ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2020-RTD-03

July 23, 2020

ALBERTA JUSTICE AND SOLICITOR GENERAL

Case File Number 007923

[1] Alberta Justice and Solicitor General ("JSG" or 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 access request #2018-P-0132 from an individual whom I will refer to as the Applicant.

[2] For the reasons outlined in this decision, I have decided to grant the Public Body 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.

Background

[4] The Applicant submitted access request 2018-P-0132 on February 6, 2018 to the Public Body as follows:

> I, [the Applicant], respectfully request any and all emails (to and/or from), texts (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger type of service (to and/or from), audio and video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, written material of any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, assessments of any kind, interpretations of any kind, reviews of any kind, written summaries of any kind, analyses of any kind, notes of any kind, minutes of any and

all meetings (in person and electronic/video/teleconferences), communications of any kind, in any format and, records of any kind of the following individuals:

- [30 names of individuals redacted – many of the named individuals include Sheriffs, Courthouse staff, legal counsel, and JSG Security staff];
- Any and all person(s) which correspond to or, may have accessed, or may have access to the email address "JSG Corp Security";
- Any and all person(s) which correspond to or, may have accessed, or may have access to, the email address justicecc.redirect@gov.ab.ca;
- [name redacted], Minister of Justice and Solicitor General;
- Any and all staff in or associated with the office of [name redacted], Assistant Deputy Minister, Resolution and Court Administrative Services;
- Any and all staff in or associated with the office of [name redacted], Minister of Justice and Solicitor General;
- Any emails to and/or from the email address ministryofjustice@gov.ab.ca and/or related individuals to this email address;
- Any emails to and/or from the email address justiceccredirect@gov.ab.ca and/or related individuals to this email address

involving myself, [the Applicant, birthdate redacted], and/or either of my two (2) children, [names and birthdates redacted], between the time period of April 26, 2017 to the present – no matter how I, [the Applicant], and/or either of my minor children may be referred to in any record.

My address is [redacted].
Please feel free to contact me via email (which is preferable) or at [telephone number redacted] should the need arise.

Given that the JSG FOIP office has provided me with numerous electronic records in the past, I would greatly appreciate receiving any and all of the associated records via secure, password protected PDF to the above noted email address ([redacted]).

[5] On February 9, 2018 the Public Body requested authorization to disregard the Applicant's access request.[1] It explained that the Applicant had made 22 access requests since 2016, and that during the processing of six of those requests, the Public Body had determined the requests were repetitious, systematic and vexatious. It provided details on a number of files that were already before my office for review, including one access request that had already been submitted to me as an application under section 55(1) (OIPC File #006487). The Public Body stated, in part:

> The Public Body has reviewed this current access request and determined that it is similar and overlapping to the applicant's previous requests; including 3 previous requests that were responded to (2016-P-0438, 2017-P-0104, 2017-P-0349) and 4 requests that the

[1] The Public Body also requested authorization to disregard 2018-P-0133 from the Applicant, but later withdrew that application.

Public Body has requested to OIPC give authority to disregard under s. 55 (OIPC #006487 – JSG#s 2017-P-0686, 2017-P-0751, 2017-P-0941)

The Public Body can provide additional information regarding these past requests, however the Public Body requests that the information provided in OIPC #006487 be considered. In summary, previous access requests are outlined below:

- 2016-P-0438 – Similar names, different time frame
- 2017-P-0104 – Similar names, overlap in time frame
- 2017-P-0349 – Almost identical to current request, overlap in time frame
- 2017-P-0686 – Overlap in "all" staff, overlap in time frame
- 2017-P-0751 – Multiple programs areas/same names, overlap in time frame
- 2017-P-0939 – Overlap in "All Sheriff's", overlap in time frame
- 2017-P-0941 – Same name, overlap in time frame

As stated previously to the OIPC, the Public Body has noted a concerning pattern to the Applicant's access requests. It is the Public Body's position that the Applicant receives records from a previous request and then makes a new request for records of all individuals whose name may appear in those records. As also noted previously, attempts to clarify the applicant's requests are not possible.

