been made by the Applicant, also on August 15, 2018. The Applicant's access request was as follows:

I request a detailed audit (including all audit logs) of Alberta Health Services' [sic] ("AHS") and/or any of AHS' subsidiaries' and/or affiliates/subcontractors and/or other (including but not limited to , third party and/or other of any kind) electronic and paper systems/databases/files/records; including but not limited to Netcare, Netcare Personal Directory, Clinibase, and/or any other databases/systems or newer/replacement electronic/paper record/note systems of any kind.

The above request includes entries/updates and/or notes of any kind in any type of Alberta Health Services' implemented system and/or other (electronic and/or other – including date stamps and terminal/computer location of any such entries; including remotely entered information/notes, if any).

Please be advised that I am receiving more than a simple audit log (however, I request to receive a comprehensive audit log first and within the legislated timeline under the FOIP Act). I am requesting a full and comprehensive audit of the above noted databases/systems/records – AHS based as well as any third party and/or subcontractor and/or agency and/or offsite records/systems/databases...

[13] The Applicant requested records involving himself "and [his] minor children", between "June 1, 2012 to the present".

[14] AHS divided that access request into three separate requests: (i) a FOIP request for information not properly characterized as health information (AHS reference number 2018-P-196); (ii) an HIA request for audit logs (AHS reference 2018-H-103); and (iii) a further HIA request for health information in the AHS clinical databases (AHS reference number 2018-H-104).

[15] AHS explained that, due to a clerical oversight, AHS staff had overlooked that access request and did not begin processing it until September 17, 2018. AHS asked to consolidate its September 25, 2018 request to disregard with its September 14, 2018 request to disregard.

[16] My office opened Case File 009850 (FOIP) to deal with that part of AHS's request to disregard that could be considered to be under the FOIP Act, and Case File 009852 (HIA) for that part of the request to disregard that could be considered to be under the HIA.

[17] Section 11(1) of the FOIP Act and section 12(1) of the HIA require a public body (the FOIP Act) or a custodian (the HIA) to make every reasonable effort to respond to a request not later than 30 days after receiving it or within any extended period allowed under the legislation. Section 11(2) of the FOIP Act and section 12(3) of the HIA say that the failure to respond within 30 days or any extended period is to be treated as a decision to refuse access.

[18] At the time of AHS's September 25, 2018 request to disregard, the 30-day time limit to respond to the access request had expired by three days. Consequently, on October 1, 2018, I asked AHS to provide information about the circumstances that led to what AHS said was the clerical oversight that resulted in its late response to the access request. I also asked for a submission on the issue of whether I could accept AHS's September 25, 2018 request to disregard, or whether it was the case that AHS's non-response was to be treated as a decision to refuse access, such that I could not consider AHS's September 25, 2018 request to disregard.

[19] I gave AHS until October 19, 2018 to provide information and a submission to me. I also gave the Applicant until November 2, 2018 to provide a submission. I received AHS's submission on October 19, 2018. I did not receive a submission from the Applicant.

[20] Section 11(1) of the FOIP Act and section 12(1) of the HIA contain the word "reasonable": a public body and a custodian, respectively, must make every reasonable effort to respond to a request within 30 days after receiving it. The question then is what constitutes every "reasonable" effort.

[21] In its October 19, 2018 submission to me, AHS laid out the circumstances of the Applicant's access requests and the fact that it was receiving voluminous email from the Applicant during this time. AHS says that it put the access request on hold after it asked the Applicant to provide documentation, which I found that it was entitled to request for processing a personal/health information request that included the Applicant and his minor children. I agreed with AHS that, when it did not receive that documentation, after 30 days it could have treated the access request as having been abandoned. However, when AHS discovered that it was past the 30 days, it did not treat the access request as having been abandoned, but rather apologized to the Applicant and requested the necessary documentation again. To date, the Applicant has not provided that documentation.

