

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD F2021-RTD-02

March 19, 2021

JUSTICE AND SOLICITOR GENERAL

Case File Number 009016

- [1] Justice and Solicitor General (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 13 access requests from an individual whom I will refer to as the Applicant. The Public Body requests authorization for the following:
- 1) Authorization to disregard all 13 access requests and any future requests until such time as all Court proceedings related to the Applicant’s death threat against the employees of the Public Body has concluded.
 - 2) On conclusion of the Court proceedings indicated in #1, authorization to allow the Public Body to open and actively process one request at a time should the Applicant submit multiple access requests at any given time.
 - 3) Authorization to disregard any access request made by the Applicant, or made on his behalf, to the extent that the request covers records or information that have already been the subject of an access request made by or on behalf of the Applicant and to which the Public [Body] has responded.
- [2] For the reasons outlined in this decision, I have decided to grant the Public Body’s 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] As a preliminary issue, the Public Body asked me to accept an *in camera* attachment, explaining that there was a statutory requirement that the information not be disclosed and that the circumstances of this case required that the information not be disclosed. In a decision dated July 13, 2018, I informed the parties that I agreed with the Public Body's assessment, and I had accepted the Public Body's *in camera* submission as it was relevant to the matter before me.
- [5] Broadly summarized, the 13 access requests before me relate to the Applicant's interactions with the Public Body and include records relating to his incarceration and involvement with Alberta Correctional Services. Most of them request information about his telephone calls or court hearings. One request (2018-G-0509) requests names of staff working in a specific location on a specific date, and another request (2018-G-0606) requests "The average number of inmates admitted [sic] in 2017 to the new E.R.C. so I may calculate whether or not 750 billion is enough for the class action lawsuit against Alberta Corrections".
- [6] The Public Body provided a history of access requests made by the Applicant. Prior to the 13 access requests at issue, the Public Body had received 24 requests from the Applicant dating back to 2008: 1 in 2008, 1 in 2013, 18 in 2017 and 4 in 2018 (prior to this matter). The Public Body provided information about the contents of those historical requests and the responses it had provided. The Public Body continued its submission as follows (with emphasis in the original submission):

The health and safety of the Public Body's employees became a serious concern during processing of one of the Applicant's previous access requests. The Public Body issued a fee estimate for 2017-P-1006 under section 12(2) of the *FOIP Regulations*. In response to that fee estimate the Applicant faxed a letter to the Public Body on March 20, 2018 stating, among other things, "*I am then authorized as a private person to use as much force as I believe (sic) necessary to ensure justice for the public persons; which I believe (sic) it would be by that point necessary to kill all members of the Justice and Solicitor General FOIP Office.*"

Edmonton Police Services were contacted and the Applicant was charged under section 264.1(1)(a) of the *Criminal Code of Canada*.

264.1(1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat
(a) to cause death or bodily harm to any person;

As a direct result, several of the Public Body's employees were required to provide witness statements to the Edmonton Police Service, and were subsequently served with subpoenas to attend a preliminary hearing on [date redacted].

The Applicant elected to proceed with a Court of Queen's Bench jury trial. The trial date has not yet been set, but it is expected that some, if not all, of the same employees will be issued a subpoena to provide evidence.

It should also be noted that the Applicant has provided the Public Body with various invalid mailing addresses. When the Public Body would attempt to correspond with the Applicant, mail would be returned by Canada Post marked as 'return to sender' or 'does not live here'.

The Public Body requested that the Applicant provide one mailing address so that the Public Body could correspond with the Applicant. Notwithstanding this request, the Applicant continued to provide the Public Body with multiple invalid mailing addresses.

In addition to the new request received by the Public Body on June 21, 2018, the Applicant also enclosed a copy of the Public Body's letter with attachments dated February 9, 2018 which is marked "*Received on June 05, 2018*" with the Applicant's initials [Attachment 3]. This letter requested he provide one valid mailing address and further asked for clarification regarding one of the requests.

The first access request is a duplication of 2017-P-0958 and 2018-P-0089 and indicates a mailing address in care of the Alberta Ombudsman's Office. The second request has an address with a notation "*Peace River Family Court*" with the Applicant's initials and a date of June 5, 2018

Please see Attachment 4 for a copy of the letter and attachments originally sent to the Applicant by the Public Body dated February 9, 2018.

Section 55(1) Requirements

The Public Body will address the repetitious and systematic nature of these requests and how they amount to an abuse of the right to make requests under the *FOIP Act*.