[6] On March 21, 2018, the Applicant copied my office on an email to the Public Body, stating in part:

> [Redacted], you will note that this is the same material that I have recently brought to the attention of the Honourable Minister of Justice, Ms. Kathleen Ganley and the Honourable Premier of Alberta, Ms. Rachel Notley.
>
> I will reiterate [redacted], you are intentionally wasting my time, the time of the OIPC and much taxpayer dollars. Your office clearly lacks much in transparency and, in my opinion, a performance audit by the Office of Auditor General of Alberta may uncover many additional issues within the Ministry of Justice, which require immediate attention and correction.
>
> As a taxpayer and a citizen, I find absolutely none of these intentional behaviours to be the least bit acceptable from public employees within a Government of Alberta Ministry.
>
> As previously noted, the Honourable Minister Ganley wished to be kept up to date with my various dealings with Alberta Justice and Solicitor General ("JSG"). Minister Ganley, respectfully, as an attorney, do you find such ongoing deliberate interference with access to information requests by your own staff members to be acceptable? Moreover, [redacted] has even written false statements about me to Ms. Jill Clayton, Commissioner of the OIPC of Alberta (although, not the first time). As an example, [redacted], in access request 2018-P-0132, has stated that "…attempts to clarify the applicant's requests are not possible". Really? I will now pose an extremely simple question to [redacted] – why? Why is it that [redacted] and/or, a member of his staff, is unable to clarify my requests with me, the Applicant? As a direct response to this ridiculous and unsubstantiated statement by [redacted], I would be most pleased to clarify any queries that [redacted] and/or any of his

staff may have in relation to any of my access to personal information requests to Alberta JSG. Please note that each of my access requests also includes this same language and I have kindly provided JSG FOIP with my contact information as well (please kindly see the attached).

As I have stated previously, I have absolutely nothing to hide – however, it certainly appears that various public bodies wish to deliberately keep much information from me – information which deals exclusively with myself (and/or my two (2) minor children), the Applicant, to various personal access to information requests.

[Redacted], please kindly ensure that my correspondence and attachments reach the Honourable Minister Kathleen Ganley for her prompt review and handling.

I look most forward to receiving a written response regarding my above queries.

Time is of the essence.

[7] On March 29, 2018, the Public Body provided a more detailed submission as follows:

In regard to this Applicant's access request, some of the records requested have been requested in previous access requests, authorized to disregard and/or are currently before the OIPC at the review stage.

Specific examples include:

- 2016-P-0436, similar employees, August 2, 2014 to November 18, 2016 – Processed
- 2017-P-0104, similar employees, November 19, 2016 to present (February 15, 2017) – Processed and with the OIPC for review/Inquiry
- 2017-P-0349, similar employees and email addresses – Authorized to disregard
- 2017-P-0751 similar employees/program areas – Authorized to disregard
- 2017-P-0941, similar employees – actively processing this request, March 1 2017 – November 8, 2017

The names and/or time frames for the new and previous requests overlap substantially.

All of the Applicant's past requests specifically name multiple employees from multiple program areas within JSG. The Applicant does the same in this current request as well as, listing any and all staff for two program areas: the Assistant Deputy Minister of Resolution and Court Services (RCAS) and the Minister's Office of JSG. The Applicant is also requesting "Any and all person(s) which correspond to or, may have accessed, or may have access to the email address justicecc.redirect@gov.ab.ca. Additionally, the Applicant names 8 Sheriffs, 10 court staff, 5 employees from the Special Investigations Unit (which is almost the entire office), the entire Corporate Security office and two other staff members from different areas in JSG. This request spans a total of 11 months.

The Public Body has noted a concerning pattern to the Applicant's access requests. It is the Public Body's position that the Applicant receives records from a previous request and then makes a new request for records of any individual whose name may appear in those

records. This was supported by the section 55 decision 006847 by the Information and Privacy Commissioner.

It is the Public Body's position that the Applicant is naming as many individuals as possible to complicate the process and is not necessarily seeking any new information. The Public Body believes this constitutes an abuse of the FOIP request process and is contrary to the purpose for which the FOIP Act was intended.

The vast amount of employees the Applicant is requesting records from, including two emails [sic] addresses, would be an immense undertaking in the search for records process and the processing of the actual request. Searching for and providing records responsive to these two requests would take the staff away from their regular duties such as providing security to Albertans and JSG staff, court administration of the Alberta court system, and other ongoing special investigations. This would greatly interfere with the operation of JSG. Additionally, due to the sensitive information coming in from these program areas, in depth consultation will be required which again will take away from their important duties. Given the above, it may be necessary for the employees to complete the search and consultation outside normal working hours. This would require the Public Body to compensate those employees for overtime.

