

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**REQUEST TO DISREGARD F2020-RTD-04**

July 24, 2020

LIVINGSTONE RANGE SCHOOL DIVISION NO. 68

Case File Number 015620

- [1] Livingstone Range School Division No. 68 (“LRSD” 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 10 access requests (containing numerous sub-parts) 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 requests.
- [3] The Public Body also requested authorization to disregard all future requests that may be submitted by the Applicant.
- [4] The facts of this case demonstrate that limitations are required on the Applicant’s right to make access requests. The Public Body is granted authorization to disregard any future requests for records that have already been provided to the Applicant. In addition, for a period of one year from the date of this decision, the Public Body need only respond to one access request at a time from the Applicant.

**Commissioner’s Authority**

- [5] 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**

- [6] There is an extensive history between the Applicant and the Public Body. The Applicant is the parent of a child attending a school within the Public Body’s School Division. Prior to this application, the Public Body had responded to three FOIP access requests made by the Applicant.

These responses included hundreds of pages of records as well as allowing site access in order for the Applicant to view video surveillance records.

- [7] The Public Body stated that since the 2015-2016 School Year, the Applicant had extensively communicated with it. The exhibits to the Public Body's Affidavit included examples of correspondence between the Applicant and employees of the Public Body. In his sworn Affidavit, the Public Body's FOIP Coordinator stated:

“The Applicant has a history of being aggressive and accusatory towards the Public Body's employees in writing and in person.

Several of the Public Body's employees that have interacted with the Applicant have reported feelings of stress and anxiety in relation to the Applicant as a result of constant correspondence from the Applicant, as well as aggressive or agitated interactions with the Applicant in person.”

- [8] On or about November 6, 2019, the Public Body sent the Applicant a cease and desist letter that banned her from attending at any property owned by the Public Body or communicating with any of the Public Body's staff members. The Public Body advises that despite the issuance of the cease and desist letter, the Applicant continued to contact her child's teacher and the Superintendent on several occasions.
- [9] The Public Body has requested authorization to disregard 10 access requests made by the Applicant in February, 2020. The first was received February 6, and the other nine were received on February 13 2020. These access requests contain numerous sub-parts amounting to approximately 25 requests in total.
- [10] Shortly after submitting the access requests that are the subject of this decision, on February 19, 2020 the Applicant advised the Public Body she was creating “ad-sets” for a social media campaign related to the Public Body. The Public Body also noted that the Applicant had begun using an email address that gave the suggestion she was associated with the Public Body, although the email was not associated with the Public Body.

### **The Access Requests**

- [11] The access requests that the Public Body has applied to disregard are reproduced below:

LRSD 2020-01 (received on February 6, 2020)

- 1) A certified true copy of AP 141 Prior to Amendment of AP 141 in Sept 4 2018 and November 2018. For greater certainty, I request a certified true copy of the AP 141 record in effect at the time I reviewed video surveillance records at LRSD Head office with [redacted] and [redacted] (General Information – A general fee of \$25 has been mailed)
- 2) All records of email correspondence between [the Applicant] and [redacted] (Personal Information)
- 3) ROE for [the Applicant]. Please include the Code for the reason for my termination of employment. Please also provide paystubs and T4's when they become available (Personal Information)