[22] In a decision dated February 22, 2019, I found that, in the foregoing circumstances described to me, AHS had made every reasonable effort to respond to the Applicant within 30 days. Therefore, section 11(2) of the FOIP Act and section 12(3) of the HIA did not apply. Consequently, I found that AHS could request authorization to disregard that access request.

[23] AHS asked for, and I granted, a reasonable time in which to submit evidence and argument in support of its September 25, 2018 request to disregard. AHS had until March 22, 2019 to provide its evidence and argument to me and to the Applicant. The Applicant had until April 18, 2019 to provide his response to me and to AHS.

[24] At the same time that I issued my decision, I also sent a letter to the Applicant, informing him that I was in the process of considering AHS's request to submit three *in camera* affidavits with its September 14, 2018 request to disregard the Applicant's access requests. I gave the Applicant an opportunity to provide a written submission to me on AHS's request to submit *in camera* affidavits. The Applicant had until March 15, 2019 to do so. I did not receive a submission from the Applicant.

[25] On March 22, 2019, I received AHS's written submission in support of its September 25, 2018 request to disregard. Included with that submission were three *in camera* affidavits. Two of the *in camera* affidavits were substantially the same as the *in camera* affidavits that AHS had submitted with its September 14, 2018 request to disregard. Attached as an exhibit to one of those two *in camera* affidavits was the third *in camera* affidavit that AHS had submitted with its September 14, 2018 request to disregard. AHS asked me to accept *in camera* again what was substantially the initial three *in camera* affidavits that it had originally submitted to me, as well as one further affidavit.

[26] April 18, 2019 came and went, without my receiving any written submission from the Applicant on AHS's September 25, 2018 request to disregard. Further, since I had not received a submission from the Applicant on the three *in camera* affidavits that AHS had originally submitted, I decided not to ask the Applicant for a submission on what were substantially the same affidavits that AHS had submitted again.

[27] AHS argued that I should accept the affidavits *in camera* because section 59(3) of the FOIP Act and section 91(3) of the HIA applied, and because of the circumstances of the case.

[28] I do not agree that section 59(3) of the FOIP Act and section 91(3) of the HIA apply. Those provisions prohibit disclosure of information a public body or custodian would be required or authorized to refuse to disclose if the information were contained in a record to which an access request had been made, or to which there has been a refusal to disclose whether information exists. I am dealing with requests to disregard, and not with refusals of access or denials of whether information exists.

[29] Nevertheless I may consider the relevant circumstances of the case. In doing so, I have decided to accept *in camera* the three affidavits that AHS originally submitted to me and the two substantially similar affidavits submitted again with its March 22, 2019 submission. The circumstances are such that AHS is attempting to demonstrate a pattern of conduct by the Applicant for the purposes of section 55(1) (FOIP Act) and section 87(1) (HIA), and has reasonable grounds for not wanting to expose the affiants to retaliation (I will discuss retaliation in more detail later in this decision).

[30] Finally, in making my decision about AHS's requests to disregard, I do not find it necessary to consider AHS's third *in camera* affidavit submitted on March 22, 2019. Therefore, I decided that it was not necessary to ask the Applicant for a submission on that affidavit.

Written submissions of AHS

[31] AHS's submissions and evidence are both extensive and thorough, and I do not intend to set out all of it in my decision. Instead, I will provide brief quotes or summaries.

[32] AHS argues that the Applicant's access requests are repetitious or systematic in nature, as the format and wording are nearly identical to that in *Request for Authorization to Disregard Access Requests – Calgary Police Service* (November 29, 2017) (the CPS case). In the CPS case, the applicant had submitted 20 access requests involving 81 employees of the public body within a 22-month period, and I found that the access requests were both repetitious and systematic in nature. In this case, AHS says that the Applicant has submitted 11 access requests involving at least 11 employees of AHS within a 16-month period.