Based on the large scope of the Applicant's request, it is unknown the amount of records that would be located for each new request, but given the details of each request it is conceivable it could be a very large number. Due to the complex nature of the Applicant's history with JSG, and the amount of time taken to process the Applicant's past requests, it is reasonable to expect it will take longer than normal to review each page and therefore respond to the Applicant.

Processing of the vast scope of this request is a disruption to the operations of the FOIP Unit. The Public Body advises that it would have to assign at least one advisor and one administrative support staff fulltime just to process this request, taking them away from all other duties. It will likely be necessary to temporarily re-assign further unit resources to assist in processing.

Efforts have been made in the past, to clarify and assist the Applicant in providing records. In one case, it resulted in his request being abandoned. Therefore the Public Body believes that attempting to request clarification would not be feasible as the Applicant is aware of the confusing nature of his requests, and this forms part of the vexatious nature of his requests.

Finally, the Applicant has repeatedly demonstrated vexatious behavior towards staff within JSG. As noted by the Commissioner in response to previous Section 55 #F3885, "*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".*

The Applicant has had multiple inquiries with numerous program areas and employees within JSG. The Applicant has demonstrated hostility towards many employee [sic] within JSG that he has had contact with and has accused staff of unsubstantiated allegations

against him. Although each program area has attempted to resolve these inquiries, the Applicant remains unsatisfied with the outcome and decisions made and continues to pursue these matters within each JSG program area. Many program areas have done all they can to resolve the Applicant's inquiries and have had to advise him that no further communication regarding his issues will be provided. Based on the Applicant's on-going history and demonstrated behaviour, it is therefore anticipated that on-going requests will result in continued dissatisfaction and the Applicant will revert to seeking employee names which in our opinion is to further harass and intimidate. It is the Public Body's position that this is an abuse and misuse of the right to request information under section 6(1) (Information rights) of the FOIP Act.

To further support the above point, the Public Body can acknowledge that the applicant's multiple contacts across the Public Body includes ongoing emails and telephone contacts requesting information, action and other activities to the Minister's Office, Legal Services Division, Corporate Services Division, Resolution and Court Services Division, and Public Security Division. The vast number of contacts was instrumental in the decision of the Public Body to create a Complex Client Management Plan for the Applicant, managed by the Public Body's Corporate Security Services. This Plan requires that communications from the Applicant is directed through a central point at Justice and Solicitor General. This also includes emails sent to other Government of Alberta (GoA) Departments.

This Complex Client Plan is also meant to manage the multitude of complaints the applicant has made regarding various government staff and demands to have them disciplined, replaced or dismissed. The emails sent over a period since 2016, often directly to employees, their supervisors and others, has had the obvious impact of creating unnecessary stress on many staff. Due to the sensitive nature of the applicant's interaction with staff, further specific information on the Complex Client Plan and the applicant's contacts can be provided *in camera,* if required by the Commissioner. It is the Public Body's position that further information is not necessary to make a determination under section 55 of the FOIP Act.

As well, based on the applicant's own admissions in various communications, it is the Public Body's belief that applicant has made a significant amount of requests and/or complaints to other GoA public bodies and other local public bodies regarding a variety of matters, and that he has pursued reviews and complaints with the OIPC on a variety of matters. Some of these communications and complaints are then shared, for no purpose, with JSG FOIP staff.

The varied and excessive contacts the applicant has made to the Public Body's various staff in various divisions has been summarized in a Briefing Note (AR 27294). Given the sensitive nature of this information, the Public Body can provide further information to the Commissioner *in camera* if required. It is the Public Body's position that further information is not necessary to make a determination under section 55 of the FOIP Act.

Even with the Complex Client Plan in place the applicant has continued to send emails with demands and statements that have a negative impact on staff. For example, the applicant wrote to the Director of FOIP and Records Management on March 23, 2018, in regard to this specific submission, and stated the following:

"Therefore, [name redacted], I will caution you on the type of statements that you attempt to relay to Commissioner Clayton in your revised Sec. 55 submission in relation to OIPC file #007923/JSG #2017-P-0132, which includes the names of numerous JSG employees (as well as the Honourable Minister of Justice, Ms. Kathleen Ganley)."