- 4) Time sheets for the hours I worked and volunteered. (I retain my copy – I wish to compare with your records). Note: this request is limited to my work with LRSD and excludes my services in relation to [redacted] and LDM. (Personal Information)
- 5) WHIMIS training – I may have signed a form in relation to safety training. I claimed to OHS that I received no training, but I wish to confirm if any records may exist.
- 6) A copy of the records that [redacted] referenced in legal correspondence addressed to my lawyer dated November 27, 2019. [Redacted] refers to correspondence dated NOVEMBER 5, 2019, and alleges [redacted] wrote to me and said, *“I am requiring that all future correspondence with the school be directed through your husband, [redacted] to the principal only.”* I request a copy of this “alleged correspondence” the date this correspondence was “allegedly” delivered to me, and any records that evidence delivery of this correspondence to include a record that confirms receipt by me of this “alleged” correspondence. I only received correspondence dated May 27, 2019 and November 6, 2019 from [redacted]. (I have alleged to the Registrar that this is record [sic] is a fabrication of the truth and does not exist. (Personal Information).
- 7) [Redacted] wrote to my lawyer on November 21, 2019 and alleges that [redacted] sent me an email dated November 14, 2019. I alleged I received no such email. I request a copy of this email, proof of delivery; time stamp of delivery and proof it was received by me. I request the copy of the email server which confirms a copy “failure to deliver email” (Personal Information). Please include web diagnostics for receipt of your delivery. You will need assistance from your IT department. (Personal)
- 8) Any records that evidence the Board or agent of Livingstone responded to my parent concern that under-age students were exposed and given “age restricted” gambling materials in their agenda. I have claimed that this record does not exist but I wish to confirm. (Personal Information)
- 9) A copy of LRSD’s insurance policy which includes occupier’s liability (General information - \$25 Fee)

September 1, 2016 – February 3, 2020, except for T4 which you can provide when it is available.

LRSD 2020-02 (received February 13 2020)

- 1) In relation to a Request to Access Information, dated Jan 15 2018, I reviewed responsive records dated Jan 8, 9, and Jan 11<sup>th</sup>. I requested that these records not be destroyed. Administrative Procedure 141 Video Surveillance System (since amended) Retention of Video Recordings: a. Video recordings shall be erased or otherwise disposed of according to a standard schedule, unless they are being retained at the request of the school principal, Division official, law enforcement official, employee, **parent** or student for documentation related to a specific incident, or are being transferred to the division’s insurers. **I request any record that may have been created and sent to inform me that Administrative Procedure 141 is being amended which results in LRSD no longer having to retain a record I requested shall not be destroyed.** The records I requested not be destroyed include a depiction a WMES staff member applying unreasonable, excessive force on my [child] to culminate in abuse/assault on the date of Jan 9, 2018 in the West Meadow Elementary School Gymnasium, in Claresholm, Alberta, Canada. The other records I requested be retained include video records that speak to the WMES’s staff allegation that my son (Kindergarten age 5) struck a WMES staff member. For greater certainty, this does not include a record that [redacted] authored to inform me the record was destroyed in response to my request to re-review the video surveillance record with my husband.
- 2) If LRSD provided a duplicate copy of the video surveillance records dated Jan 8, 9, 10, 11, before you destroyed the video evidence held in Livingstone Range School Division custody in relation

to [redacted], to its Legal Counsel or insurance company, I request a copy of this record now please.

January 8, 2018 through to present day.

LRSD 2020-03 (received February 13 2020)

- 1) A copy of the legal agreement/privacy agreement between LRSD-WMES and Fresh Grade. (Fresh Grade contacted me and indicated that all the records [redacted] uploaded to Fresh grade in relation to [redacted] are the sole property of Fresh Grade). I have already remitted a \$25 fee for this request but please advise me you require an additional fee.
- 2) A duplicate record of every record that was uploaded to Fresh Grade in relation to [redacted]. September 1, 2018 to September 30, 2019

LRSD 2020-04 (received February 13, 2020)

- 1) A copy of all records (invoices) to include copies of public accounting records – General Ledger – line items for which clearly delineate LRSD expenditure of public funds to retain legal services in relation to [the Applicant and her child]. For this request, I am looking only for information that establishes the dollar amount allocated or expended by LRSD. Thus you may redact any identifying information (ie Lawyer’s name; law firm; subject line) but you may not redact any record that bears my legal name or the name of my child.
- 2) This is a continuous request to mean I wish to receive updates on all records. I have already provided a \$5.00 fee [sic] for the continuous request if you require an additional, initial fee, please contact me and advise accordingly.

September 1, 2016 to present day. This is a continuous request for the future.