IPC File Reference F3885 states:

'repetitious' is when a request for the same records or information is submitted more ; than once; and

'systematic in nature' includes a pattern of conduct that is regular or deliberate

With respect to abuse of process, the Office of the Saskatchewan Information and Privacy Commissioner has stated [University of Saskatchewan (Re), 2016 CanLII 77399 (SK IPC) :

Offensive or intimidating conduct or comments, the use of derogatory or vulgar language, or the making of unfounded accusations against a public body's staff, has been held to constitute an abuse of process in many court and tribunal cases across the country. In such cases, the persons using such language have been denied the exercise of what would otherwise be their rights, or have been denied remedies.

Requests under Consideration for Section 55(1) Analysis:

As a whole, all 13 of the Applicant's access requests are repetitive and systemic in nature and amount to an abuse of the right to make requests under the *FOIP Act*.

The pattern of the recent access requests can be viewed as repetitive and systematic in nature. The first eight requests were received on May 23, 2018 with the remaining four received on May 24, 2018.

- Requests 2018-P-0497, 0498, 0502, 0503 and 0504 are with respect to obtaining access to phone numbers, audio of phone calls or CCTV audio/video with minor variations of the date ranges and referencing either an ORCA or CoMIS number. A similar request for this information was made under 2017-P-1006 (date range of September 1, 2013 to December 1, 2017) and deemed abandoned after a fee estimate was issued and the Applicant responded to the Public Body with a written death threat.
- Requests 2018-P-0500 and 0501 are with respect to RFIs for the exact same date ranges, with one referencing an ORCA number and the other a CoMIS number.
- Request 2018-P-0499 is a request for an RFI unrelated to the Applicant other than a statement that the Applicant completed the RFI on behalf of a third party.
- Request 2018-P-0506 relates to information on a court file and is exempt from the operation of the *FOIP Act*.

With respect to requests 2018-P-0507 and 0508, records have been provided to the Applicant on several occasions and encompass much of the information the Applicant has repeatedly requested; notably, request 2017-P-0181 (71 pages) and 2017-P-0192 (472 pages).

Additionally, the Applicant was provided with 5 audio recordings under 2018-P-0047, however, the package was returned to the Public Body by Canada Post, unopened, marked 'does not live here' notwithstanding the Applicant supplied the address to the Public Body.

When the above 13 requests are combined with the previous requests, a definitive pattern emerges in repetitious and systematic nature of the requests.

The right to access information held by a public body is a fundamental right. The intent of Part 1 of the *FOIP Act* is to provide access to any record in the custody or under the control of a public body, including a record containing the personal information about the applicant.

The Public Body submits that when the Applicant threatened, **in writing**, to kill all members of the FOIP Office, resulting in the Edmonton Police Service **charging** the Applicant under the *Criminal Code*, the Applicant's right to make requests under the *FOIP Act* were superseded by the Public Body's **obligation** under Occupational Health and Safety legislation to ensure that none of the Public Body's employees are subjected to

violence at the workplace. [*Occupational Health and Safety Act, SA 2017 c O-2.1, ss. 3(1)(c) and 4(a)(v)*]

*“Violence”, whether at a work site or work-related, means the **threatened, attempted or actual conduct of a person that causes or is likely to cause physical or psychological injury or harm...**” [s. 1(yy)]*

With respect to offensive, intimidating and threatening language used by an Applicant, in Order F2015-16 at paragraph 46, you stated:

I accept that a respectful workplace is an extremely important principle. Requiring government workers to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments is not only unwarranted, but I agree with the Public Body’s argument (at page 5 of its initial submission) that it could potentially “cause harm” by having a detrimental effect on their well-being.

The language used by the Applicant goes well beyond offensive, intimidating and threatening and is likely to have a lasting detrimental effect on the employee’s physical, psychological and social well-being.

Unfortunately, while certain professions are subjected to threats of this nature on a regular basis, employees in the JSG FOIP Office generally are not. Processing the access requests of an individual who has physically threatened harm amounts to the re-victimization of employees and negates the duty of the employer under OHS legislation.

Use of offensive and intimidating language and its [sic] effects on employees has also been addressed by the Office of the Saskatchewan Information and Privacy Commissioner:

*Offensive or intimidating conduct or comments by Applicants is unwarranted and harmful. They can also suggest that an Applicant’s objectives are not legitimately about access to records. Offensive or intimidating content in an Applicant’s communications should be addressed as a respectful workplace issue. **Requiring employees to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments can have a detrimental effect on well-being.** [Saskatoon Regional Health Authority (Re), 2016 CanLII 28143 (SK IPC)] [Emphasis added]*

Conclusion:

It is the Public Body’s position that the Applicant’s access requests are repetitive and systemic in nature and amount to an abuse of the right to make requests under the *FOIP Act*.