The applicant is well aware of the process the OIPC has determined regarding this request and has been advised that his concerns about the process should be directed to the OIPC. His caution is concerning as it is unnecessary and he is aware that it is outside of the process of the OIPC direction.

Conclusion

It is the Public Body's position that this request is repetitious, systematic and vexatious in nature. To respond to this request, would create a burden which would unreasonably interfere with the operations of the Public Body and take away time and resources that would normally be used to serve those who use the legislation and resources appropriately.

[8] The Applicant provided a further submission on May 1, 2018, stating

As I have stated previously in a prior response to the OIPC of Alberta regarding a different Sec. 55 request of [the Public Body], I will simply state and emphasize that the new Sec. 55 request of [the Public Body] is completely nonsensical and without any legitimate merit – moreover, [the Public Body] has again made such a request once I, [the Applicant], had made a personal access request to Alberta JSG involving senior staff members and/or elected Government of Alberta offices; including, but not limited to [redacted], Assistant Deputy Minister, [redacted], Assistant Deputy Minister, Resolution and Court Administrative Services and the Honourable Minister of Justice, [redacted]. Given that the Applicant's name was arbitrarily placed on the Government of Alberta's secretive (and as self-described in internal Alberta JSG correspondence, "…for your eyes only…" MASTER COPY Complex Client List", it is exceptionally clear that [redacted] (and/or other staff and/or elected officials within Alberta JSG) have records and/or information which they wish to keep from the Applicant – despite the existence of enacted Alberta FOIP legislation. In prior instances, [redacted] had made extreme efforts to keep personal records from the Applicant, when such FOIP requests involved [redacted], his supervisor [redacted] and one of the staff members of [redacted]. Responses to such personal access to information requests have demonstrated that I, [the Applicant], have been on such "Complex Client List" for well over a one (1) year period – again, for absolutely no valid and/or substantiated reason (and I reiterate, such list is self-described as being completely unvetted). Such "Restricted" and highly sensitive Government of Alberta list describes three (3) groupings of individuals (and includes over forty (40) pages of names) – each grouping arbitrarily describes individuals as being and/or potentially being dangerous (with individuals having a predisposition towards violence) and/or as being significant threats to the Government of Alberta and/or its staff members). More specifically, the Government of Alberta arbitrarily places individuals and members of the public; including the Applicant, into one (1) of the following categories:

Group 1 – (Vexatious and Habitual Complaints) Although normally a low risk for violence, individuals in this group can spontaneously escalate their inappropriate behaviour towards department employees. This group consists of individuals who are aggrieved, either for legitimate or perceived reasons, and deliberately tax government resources by submitting matters that are vexatious or habitual in nature.

Group 2 – partially redacted definition. These individuals adhere to an ideology of anti-government sentiment and claim to have severed all ties with the Government of Canada or Alberta. While advocating a claim to rights under common law, these individuals will often engage in acts of harassment, retaliation and intimidation against public officials, members of the Judiciary, law enforcement and private citizens.

Group 3 – substantially redacted definition. (Aggressive, Abusive or Criminal Behaviour) Individuals categorized in this group pose a high risk to department employees or others within the workplace.

At the bottom of page one is an interesting caution message to any potential users of the "Complex Client List" … The information contained within this document is considered proprietary and Restricted to Alberta Justice and Solicitor General, Corporate Security Services (CSS). Inappropriate and unauthorized disclosure of this report or portions of it could result in significant damage or loss to the Alberta Government. Over half of the warning has been redacted by [redacted] using Secions [sic] 20(1)(a) and 20(1)(c) of the FOIP Act.