LRSD 2020-05 (received February 13, 2020)

- 1) A certified true copy of the email, authored by [redacted] (PUF learning support teacher – Assistant Principal – Former PUF coordinator), which clearly evidence the legal name of all recipients. [Redacted] demeans/degrades/lowers/reduces me ([redacted’s] mom) to her colleagues who are also the legal members of [redacted’s] adaptive learning team. I have received a copy in the former Access Request, but I request a certified True Copy.
- 2) I wish you to also receive a copy of any other records, authored by any member of WMES or LRSD staff or Board, wherein I am the subject of the email correspondence or written word, of which a record exists. (this does not include records of which LRSD legal counsel is the recipient or sender of communication)

Sept 1, 2016 to present day

LRSD 2020-06 (received February 13, 2020)

See excerpt from Funding Manual for School Authorities 2017-2018 to assist you with this request (Attached)

- 1) A record (copy) of the funding formula LRSD-WMES remitted to AB ED for all three years of PUF coding for [redacted]. The records I request shall be responsive to evidence Centre Based Programming and/or Combined and/or clustering. Further to, the records I request will be responsive to breakdown the # of sessions and who provided the service (ie. SLP/Learning Support Teacher/OT). Specifically, I must receive a record to evidence how much of the PUF grant which LRSD for remittances for SLP services provided to [redacted] under the PUF program with LRSD for all three PUF years. Call me if you have questions and how much money did LRSD allocate to the Learning Support Teacher for all three years. (The breakdown must be evidenced year by year.)

- 2) This is a repeat request to determine if any records have surfaced since the last request. I request records responsive that evidence PUF policy, procedures, eligibility, community outreach (advertising) to include any records that are provided to staff or parents that explain the purpose and expectations associated with PUF.
- 3) FSCD and LRSD and [redacted's] parents had a meeting to discuss legal requirements in the Government policy manual governing PUF and specialized services. I am requesting any formal records that were collected or created (minutes; procedures; follow up; etc.) to evidence LRSD's retention of the directives provided to LRSD by the Government of Alberta in relation to adhering to binding policy.

September 1, 2016 to present day

LRSD 2020-07 (received February 13, 2020)

- 1) Receive a record of IPP updates (Adaptive learning plan) for the pupil [redacted] – This includes all records that have addressed [redacted's] disability needs at WMES that are included in the IPP (Adaptive learning plan) as an attachment. This is a cumulative (continuous) access request and I have mailed a \$5 fee [sic] separately.  
November 1, 2019 to present day, and this is a cumulative (continuous) access request and I have mailed a \$5 fee [sic] separately.

[Note: The Public Body advised that on approximately March 18, 2020, as a result of the closure of schools due to the COVID-19 pandemic, the Applicant was provided a response to this request (2020-07) outside of the FOIP process.]

LRSD 2020-08 (received February 13, 2020)

- 1) Receive a report of all forms entitled Public Civility Incident Report (See AP 132) that bear the name [of Applicant] under the heading: "Name of person you are reporting (if known). For this request, if LRSD is concerned about protecting its employee's privacy, I would ask that you redact any identifying information to ensure your staff's privacy so they feel safe to report. This may result in redacting the entire document except for my name. This is a continuous access request.
- 2) Receive a record of all records that Livingstone Range School Division (to include WMES) provided to the RCMP or police authority that bears my legal name [redacted]. This includes Public Civility Incident Report forms and any record that has been submitted to police. Again if LRSD wishes to redact any identifying information, please feel free to do so but you may not redact dates or times or my name. This is a continuous access request.

Records will likely be located between the dates of April 1, 2019 through to present day. However, for greater certainty, the time period for this request is September 1, 2016 through to present day and onward. This is a continuous request and I have provided a \$5 initial fee [sic] to receive any future records under this Access Request.