[33] AHS maintains that the Applicant's access requests are repetitious or systematic in nature when considered in the context of the Applicant's other access requests to AHS. AHS says:

...Specifically, the Requests were made shortly after and in response to the altercation at SMCHC. At the crux of the incident at SMCHC is the Applicant's anger and dissatisfaction with information found in the demographics section of his daughter's medical chart, which lead to the Applicant's aggressive inquiry into how certain information got onto his daughter's medical chart, when such changes were made, and who authorized such changes. Indeed, the Applicant's initial reaction was to threaten to sue the Public Body and demand a complete audit of the Public Body. The Requests are consistent with the Applicant's stated intention to audit a portion of the Public Body's record keeping process.

[34] AHS submits that the use of the same text and format in the Applicant's access requests since the spring of 2017 demonstrates a regular and deliberate pattern of conduct that is systematic in nature. AHS concludes:

By his own admission, the Applicant has engaged in a pattern of conduct that is regular and deliberate in nature as evidenced by his admission in using “exactly the same type of request” to “various public bodies to date”.

[35] AHS says that the Applicant continually makes access requests on behalf of his two minor children, but the Applicant does not provide the necessary documentation to demonstrate that the Applicant has the authority to act solely to request information on behalf of his minor children. This is the case despite repeated requests from AHS and one intervention from my office to allow the Applicant time to provide that documentation. Furthermore, AHS says that the Applicant becomes confrontational when requested to provide that documentation.

[36] Next, AHS argues that the access requests amount to an abuse of the right to make the access requests, in that the Applicant makes access requests for his personal information in relation to every employee with whom he has contact. AHS says that this is evident in relation to the day of the altercation and the Applicant’s attempt to identify the person who made changes to his daughter’s medical chart.

[37] AHS maintains that the Applicant embarks on a pattern of conduct in which he alleges that employees have not provided sufficient, appropriate or “ethical” service and then makes access requests in relation to those employees as a means to “browbeat, intimidate and harass”. Besides making access requests in relation to employees, the Applicant also threatens formal complaints against employees as a means to get his way. AHS has provided considerable evidence of the Applicant’s pattern of harassment and abuse of employees. AHS submits that the access requests are a “...long-standing history and pattern of behaviour designed to harass, obstruct or wear the Public Body down, which amounts to an abuse of the right to make those requests.”

[38] Finally, AHS argues that the access requests are vexatious, based on the volume, repetitious nature, nearly identical nature of the requests, and excessive range in some of the requests.

[39] AHS says that it is both noteworthy and concerning that there are repeated and unsubstantiated allegations or references to conspiracy in the Applicant’s correspondence, allegations which also serve as vexatious conduct. AHS provided a table of examples.

[40] AHS says:

...Further, the Applicant has engaged and indulged in offensive, intimidating, threatening, and insulting conduct or comments, which demonstrate that the Applicant’s motivation in this matter is to intimidate and deliberately offend rather than pursue a genuine interest in obtaining relevant information in the spirit of FOIP or the HIA. It is clear that the Applicant employs such tactics with nearly every Public Body representative assigned to his access requests, as summarized in the chart below. Indeed, the Applicant’s style of communication caused the Public Body to assign [AHS’s external legal counsel] as the single point of contact for communications between the Applicant and the Public Body on August 23, 2018.

[41] The chart to which AHS refers comprises 10 pages of examples of the Applicant’s behaviour.

[42] AHS concludes:

...The chart above demonstrates that the Applicant’s conduct and communication is historically and habitually offensive, intimidating, threatening and insulting. There is evidence of escalating behaviour,

including frequency of access requests, repeated demands to speak to management and repeated threats to file various formal complaints in various forums. Further, the chart above demonstrates continued allegations of misconduct and unethical behaviour on behalf of each and every Public Body employee or representative with whom the Applicant has contact. In many instances, the Applicant's communications involve personal attacks entirely unrelated to the substance of the Requests, verbal or written assaults that are properly characterized as nothing other than an attempt to insult, browbeat and threaten. The employees and agents of a public body are not obliged to tolerate such behaviour in the course of carrying out their duties, nor should they be exposed to it. Further, given the historic and detailed exchanges between the Applicant and the Public Body regarding the requirement of supporting documentation confirming the Applicant's authority to act solely to request information on behalf of his minor children, the Applicant's non-compliance with these requests is evidence of the Applicant's true motives in making the Requests: using access requests to intimidate and harass rather than the pursuit of obtaining relevant information regarding his children's personal or health information. In our respectful submission, the Applicant's behaviour in general, and the Requests in particular, are vexatious in the extreme. It follows that the requirements of section 55(1)(b) of FOIP and section 87(1)(b) of HIA are met.