Therefore, as I have noted previously, I have come across much material and records in prior personal access to information requests, which involves various staff of Alberta JSG that gives me, the Applicant, much cause for concern (including the safeguarding of my own physical safety). Again, as noted previously, material has led me to file valid formal complaints against certain staff, including certain Sheriffs at the Calgary Court Centre. Furthermore, I now have additional concerning video evidence from the Calgary Court Centre which clearly demonstrates that Alberta JSG has intentionally gathered, electronically copied, disclosed and used my personal records and notes – contrary to Alberta privacy laws – all of which was obtained during a hearing before a Justice of the Court of Queen's Bench of Alberta. [Redacted] is continuously hindering my ability to exercise my own legal rights under enacted legislastion [sic] and; more importantly, [redacted] has clearly and intentionally interfered with formal investigations that fall under the Peace Officer Act. This, again, is illegal. I will reiterate that [redacted] has intentionally broken various sections of the FOIP Act and wishes to hide various actions of himself and other staff members of Alberta JSG – (as well as among other public departments and elected officials). All of this has been clearly demonstrated by the ongoing actions of [redacted] – and further evidenced by the extremely secretive Government of Alberta "Complex Client List".

As in prior Sec. 55 requests, [redacted's] primary argument and main conclusion for the Sec. 55 request is that my access to personal information requests will create an overabundance of work for his FOIP department and cause an interference and/or burden within Alberta JSG (one that may even cause the payment of overtime to certain staff members). This, again, is completely nonsensical and is truly a cause for much concern as it relates to senior

staff arbitrarily neglecting the fiduciary and legal obligations of the Alberta JSG FOIP office. I, the Applicant, will again reiterate and stress the fact that the Alberta JSG FOIP office solely exists to provide information and records under the FOIP Act. Access requests cannot simply be denied because they may take effort on the part of a specific FOIP office and/or other relevant public officials and/or elected officials and/or because there may be a cost associated with completing such general and/or personal FOIP requests in a timely manner. This would be an extremely dangerous precedent for the OIPC of Alberta to introduce if such an excuse could arbitrarily be used against each and every access request to public bodies. Various individuals within the Canadian government have expressed this same cause for concern with respect to access to information requests (please kindly see attached article, dated September 27, 2017 – Globe and Mail). Certain access requests by journalists, etc. can be enormous in time and effort; nonetheless, such access requests must be fulfilled under enacted law. To dissuade or disregard such access requests due to their size and/or scope is a terrible attack on democracy. Therefore, the main argument of [redacted] simply does not withstand scrutiny. Furthermore, as I had previously stated to [redacted] on numerous occasions, I would be most willing and happy to clarify certain of my prior access requests; unfortunately, [redacted] did not provide me with such an opportunity in this instance – and [redacted], again, went directly to a Sec. 55 request and my legitimate access requests have been on hold for a lengthy period of time as a result.

As in prior arguments to Sec. 55 requests, [redacted] again states that some of my requests are repetitive and/or overlap. Again, that is not entirely correct as I have made requests of certain employees of JSG and of their assistants – involving myself. These are different requests, involving different employees and they do not overlap. Also, as in a prior access to information request, I was actually attempting to reduce the workload for the Alberta JSG FOIP office (as I, the Applicant, cannot possibly be expected to know the detailed processes of the FOIP office) – highlighted in my personal access request, [redacted] has again attempted to use the format of my personal access to information request against me as part of his Sec. 55 rationale to the Commissioner, Ms. Jill Clayton. Finally, my personal access to information requests are not difficult, confusing and/or complex in nature – as [redacted] attempts to portray them in his most recent Sec. 55 request – on the contrary, my personal access to information requests contained detailed language that should be easily followed by sophisticated professionals that complete such access requests on a daily basis. I, the Applicant, am truly unsure as to why such searches for records (of which the vast majority, I would assume, are in electronic form) cannot simply happen in the background (applying routine key word searches and the like) by trained IT staff – and therefore, have little, to no disruption, of any public staff within Alberta JSG, PSU, etc. As a professional myself, it appears that the Alberta JSG FOIP office and, its staff members, could significantly benefit from additional information management training – therefore, perhaps learning revised methods and procedures to search for records in much less disruptive ways to the overall daily operation of Alberta JSG.

Analysis

[9] An individual's right of access to information is not unlimited. No one has a right to make abusive access requests. The Alberta Legislature recognized this through incorporating various gatekeeping provisions in the FOIP Act, including section 55(1). Courts have also

recognized the necessity of gatekeeping in appropriate circumstances. For example, the Supreme Court of Canada has stated, "There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice".[2]

Section 55(1)(a) – Requests are repetitious or systematic in nature

[10] "Repetitious" is when a request for the same records or information is made more than once. "Systematic in nature" includes a pattern of conduct that is regular or deliberate.