LRSD 2020-09 (received February 13, 2020)

- 1) On the recommendation of [redacted], former LRSD Occupational Therapist/ISPP Team Leader, I disclosed my disability to WMES and LRSD and a protocol was established in the event I became incapacitated or if my disability would serve to frustrate communication/future ISPP/IPP learning plans. The persons in attendance for this meeting were [redacted] (PUF Learning Support Teacher) and [redacted] (PUF coordinator), [redacted] (OT for LRSD) and myself. The meeting took place on May 5, 2017. I requested any records that were created to evidence that LRSD-WMES took steps to ensure that the assurances provided to me on this date would be in

effect. Due to the serious nature of the disclosure of my disability and the vulnerability it took for me to disclose, this information may not have surfaced in a record other than notations to evidence that WMES LRSD administrators would act in accordance with assurances provided to me on this date. I confirm I am in possession of [redacted's] acknowledgement so this record does not need to be duplicated.

On or after May 5, 2017 and any date thereafter to present day.

LRSD 2020-10 (received February 13, 2020)

- 1) In relation to a Request to Access Information, dated January 15, 2018, I reviewed responsive records dated Jan 8, 9, and Jan 11<sup>th</sup>. I requested that these records not be destroyed. Administrative Procedure 141 Video Surveillance System (since amended) Retention of Video Recordings: a. Video recordings shall be erased or otherwise disposed of according to a standard schedule, unless they are being retained at the request of the school principal, Division official, law enforcement official, employee, parent or student for documentation related to a specific incident, or are being transferred to the division's insurers. I request any record that may have been created and sent to inform me that Administrative Procedure 141 is being amended which results in LRSD no longer having to retain a record I requested not be destroyed.

For greater certainty, between the date of Jan 8, 2018 through to present day.

## Analysis

- [12] I have reviewed and carefully considered the parties' submissions.
- [13] In support of its application, the Public Body provided an explanation of how and why it believed the requirements of section 55(1) were met, and a detailed Affidavit supporting its argument.
- [14] I accepted a 35 page submission from the Applicant. This submission included numerous links to the Applicant's external website; however, in an interim decision, I held it was not necessary to retrieve any additional information from the Applicant's website. It is the Public Body, not the Applicant, who bears the burden of proof to establish that the conditions of section 55(1) are met.<sup>1</sup> An applicant may choose to make a submission in response to a request under section 55(1), but there is no requirement for an applicant to do so.
- [15] In her submission, the Applicant abandoned a number of the access requests<sup>2</sup> and modified others.<sup>3</sup> The Applicant provided a detailed explanation for each access request, which, broadly summarized, was either to compare the Public Body's response with prior information<sup>4</sup>, and/or related to an anticipated legal or administrative proceeding such as a Statement of Claim, Workers' Compensation complaint, Employment Standards complaint, privacy and access

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<sup>1</sup> The Court of Queen's Bench has previously stated that a person defending what amounts to a summary dismissal application under section 55 need to no more than show merit. In other words, that person does not have burden to show the request is for a legitimate purpose. (See Court File 1103-05598, as summarized in my Office's 2011-2012 Annual Report).

<sup>2</sup> LRSD Access Request Nos: 2020-01(3), 2020-01(9), 2020-05(1), 2020-07, 2020-08(2) and 2020-10.

<sup>3</sup> LRSD Access Request Nos: 2020-01(2) and 2020-05(2).

<sup>4</sup> LRSD Access Request Nos: 2020-01(1), 2020-06(2) and 2020-09.

complaint, or her proposed establishment of a separate school district.<sup>5</sup> Finally, the Applicant requested that if the Public Body's application was granted, that her spouse be permitted to make some of the same requests for access to information.<sup>6</sup>

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

[16] “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.

[17] The Public Body submitted that a number of the requests were repetitious.<sup>7</sup> It further argued that the requests were also part of a pattern of conduct that is regular, deliberate and systematic in nature because the Applicant makes continual requests about issues that have arisen between the Public Body and the Applicant from years ago.