Application of section 55(1) (FOIP Act) and section 87(1) (HIA) to the access requests

Section 55(1)(a) (FOIP Act) and section 87(1)(a) (HIA) – repetitious or systematic in nature

[43] In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007), the former Commissioner said that “systematic in nature” includes a pattern of conduct that is regular or deliberate.

[44] The Applicant has submitted 11 access requests involving at least 11 employees of AHS within a 16-month period, including the August 2018 access requests. The Applicant makes access requests for his personal information and that of his two minor children in relation to every employee of AHS with whom he has contact. In this case, he has also made an access request to ascertain who changed his daughter's contact information.

[45] I find that the Applicant's access requests are part of a pattern of conduct that is regular or deliberate. Therefore, I find that the Applicant's access requests are systematic in nature, as provided by section 55(1)(a) (FOIP Act) and section 87(1)(a) (HIA).

Section 55(1)(a) (FOIP Act) and section 87(1)(a) (HIA) – amount to an abuse of the right to make those requests

[46] In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007), the former Commissioner defined “abuse” to mean misuse or improper use. In that case, the Commissioner found that the applicant was not using the FOIP Act for the purpose for which it was intended, but as a weapon to harass and grind the College. He found that the applicant's requests were part of a long-standing history and pattern of behaviour designed to harass, obstruct or wear the College down, which amounted to an abuse of the right to make those requests.

[47] In *Request for Authorization to Disregard Access Requests – Alberta Justice and Solicitor General* (February 12, 2018), I said that section 55(1)(a) of the FOIP Act clearly contemplates that the systematic nature of access requests, in and of themselves, may amount to an abuse of the right to make those access requests. I also said that section 55(1)(a) says nothing about an improper motive, although an improper motive would clearly establish abuse. The same would apply to section 87(1)(a) of the HIA.

[48] The issue I have to decide is whether there is something about the systematic nature of the Applicant's access requests in this case that is a misuse or improper use of the FOIP Act and the HIA.

[49] In my view, it is clearly improper for the Applicant to continually attempt to obtain access to information and records on behalf of his two minor children, without providing evidence of his authority to act solely on their behalf. This is especially important under the HIA, where there is no right of access to health information other than one's own. Only a person who has the authority to act on someone's behalf may access that person's health information. AHS is well within its right to ask for evidence of that authority. An attempt to access health information on someone else's behalf, without authority, is an abuse of the right to make an access request, whether under the FOIP Act or the HIA.

[50] Furthermore, the behaviour of the Applicant as described by AHS and the clear and overwhelming evidence of that behaviour that AHS has provided to me leads me to conclude that the Applicant's access requests are retaliatory. Evidence of statements from the Applicant about threats to make access requests if he doesn't get what he wants, and that this is how he operates, also supports my conclusion. The Applicant is not using the FOIP Act or the HIA for the purposes for which they were intended, but to harass AHS and in particular its employees.

[51] I have found that the Applicant's access requests are systematic in nature. I find that, because of their systematic nature, the Applicant's access requests amount to an abuse of the right to make those access requests, as provided by section 55(1)(a) (FOIP Act) and section 87(1)(a) (HIA).