[11] In their submissions, the parties referred to a number of matters before my office in which they were involved, including OIPC File #006487.[3] OIPC File #006487 is a section 55(1) decision I issued on February 12, 2018 where, on the basis of the evidence before me, I authorized the Public Body to disregard certain portions of the Applicant's access requests and required it to respond to others.

[12] In OIPC File #006487, I found the Applicant's access requests were systematic in nature for the following reasons:

> In my view, the pattern appears to be the same for each of these access requests, namely, the Applicant has contact with particular individuals, and then makes access requests for records about himself and often his children, in relation to those individuals. In Alberta Justice's view, the Applicant makes access requests in relation to individuals whose names appear in records that he receives. In either case, I note that there is duplication of some names in these access requests and the ones that are currently the subject of the section 55(1) request, although the date range is different. It may be that the Applicant either has ongoing contact with those individuals, or is seeking to know whether those individuals are generating any further records about him.
>
> Alberta Justice's evidence before me is that some of the Applicant's access requests are repetitious, as the Applicant has asked for records relating to certain employees within units of Alberta Justice and has also asked for records relating to all employees in those units. I agree that the Applicant's access requests are repetitious to the extent that specific individuals would be included within the larger access requests, depending on dates. The Applicant says he is prepared to narrow those larger access requests. Later in this decision, I will deal with the Applicant's offer to narrow those requests.
>
> There is no doubt that all of the Applicant's access requests are systematic in nature. The access requests are part of a pattern of conduct in which the Applicant appears to make access requests for his personal information in relation to every employee either with whom he has contact or whose name appears in records. I note the Applicant does not

[2] *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59 at para 47. See also: *Canada v Olumide*, 2017 FCA 42 at paras 17 – 20.

[3] Request for Authorization to Disregard Access Requests under section 55(1) of the *Freedom of Information and Protection of Privacy Act*, Alberta Justice and Solicitor General, OIPC File Reference 006487, February 12, 2018. Available online at www.oipc.ab.ca.

deny Alberta Justice's submission that the Applicant asks for records concerning those individuals whose names appear in any records the Applicant obtains in an access request.

[13] The Public Body provided specific examples of some repetition in the Applicant's access request. Further, as in #006487, in this case the Applicant has demonstrated the same deliberate pattern of conduct. He has named specific individuals, as well as records involving all employees in particular named units.

[14] The Public Body also submitted that the Applicant, in his communications with JSG FOIP staff, has referred to his other access requests and complaints involving other public bodies. In my earlier section 55 decision involving these parties (#006487) I said I may consider other matters involving a party before my office where such evidence may be relevant in demonstrating a pattern or type of conduct under consideration for the purposes of section 55(1) of the Act. In vexatious litigant applications before the Court, it will also undertake a similar consideration of an individual's other litigation and court history when making a determination.[4]

[15] Accordingly, while the public body bears the burden to establish the conditions under section 55 are met, in making a decision I may also consider other relevant matters involving the Applicant before my office. As such, in addition to my earlier decision in #006487, in this case, and considering the Public Body's submission that the Applicant has already provided information about his involvement with other public bodies, I find that in determining whether the Applicant's access request is systematic, it is a relevant consideration that two other public bodies have previously requested and have been granted authorization to disregard access requests made by the Applicant.[5]

[16] Further, and as I have also noted in F2020-RTD-02 (a decision being released concurrently involving the Applicant and another public body), the Applicant's other activities before my office are relevant in considering whether authorization to disregard this request should be granted. Between November, 2016 and January, 2019, the Applicant has been involved in 70 matters before my office.[6] 18 of these matters have been between the Applicant and JSG, including 11 requests for review, 4 complaints, and 3 requests for authorization under section 55.

[17] The Applicant is a persistent and prolific user of access to information legislation. I find this access request is systematic in nature, as it is part of pattern of conduct that is regular or deliberate.

---

[4] See for example, *Kavanaugh v Kavanaugh*, 2016 ABQB 107 at para 66 and *Jonsson v Lymer,* 2020 ABCA 167 at para 40.

[5] F2019-RTD-02/H2019-RTD-01 (Alberta Health Services) and Request for Authorization to Disregard Access Requests under section 55(1) of the *Freedom of Information and Protection of Privacy Act*, Calgary Police Service, OIPC File Reference 006221, November 29, 2017. Available online at www.oipc.ab.ca. See also F2020-RTD-02.