[18] The Applicant confirmed that her access requests were repetitious or systematic in nature:

“Addressing allegations of “Systematic in Nature”: [...] Livingstone discriminates against me, in its continuous, abusive pattern of unprofessional and threatening dialogue, purposed with intent to rebuke, scold, admonish, punish and reduce me to deflect attention away from its own cumulative, tortious acts. I employ various chosen method(s) of disability management to mitigate the horrific, adverse symptoms of my disability, namely [redacted]. One method is making FOIP ACCESS REQUESTS to public bodies. In response, Livingstone escalates its abusive, high-handed authority in leveraging my disability symptoms against me. In *Unrau v National Dental Examining Board*, 2019 ABQB 283, Chief Justice Rooke speaks to the historical tendency to target abusive (vexatious) litigants by their intent (para 27). I concede I engage in proactive conduct, in making routine FOIP requests, systematic in nature, in request for public bodies to delineate (distinguish) between “real” events as evidenced in public body records and “perceived” events which I categorize as “false” memory or “conclusion derived in distortion of thought”. I do not make apology for managing my disability. I do, however, **concede** to my susceptibility as being identified by the court as the “*stereotypic or true querulous litigant – a deluded individual, whose condition is difficult to treat or address via psychotherapeutic intervention: at 431. [at para 99]*” That is why granting me access to public body records is imperative for me so I can reduce and/or eliminate those criteria which categorize me as a defacto abusive litigant. The non legal definition of “systematic nature” is *something that is done in a systematic way is done according to a fixed plan, in a thorough and efficient way*. I concede I made FOIP requests to Public bodies to ensure I can judiciously defend/affirm my concern. In the instance of Livingstone, it is in DIRECT RESPONSE to the allegations Livingstone has leveled against me. Section 55(1)(a) is not a reasonable limit when the systematic nature of my FOIP requests is purported to mitigate my disability and reduce and/or eliminate foreseeable abuses of the court resources, by the very nature of my disability.

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<sup>5</sup> LRSD Access Request Nos: 2020-01(1), 2020-01(2), 2020-01(4), 2020-01(5), 2020-01(6), 2020-01(7), 2020-01(8), 2020-02(1), 2020-02(2), 2020-03(1), 2020-03(2), 2020-04(1), 2020-04(2), 2020-06(1), 2020-06(3), 2020-08(1) and 2020-09.

<sup>6</sup> LRSD Access Request Nos: 2020-01(1), 2020-01(6), 2020-02(1), 2020-02(2) and 2020-09.

<sup>7</sup> Public Body's submission at page 8, referring to LRSD File Nos. 2020-01, 2020-02, 2020-05, 2020-06 and 2020-10.

I access public records to edit myself and evaluate for “frivolity” before attempting to making a formal written concern, or in this instance, a pending Statement of Claim.

Given that SLRs are abusive in term of costs to the court, it is important for me to take note of Justice Rooke’s decision, as I do acknowledge I fit into the categories of abusive litigant by definition of my diagnosis (not vexatious [sic] though). In making access requests under the FOIP act to Livingstone, I can optimize my pleadings so as not to waste the resources of the court while also advancing my own acknowledgement of identifying myself as an “abusive litigant”, to the Court as defined in Justice Rooke’s 195 page decision. (Managing Litigation – Rules of Court at page 95). I have been persistent to repeatedly request Livingstone enter into formal mediation. My pleadings will gain credibility when I can demonstrate that I tried to confine the issues to a private and confidential proceeding. We even agreed to waive our right to counsel and sign an agreement not to file a lawsuit if we can get that apology. In view of [the Public Body’s] submission to the OIPC Commissioner, and the allegations Livingstone has leveled against me, I am confident that apology is never coming. Our only option is to file a Statement of Claim in the Court of Queen’s Bench. I would benefit from receiving access to the records I request under FOIP, to strengthen my pleadings, given my disability catagorizes [sic] me, by default, as an abusive litigant. If it is an abuse of process under FOIP for me to make multiple requestS,so [sic] as to ensure my pleadings are not abusive under the Rules of Court and as defined in Unrau v National Dental Examining Board, then I’m in a quandry [sic].”