Section 55(1)(b) (FOIP Act) and section 87(1)(b) (HIA) – frivolous or vexatious

[52] Having found that section 55(1)(a) (FOIP Act) and section 87(1)(a) (HIA) apply to the Applicant's access requests, it is not necessary that I also consider whether section 55(1)(b) (FOIP Act) and section 87(1)(b) (HIA) also apply. However, in this case, I have decided to consider whether one or more of the Applicant's access requests are also vexatious.

[53] In *Request for Authorization to Disregard Access Requests – Edmonton Police Service* (November 4, 2005), the former Commissioner reviewed the meaning of "vexatious", which *Black's Law Dictionary* (7th Edition) defined as without reasonable or probable cause or excuse; harassing; annoying.

[54] In *Request for Authorization to Disregard Access Requests – Calgary Police Service* (November 29, 2017), I considered the types of behaviors that the Court considers to be vexatious, such as hostility towards the other side, extreme and unsubstantiated allegations, and conspiracies involving large numbers of individuals and institutions. I also considered a history or an ongoing pattern of access requests designed to harass or annoy a public body, excessive volume of access requests, and the timing of access requests.

[55] In *Request for Authorization to Disregard Access Request – Association of Professional Engineers and Geoscientists of Alberta* (July 4, 2018) (APEGA), the Organization provided cases about the Court's interpretation of vexatious. It stated:

Previous decisions of the Commissioner have stated that 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 (Calgary Police Service at para 35).

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."

The foregoing statements are consistent with judicial jurisprudence on vexatious litigants. In *Jamieson v. Denman*, 2004 ABQB 593, Watson J. (as he then was) described vexatious in the following terms at para 126:

I consider the word 'vexatious' to carry with it a normative concept as well as a legal one. It seems to me that a party can be said to have acted in a vexatious manner, not merely that they acted in a manner which might be characterized as mean-spirited or nasty, but also that in fact the nastiness conveyed itself through to the legal process itself. In other words, that the legal process was being misused.

In *O'Neill v. Deacons*, 2007 ABQB 754, Associate Chief Justice Wittman (as he then was) stated at para 25:

What the various common law and statutory criteria suggest is that vexatious litigants are those who persistently exploit and abuse the processes of the court in order to achieve some improper purpose or obtain some advantage. Vexatious litigants tend to be self-represented, and quite often the motivation appears to be to punish or wear the other side down through the expense of responding to persistent, fruitless applications. This is why the failure to pay costs for such applications is a significant element in determining whether a litigant is vexatious.

In *Kavanagh v. Kavanagh*, 2016 ABQB 107, Shelly J. stated at para 64:

What unites these subcategories [of vexatious litigants] is their effect. All misuse legal procedure in a manner that has no valid purpose, and, as a consequence, causes harm to involved litigants and the waste of court resources. While non-legal dictionary definitions of "vexatious" focus on an act being wrongful, harassing, malicious, or intended to annoy, the legal meaning is this word is broader. A vexatious proceeding is one that in effect abuses or misuses legal processes.

Shelley J. referred to *Chutskoff* where Michalyshyn J. reviewed the following principles and factors are relevant to test whether a person is a vexatious litigant (at para 66):

1. the entire history of a dispute, including activities both inside and outside court;
2. other litigation and court history is relevant;
3. a person is presumed to intend the natural consequences of their acts; and
4. features and traits of vexatious litigation, which include:
 - a. collateral attacks on previous judicial decision-making, including attempts to circumvent the effects of court orders;
 - b. hopeless proceedings that cannot be expected to provide the form or scale of relief sought, involve disproportionate remedies and/or cost claims, or that are incomprehensible;
 - c. escalating proceedings, where grounds and issues re-appear in subsequent litigation, and/or new parties, subjects and issues are added;
 - d. proceedings with improper purposes, such as to frustrate litigation, for an ulterior motive or to obtain a collateral advantage, or which are intended to extort a benefit, as revenge, harassment, or to cause harm;
 - e. "busybody" lawsuits that relate to third parties;
 - f. failure to abide by court orders;

- g. spurious appeals;
- h. inappropriate courtroom behaviour;
- i. unsubstantiated allegations of conspiracy, fraud, and misconduct, including allegations of bias, harassment and offensive and defamatory allegations;
- j. scandalous or inflammatory language in pleadings or before the court;
- k. OPCA arguments; and
- l. attempts to use court processes to further criminal activity.

