

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD F2019-RTD-04

September 18, 2019

UNIVERSITY OF LETHBRIDGE

Case File Number 005073

- [1] The Governors of the University of Lethbridge (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 also requested authorization to disregard any subsequent related requests for a period of three years.
- [2] For the reasons outlined in this decision, I have decided to grant the Public Body’s request for authorization to disregard the Applicant’s access request.

Commissioner’s Authority

- [3] 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.*

- [4] A decision under section 55 is a discretionary “may” decision. A public body making a request under section 55(1) of the Act 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

- [5] On January 27, 2017, the Applicant made an access request under FOIP for the following:

I am requesting any and all notes, memos, letters, documents, and materials which in any way make reference to me, [the Applicant], in the records of [a former employee of the Public Body]". For the purpose of my request, please use the search term "[redacted]". Third party information can be redacted.

I am requesting any and all notes, memos, letters, documents, and materials which in any way make any reference to me [the Applicant], in the records of [another former employee of the Public Body]. For the purpose of my request, please use the search term "[redacted]". Third party information can be redacted.

The dates indicated in this request are from 1989 to the present (date of request).

- [6] On February 24, 2017, the Public Body applied to me under section 55(1) of the Act. The Applicant was provided a deadline of July 31, 2017 to respond, which was subsequently extended to July 5, 2018, with a further final extension to October 5, 2018. The Applicant did not provide a submission.

The Public Body's Position

- [7] The Public Body explained that the Applicant had previously made an access request on July 2, 2013 for all records containing her personal information. The Public Body provided the Applicant with 60 pages of responsive records, and after receiving these records the Applicant specified that she was particularly looking for a letter dated June 10, 1993, which had been written by a former employee of the Public Body. The Public Body responded that it could not locate this record, and the Applicant requested a review by this office. Ultimately, the Applicant's previous access request resulted in Order F2016-60, in which the Adjudicator held the Public Body had conducted an adequate search for records under s. 10(1) of the Act.
- [8] The Public Body stated:

The University of Lethbridge acknowledges that the inquiry referred to above was in relation to its duty to assist [the Applicant] in locating one specific document, the letter dated June 10, 1993. However, the original request was for all personal information related to [the Applicant]. That original request was fulfilled by searching all the departments and their various iterations that are still in existence for the personal information of [the Applicant]. No documents were withheld, regardless of the fact that at the time of the subsequent, secondary search [the Applicant] had narrowed her search to just the letter of June 10, [1993], this is evidenced by the provision of the 2 page documents provided on August 1, 2013.

The search of [the files of two former employees of the Public Body named in the current access request] has been conducted on two previous occasions, in both the first and subsequent search pursuant to the earlier FOIP requests of [the Applicant]. The two named individuals have not been employed by the Public Body since 1997,

and 2000, respectively. [The Applicant] completed her studies and employment at the University of Lethbridge on May 31, 1994 (employment) and fall of 1994 (studies). No new information will have been added to the former employees' files after their ceasing of relevant employment which both occurred prior to the Previous Request.

The Applicant's Position

- [9] In her requests for time extensions to respond to the Public Body's request for authorization to disregard her access request, the Applicant stated she disputed the Public Body's position. Ultimately, however, the Applicant did not provide a submission in this matter.

Application of Section 55(1) of FOIP

- [10] "Repetitious" is when a request for the same records or information is submitted more than once. The Public Body states that the current access request will produce the same records as the completed previous request made on July 2, 2013. It states that "[g]iven the initial request was for all personal information and no further personal information has been collected or created in any files held by [the two former employees], this Current Request is repetitious."
- [11] I agree with the Public Body that the Applicant's request is repetitious because it is for a subset of the same records previously requested by the Applicant on July 2, 2013
- [12] Under section 55(1)(a) of FOIP, the requests must also unreasonably interfere with the operations of the Public Body or amount to an abuse of the right to make those requests.
- [13] Order F2016-60 provided details of the Public Body's "extensive and thorough" search for the requested information (at paras 26 – 28 and 30). The Public Body also provided information about its prior search in its current submission. The Public Body submits that to repeat this search would be an unreasonable interference with its operations because "it will take significant resources to complete the same searches which have already been completed as a result of the Previous Request to the satisfaction of Adjudicator Swanek". It further states:

Because of a substantial passage of time from when [the Applicant] was a student and employee at the University of Lethbridge, the departments which she is requesting being searched have morphed in a number of different directions, as is evidenced by the 22 departments/offices previously searched. The Office of Ethical Behaviour which is at the heart of this request was created and closed by then President Howard Tennant (Dr. Tennant's tenure was President of the University of Lethbridge was from 1987 through 2000). It no longer exists. This office was related to Student Services and as such when conducting a thorough search for documents

emanating from this former office all student services areas need to be searched. The University of Lethbridge understands that a proper search does require this broad scope. The University of Lethbridge took this broad scope approach and searched for all necessary documents in the Original Request. To duplicate this broad scope search of 22 departments in addition to going back to [the named former employee] and asking him to conduct the same searches he has already extensively conducted would be an unreasonable interference with the Operation of the University of Lethbridge.

Further, as was provided to [the Applicant] and Adjudicator Swanek the majority of the types of records [the Applicant] is looking for have long since been destroyed pursuant to the University of Lethbridge Records Retention system and policies. Once again these policies have been updated and adapted over the 28 years for which [the Applicant] seeks records.

There is no reasonable likelihood of success in finding additional documents from either the department [the former employee] was involved in nor the President's office nor by repeating a search of [the other former employee's] personal files. These areas have been thoroughly searched for all documents related to [the Applicant]. No additional documents would be contained in any of the areas previously searched from the date of the Original Request. To conduct these repeated searches would unduly create a hardship on the University of Lethbridge and be an unreasonable interference with the operations thereof.

[14] The Public Body has previously responded to the Applicant's access request for all records containing her personal information. The current access request is a subset of the original access request, as it singles out the records containing the personal information of the Applicant contained within the records of two former employees of the Public Body. The Applicant has already been provided with all of the responsive records.

[15] I accept the Public Body's submission that repeating its original search, which as previously noted, in Order F2016-60 was found to be extensive and thorough, would unreasonably interfere with the operations of the Public Body.

[16] I find that the Public Body has met the requirements of section 55(1)(a) of the Act. As such, there is no need for me to consider whether section 55(1)(b) also applies.

Request for Authorization to Disregard Future Access Requests

[17] In the conclusion to its submission, the Public Body also requested authorization to disregard any subsequent related request submitted by the Applicant for a period of 3 years. In the absence of any further submissions on this request for future authorization, I will not consider the Public Body's request at this time. However, should the Applicant make any access requests in the future that the Public Body believes meet the requirements of section 55(1) of FOIP, it may apply to me at that time.

Commissioner's Decision

[18] I authorize the Public Body to disregard the Applicant's January 27, 2017 access request under section 55(1)(a) of the Act.

Jill Clayton
Information and Privacy Commissioner