- [19] I agree with the position taken by both parties, that the requests are repetitious and/or systematic in nature. On the basis of the evidence before me, I find all of the Applicant’s access requests are either repetitious or systematic in nature.

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

- [20] The Public Body submitted that the Applicant’s repetitious and systematic requests in and of themselves are an abuse of the right to make requests. It further argued there was evidence that the Applicant is abusing the process under the FOIP Act, trying to intimidate and harass the Public Body and its employees and acting for an improper purpose. The Public Body stated that some requests will continually monitor and check up on the Public Body. For example, LRSD File Nos. 2020-04 and 2020-09 involve continuous requests that would allow the Applicant to receive advance notice of complaints made about her and to monitor when the Public Body is seeking legal advice about her, and could gain insight or advance notice of legal strategy.
- [21] The Public Body stated that some requests are retaliatory in nature and are intended to harass and intimidate its employees. For example, in LRSD File Nos 2020-01 and 2020-06, it points to the argumentative wording of some requests and the manner in which the Applicant dictates how the Public Body must respond to her requests. The Public Body referred to various indicia of vexatiousness that it stated were exhibited by the Applicant, including: hostility towards the Public Body, extreme and unsubstantiated allegations, a history or an ongoing pattern of access requests designed to harass or annoy a public body and an excessive volume of access requests.<sup>8</sup> The Public Body made submissions on the Applicant’s motivation for making requests as follows:

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<sup>8</sup> Public Body’s Submission at pages 5 – 7.



“As outlined in the Affidavit of [the FOIP Coordinator], the history between the Public Body and the Applicant is extensive. She has made multiple complaints with respect to the Public Body and its employees. This history, when reviewed in the context of the types of information requested by the Applicant, is indicative of a frivolous and vexatious requester. The Applicant has shown extreme hostility towards the Public Body; made extreme allegations against the Public Body and its employees including in the form of complaints to the Registrar at Alberta Education and Occupational Health and Safety; has a history of extensive requests to the Public Body, including the recent production of nearly 300 pages of responsive records; and has made an excessive volume of requests to the Public Body (25 in the 10 request documents received in February, 2020). The Public Body believes the Requests for Information are unrelated to access to information and unrelated to the Public Body’s responsibility and efforts to support the Applicant’s child and his education. Instead, the Requests are aimed at harassing the Public Body, seeking revenge against the Public Body, and causing harm to the Public Body. Each of these factors supports a finding that the Applicant’s requests are frivolous and vexatious.” [footnotes omitted]

[22] In his sworn Affidavit, the FOIP Coordinator stated:

“On the basis of the nature of the Requests for Information received on February 6, 2020 and February 13, 2020, the information sought pursuant to those Requests for Information, and the history between the Public Body and the Applicant, I do verily believe that the Applicant has made the Requests for Information received on February 6, 2020 and February 13, 2020 for ulterior motives beside access to information and for ulterior motives unrelated to the Public Body’s responsibility and efforts to support her child and his education. More specifically, I do verily believe that the Applicant has made the Requests for Information received on February 6, 2020 and February 13, 2020 for the purposes of:

- a. harassing the Public Body;
- b. revenge against the Public Body;
- c. causing harm to the Public Body; and
- d. creating ad-sets in the Applicant’s social media campaign referred to herein at Exhibit C.

I do verily believe that the Applicant will continue to submit requests pursuant to the *FOIP Act* for the purposes [described above].”

[23] The Applicant disputes the Public Body’s characterization of her access requests, and explains that she is self-represented and her access requests are the only means for her to self-accommodate her disability.<sup>9</sup>

[24] I acknowledge the Applicant’s belief that these access requests are necessary for her; however, an applicant cannot shield or excuse abusive behaviour simply because he or she is self-represented.<sup>10</sup> Further, although my office primarily deals with access and privacy issues, not human rights issues, the law is clear that a public body’s duty to accommodate a disability does

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<sup>9</sup> See, for example: Applicant’s Submission at pages 10 and 11.