[6] During this time, the Applicant brought 46 Requests for Review and 16 complaints to my office. Public Bodies and custodians have brought 8 separate applications to disregard access requests made by the Applicant.

[18] Under section 55(1)(a), the request must also unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests.

Section 55(1)(a) – Unreasonably interfere with the operations of the public body

[19] This provision requires a Public Body to provide evidence about how the particular access request it is seeking to disregard will unreasonably interfere with its operations.

[20] The Public Body submitted that responding to the access request would be an immense undertaking that would remove staff from their regular duties such as providing security and administering the courts, and would greatly interfere with its operations. It stated that due to the sensitive nature of information in the responsive program areas, it may be necessary for employees to work outside their regular working hours, which would require the Public Body to compensate them for overtime. The Public Body further stated that the scope of the request was a disruption to the operations of the FOIP Unit and would require at least one advisor and one administrative support staff full time to process the request, which would remove them from all other duties. Further, the Public Body stated it would likely be necessary to temporarily re-assign additional unit resources to assist in processing the request.

[21] In response, the Applicant argued that the Public Body's position was "completely nonsensical and is truly a cause for much concern as it relates to senior staff arbitrarily neglecting the fiduciary and legal obligations of the Alberta JSG FOIP office". He stated the sole purpose of the FOIP office was to process access requests and to allow the Public Body to disregard an access request based on its size or scope would be "an extremely dangerous precedent" and "a terrible attack on democracy". The Applicant said he would be happy to clarify his request and suggested that his request would have little impact on the Public Body's operations because it could be done through key word searches by professional IT staff. He further suggested the staff of the Public Body would benefit from additional training to learn to search for records.

[22] In my view, the Public Body is more qualified than the Applicant to speak to the impact of processing his request on its operations. Responding to an access request requires more than key word searches as, at a minimum, any resulting records must still be reviewed for responsiveness. Further, given that section 55(1)(a) of FOIP specifically contemplates a circumstance where, because of their repetitious or systematic nature, the request would unreasonably interfere with a public body's operations, a public body is entitled to make submissions on that point.

[23] Although the Public Body provided some general information regarding what would be involved in processing the request and how that would interfere with its operations, it is difficult for me to make a determination, on the basis of the evidence before me, as to whether this would *unreasonably* interfere with its operations. All access requests will

interfere with an organization's operations to some extent. I recognize it may be difficult for a public body to provide a precise estimate of the time required to process an access request without processing it, but some additional information is needed. For example, an estimate of how long full time staff may be required and, importantly, how that compares to its regular operations and usual access requests would be of assistance.

[24] As in #006487, I accept that at least some portions of the Applicant's access request, particularly those aspects removing security staff from their security duties, would unreasonably interfere with the operations of the Public Body. In any event, it is not necessary for me to determine exactly which portions of the access request (if not all of it) would unreasonably interfere with the Public Body's operations because, for the reasons set out below, I find the entirety of the Applicant's access request is an abuse of his right to make access requests.

Section 55(1)(a) – Or amount to an abuse of the right to make those requests

[25] An "abuse of the right to make those requests" includes misuse or improper use of the FOIP Act. Section 55(1)(a) contemplates that the systematic nature of access requests, in and of themselves, may amount to an abuse of the right to make those requests. An improper motive in making an access request is clearly an abuse. Further, an access request may amount to an abuse of the right to make an access request if there is evidence that the applicant's requests are retaliatory in nature, aimed at harassing a public body and its employees.

[26] In my earlier decision in #006487, I found there was insufficient evidence before me at that time to establish the Applicant's access requests were an abuse. However, I also stated this:

> Finally, my view is that the systematic nature of the Applicant's access requests is fast approaching abuse, based on the escalating nature of those access requests in relation to the matter that triggered his involvement with the justice system on August 2, 2014. If this escalating behavior continues, Alberta Justice may consider whether to apply to me again in the near future and provide sufficient evidence to meet its burden under section 55(1) of the FOIP Act.

[27] In this case, the Public Body pointed to a number of factors indicating the Applicant was abusing his right to make requests. As is quoted in its submission above, it argues:

- the Applicant systematically makes new access requests including new names of individuals that he has obtained from the Public Body's responses to prior access requests;
- the Applicant names as many individuals as possible to complicate the process, not to seek new information; and

- the Applicant reverts to seeking names of employees through the FOIP Act when a program area has done all it can to resolve his issues, and advises him that no further communication will be provided.