[56] In the APEGA request to disregard cited above, I considered the Court's criteria in deciding whether the access request in that case met the definition of vexatious. I intend to do so in this case as well. Following my usual practice, I also intend to consider all of the Applicant's activities, both before my office and outside of it. This is also consistent with the Court's practice.

[57] AHS has provided me with 10 pages of examples of unsubstantiated allegations and scandalous and inflammatory language. I do not find it necessary to quote any of those examples here.

[58] In terms of escalating proceedings, to date, the Applicant has brought 75 matters before my office, including matters involving AHS. Twice before I have authorized public bodies to disregard some or all of the Applicant's access requests where the public body met the burden of proof, including in situations in which the Applicant was making access requests in relation to employees of public bodies and retaliating.

[59] Based on the Court's criteria for vexatious litigants, I find that the Applicant's access requests are vexatious, as provided by section 55(1)(b) (FOIP Act) and section 87(1)(b) (HIA).

My decision

[60] AHS has met its burden to prove that that part of the Applicant's August 15, 2018 access request that predates August 9, 2018, and the Applicant's August 28, 2018 access requests, are systematic in nature and amount to an abuse of the right to make those access requests. Furthermore, considering the Court's criteria for vexatious litigants, the Applicant's access requests are also vexatious. Therefore, I authorize AHS to disregard that part of the August 15, 2018 access request that predates August 9, 2018, and the August 28, 2018 access requests.

Request to disregard future access requests

[61] AHS asks to disregard future access requests from the Applicant

...at least insofar as such requests relate to the Applicant's inquiries for records regarding the August 9, 2018 altercation at SMCHC and records regarding whether the Public Body employees have created or accessed the Applicant and his two children's health information.

[62] To be clear, if the Applicant does not provide evidence satisfactory to AHS of the Applicant's authority to act solely on behalf of his two children, AHS does not have to respond to and may disregard any and all future access requests from the Applicant that seek personal or health information of his two children. AHS does not need my authority to disregard those access requests. In this case, I have authorized AHS to disregard such access requests on the basis that making such access requests over and over again without authority is abusive and vexatious.

[63] As to the other information or records to which the Applicant has requested access, I accept that future access requests for this same information or these same records will meet the requirements of section 55(1) (FOIP Act) and section 87(1) (HIA) equally in the future as now because the Applicant has demonstrated a consistent pattern of behaviour that is characteristic of vexatious litigants, as set out below.

[64] The *in camera* affidavits provided by AHS describe incidents in which the Applicant unnecessarily raises his voice and berates employees, sometimes while following employees down hallways. The affidavits are clear evidence of a pattern of verbal abuse, and verbal and sometimes physical harassment of employees.

[65] That and the other evidence provided by AHS is that the Applicant is invariably confrontational with employees with whom he has contact. He creates a situation, escalates it and then targets the employees with whom he has had contact by making access requests in relation to them and often threatening to make complaints against them. To protect its employees from the Applicant's behaviour, AHS has found it necessary to assign one point of contact for the Applicant. I agree with AHS that employees of AHS should not have to bear the brunt of the Applicant's behaviour.

[66] Because I do not see the Applicant's behaviour changing in the future, and with one possible exception below, I authorize AHS to disregard future access requests from the Applicant in relation to records regarding the August 9, 2018 altercation at SMCHC and records regarding whether AHS's employees have created or accessed the health information of the Applicant and his two children.

[67] AHS did not ask to disregard that part of the Applicant's August 15, 2018 access request that post-dated August 9, 2018. I will authorize AHS to disregard future access requests for that same information or records only to the extent that AHS has already responded to that part of the Applicant's access request.

Jill Clayton
Information and Privacy Commissioner