<sup>10</sup> *Makis v Alberta Health Services*, 2020 ABCA 168 at para 39 and *Jonsson v Lymer*, 2020 ABCA 167 at para 15.

not mean the individual requiring accommodation can unilaterally dictate the terms by which they must be accommodated.<sup>11</sup>

- [25] 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".<sup>12</sup>
- [26] In previous decisions, I have held 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.<sup>13</sup> Further, although section 55(1)(a) says nothing about an improper motive, an improper motive would clearly establish abuse.
- [27] In the circumstances of this case, the repetitious and systematic nature of the Applicant's access requests is an abuse of her right to make requests. The language used by the Applicant in some of her access requests includes various allegations of wrongdoing by the Public Body. In my view, some of these appear to be not only requests for information, but a means for the Applicant to air her grievances against the Public Body.
- [28] The Public Body made arguments about the Applicant's motive in the context of section 55(1)(b). Submissions about an improper motive are also applicable to the analysis of whether there is an abuse of the right to make requests under section 55(1)(a). Although an Applicant is not obligated to explain the reason for their access requests, where an Applicant chooses to make a submission, I can consider what they have said. In this case, the Public Body's position on improper motive receives some support from the Applicant's own submission as it is replete with inflammatory language, and confirms that the majority of her access requests are for the purpose of an anticipated legal or administrative proceeding against the Public Body.
- [29] Seeking information for the purpose of an anticipated legal proceeding is not an abuse of the FOIP Act.<sup>14</sup> On the facts of this case, however, and as was argued by the Public Body, the broad range of legal actions and administrative proceedings anticipated by the Applicant appears to be intended as harassment and revenge against the Public Body. Considering the extensive history between the parties, the timing of the requests after being restricted by the Public Body in other

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<sup>11</sup> Although these decisions were issued in the context of an employment relationship, Courts have recognized that where there is a duty to accommodate, accommodation requires co-operation of all involved parties. See, for example: *McGill University Health Centre (Montreal General Hospital) v Syndicat des employes de l'Hopital general de Montreal*, 2007 SCC 4, at para 22 and *Canadian National Railway Company v Teamsters Canada Rail Conference*, 2018 ABQB 405 at para 56.

<sup>12</sup> *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.

<sup>13</sup> F2019-RTD-02/H2019-RTD-01 at para 47.

<sup>14</sup> Section 3(c) of the FOIP Act provides that "This Act does not limit the information otherwise available by law to a party to legal proceedings". An individual may choose to make an access request under FOIP, an individual may choose to obtain records through the process of a legal proceedings, and an individual may do both at the same time. A legal proceeding will have its own processes for obtaining and producing records, which is separate from the FOIP Act.

ways, and the inflammatory wording chosen by the Applicant, I am satisfied that the Applicant's access requests are motivated by, at least in part, retaliation against the Public Body and to harass and intimidate employees of the Public Body.

- [30] The Public Body has met its burden to establish that the conditions of section 55(1)(a) are met. I find that the Applicant's access requests amount to an abuse of the right to make those requests.
- [31] Because I have found that section 55(1)(a) applies, it is not necessary for me to consider whether the Applicant's access requests are also frivolous or vexatious under section 55(1)(b) of the FOIP Act.

### **Decision**

- [32] On the basis of the evidence before me, I have decided to exercise my discretion under section 55(1)(a) of the FOIP Act. The Public Body is authorized to disregard the Applicant's access requests: LRSB File Nos. 2020-01 to 2020-10.

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

- [33] The Applicant indicated she intends to continue making access requests or pursue obtaining the requested information through other means. For example, the Applicant asked whether her spouse could make the same requests if the Public Body received authorization to disregard her access requests.<sup>15</sup>
- [34] The Public Body requested the following:

“At a minimum, the Public Body requests that it have authority to disregard any future requests for records that have already been provided to the Applicant. The Applicant has already made repetitive requests, and it is reasonable to believe that these repetitive requests will continue in the future.