[28] The points made by the Public Body are supported by the evidence before me.

[29] Further, in addition to requesting information about himself, the Applicant also requested access to personal information about his two minor children. This pattern of conduct is the same as in F2019-RTD-02/H2019-RTD-01 where I held as follows:[7]

> [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 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.

[30] Making an access request for the personal information of another individual without authority to do so (or refusing to provide evidence of the authority to do so) is also an abuse of the FOIP Act. The Applicant has provided no evidence that he has the authority to make access requests on behalf of his two minor children. As I stated in F2019-RTD-02/H2019-RTD-01, in the absence of authority, a public body does not need my permission to disregard an access request for the personal information of another person.

[31] I find the Public Body has met its burden to establish that the Applicant's access request is an abuse of the right to make a request.

Section 55(1)(b) – frivolous or vexatious

[32] Having found that section 55(1)(a) applies to the Applicant's access request, it is not necessary that I also consider whether section 55(1)(b) applies. However, in this case, I have decided to consider whether the Applicant's access request is vexatious.

[7] F2019-RTD-02/H2019-RTD-01 at paras 35, 49 and 50.

[33] A "frivolous" request is typically associated with matters that are trivial or without merit. Information that may be trivial from one person's perspective, however, may be of importance from another's.

[34] A vexatious request is one that involves misuse or abuse of a legal process.[8] "Vexatious" has been defined in *Black's Law Dictionary* (7th edition) as without reasonable or probable cause or excuse; harassing; annoying. The class of vexatious requests includes those made in 'bad faith', such as for a malicious or oblique motive. Such requests may be made for the purpose of harassing or obstructing a public body.

[35] A request is not vexatious simply because a public body is annoyed or irked, or because the request is for information that the release of which may be uncomfortable for the public body. 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 the public body to a standstill. Further, as I noted in #006487, vexatious behaviours include hostility towards the other side, extreme and unsubstantiated allegations and conspiracies involving large numbers of individuals and institutions. A history or an ongoing pattern of access requests designed to harass or annoy a public body, an excessive volume of access requests, and the timing of access requests may also lead to a finding of vexatiousness.

[36] The Public Body stated the Applicant has repeatedly demonstrated vexatious behaviour towards staff within JSG. This is supported by the evidence before me, including the Applicant's own submission. It is replete with inflammatory language about employees of the Public Body and includes numerous unsubstantiated accusations of wrongdoing and illegal behaviour by the employees and the Public Body. The Public Body also states that the Applicant's communications have had the obvious impact of creating unnecessary stress on many staff.

[37] The Applicant denies his access request is frivolous or vexatious.

[38] In #006487 I was unable to conclude that the Applicant's access requests were vexatious, but observed that the Applicant's escalating access requests and behaviour could change my finding in the future. Despite what was in effect my warning to the Applicant, his behaviour has not changed.

[39] As a whole, the evidence before me is clear that the intent of the Applicant's access request is not to gain access to his personal information, but to misuse the FOIP process in order to harass the Public Body and its employees. Further, as submitted by the Public

[8] Request for Authorization to Disregard Access Requests under section 55(1) of the *Freedom of Information and Protection of Privacy Act*, Calgary Police Service, OIPC File Reference 006221, November 29, 2017 at paragraphs 36 and 37. Available online at www.oipc.ab.ca.

Body, the Applicant has made numerous allegations against a number of employees and has been restricted in his communications with the Public Body. Therefore, I find the access request is intended, at least in part, as retaliation against the Public Body.

[40] The Applicant is a persistent and prolific user of access to information legislation. Access to information rights are intended to foster open and transparent government. Access to information rights are not intended to allow a disgruntled individual to harass a public body or its employees in retaliation for perceived wrongs against that individual.

[41] I find the Applicant's access request is vexatious under section 55(1)(b) of the FOIP Act.

Decision

[42] On the basis of the evidence before me, I have decided to exercise my discretion under section 55(1) of the FOIP Act. The Public Body is authorized to disregard the Applicant's access request P2018-P-0132.

Jill Clayton
Information and Privacy Commissioner