The Public Body ultimately seeks authority to disregard any future requests from the Applicant. The Applicant's attitude towards the Public Body and its employees has been consistently confrontational. The Public Body has already taken steps to limit the Applicant's ability to access the Public Body's property and contact employees. The Applicant attempts to circumvent that by including her confrontational language in requests under the *FOIP Act*. The Applicant's requests are clearly aimed at proving a point to the Public Body, rather than gathering information under the *FOIP Act*. Based on the history of the Applicant's requests, the Applicant has a clear intent to harass the Public Body and the Public Body believes that these requests will continue into the future.”

- [35] It is clear that exercising her access rights is important to the Applicant. It is also clear, in my view, that limits are required on future access requests the Applicant may choose to make. The issue before me is the extent of that limitation.

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<sup>15</sup> As this decision is on the Public Body's application under section 55(1), the potential issue of the Applicant's spouse making the same access requests is not directly before me. I need not decide the issue at this time.

- [36] The Alberta Court of Appeal recently provided guidance on the principles underlying vexatious litigant orders in the Courts. Many of these considerations can also be applied in circumstances where individuals are abusing their access to information rights. For example, any limitations on the Applicant's future access requests should be focused on the Applicant, be proportional to her problematic conduct, and should be incremental and adapted to this specific problem.<sup>16</sup>
- [37] As the Applicant pointed out, she is self-represented and makes access requests as means of self-accommodating her disability. As such, I accept she may not have been fully aware of the abusiveness of her conduct. Through this Decision, the Applicant should now be aware that her prior conduct regarding the Public Body was unacceptable. I am not satisfied, at this time, that a blanket authorization preventing the Applicant from making any future access requests to the Public Body is warranted. However, should the Applicant persist in her abusive behaviour, and if the Public Body asks again, I may consider granting such an authorization in the future.
- [38] That said, the Public Body's request to disregard any future requests made by the Applicant for records she has already received is reasonable.
- [39] Further, in view of the evidence before me, I find it is reasonable to put limitations on the Applicant's right to make access requests to the Public Body.<sup>17</sup> Limiting the Applicant to one access request at a time will allow her to prioritize her access requests and to some extent, will accommodate her. Limiting the time this restriction is in effect is a proportionate response. Therefore, for one year from the date of this decision, the Public Body need only respond to one access request at a time from the Applicant.<sup>18</sup> This will allow the Applicant to continue to exercise her quasi-constitutional access rights, albeit in a limited manner, and will also provide the Public Body and its employees with some protection from the Applicant. This does not mean the Applicant may make one request with numerous sub-parts that equate to a number of separate requests – the Public Body may determine what "one" request is.
- [40] To be clear, this limitation does not affect access requests that may be made by the Applicant to other public bodies. Any other public body affected by the Applicant must bring its own application to disregard a request if it believes the conditions of section 55(1) are met.
- [41] In conclusion, I authorize the following limitation on any future access requests the Applicant may make to the Public Body:
1. The Public Body is authorized to disregard any future requests for records that have already been provided to the Applicant.
  2. For a period of one year from the date of this decision, the Public Body need only respond to one access request at a time from the Applicant. The Public Body may determine what constitutes one access request.

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<sup>16</sup> *Jonsson v Lymer*, 2020 ABCA 167 at para 85(f) and (g).

<sup>17</sup> *Makis v Alberta Health Services*, 2020 ABCA 168 at paras 35 and 39.

<sup>18</sup> Other jurisdictions with similar access and privacy legislation have implemented similar limitations on abusive conduct. See, for example: B.C. OIPC Order F20-15. Ministry of Children and Family Development and Ministry of Children's Services, 2020 BCIPC 17 at para 38.

[42] If the Public Body believes that a future access request made by or on behalf of the Applicant meets the conditions of section 55(1) of the FOIP Act, it may apply to me for authorization to disregard that access request.

Jill Clayton  
Information and Privacy Commissioner