More seriously, the Applicant’s right to make requests under the *FOIP Act* are superseded by the Public Body’s obligation under Occupational Health and Safety legislation to ensure that none of the Public Body’s employees are subjected to violence at the workplace.

The time required to dedicate exclusively to matters involving the Applicant is detrimental to the health and safety of the Public Body's employees as defined by OHS legislation and further takes time and resources that would normally be used to serve those who use the legislation and resources appropriately.

The Public Body is requesting that Attachment 5 letter be accepted as an in camera submission as there is a statutory requirement that information not be disclosed and circumstances of the case require that information not be disclosed.

Based on the Applicant's history of making access requests to the Public Body, his direct threats toward employees of the JSG FOIP Office, the matter currently before the Courts and the Applicant's history of providing invalid mailing addresses, it is the Public Body's position that the Applicant will likely continue to abuse the right to make access requests under the *FOIP Act*.

Despite attempts of the Public Body to meet it's [sic] duty to assist the Applicant under section 10(1), the Applicant has interfered with Public Body's duty to protect employees under Occupational Health and Safety legislation and has taken time and resources normally used to serve those who use the legislation and resources appropriately to access by making access requests that are systematic and repetitive.

[7] The Applicant provided a response, a portion of which is quoted below:

In response to [the Public Body's] letter dated June 22nd, 2018, which I received on July 6th 2018. I respectfully ask that:

- 1) Please have all of my requested information delivered by a R.C.M.P. member. Since Correctional Services has been obstructing my mail with unreasonable delay and even forwarding some information that was requested to a private address I have on file as a home address which did cause some information that was provided to be returned. Instead of sending it to were [sic] I was transfered [sic] temporarily which was [redacted].
- 2) Please have any information provided to me but never received by me, and that as a result was returned to the foip office, retuned to me in person by police service for those files. Thank you.
- 3) Please disregard all duplicates since it was not an attempt to abuse of process on my behalf but occured [sic] as a result of believe abuse of process by various staff and/or divisions of the Justice Solicitor General which made me unaware that the foip office even seen or received some of my requests. As noted in [the Public Body's] letter some correspondence was delayed by being received by myself for a full 4 months or close to it. Thank-you.
- 4) Please re-open all non-duplicate requests that are deemed abandoned. Thank you.
- 5) Please provide a detailed reasoning to why requests that were deemed withheld were withheld. Thank you.

- 6) Please note that multiple addresses were not intended for abuse of process. In fact attempts to circumvent the abuse of process by correctional service division. So that information intended for the destinations could have been directly delivered to those destinations, such as the R.C.M.P. and Alberta Ombudsman. So that I could have at least directed them through it from a distance but now I realized it is going to have to come to me first. So that I may pinpoint the information I required to be sent as evidence to various files whichever they may relate to and for me to duplicate instead of duplicate requests.
- 7) It is reasonable that the foip office not have to complete all the requests at the same time. I accept their request to work on one request at a time provided they ensure scheduled completion date by the end of this year 2018 for all the requests being: the re-opened previously deemed abandoned requests; the information provided but returned to foip office requests; the non duplicate requests; and the deemed withheld that are not by this letter ordered to be deemed not withheld request. Since [redacted] is being abandoned by criminal negligence and an innocent [sic] man accused [sic] of murder being held in custody have both been enduring [sic] their hardships for more than a year. I guess it is reasonable that they may continue enduring [sic] their hardships for the rest of this year for fairness to the foip office staff. Please no longer than that. Thank you.

I believe that these above mentioned seven requests that I have asked for are reasonable. And now feel that I am required to give caution and make you aware of the fact that failure [sic] to comply with what I have asked is criminal code offences in the following manner of reasons now listed.

- [8] The relevance of the remainder of the Applicant's submission to this matter is unclear. It refers to various sections of the *Criminal Code of Canada*, and appears to outline a number of criminal charges. The submission also appears to address outstanding criminal charges against the Applicant and explains that letter(s) at issue were written, not on behalf of the Applicant himself, but a corporate entity with the Applicant's initials. Each page is marked with a circle containing the Applicant's initials and the submission ends with what appears to be a finger or thumbprint stamped in ink.

Analysis

- [9] As noted above, on July 13, 2018 I informed the parties I had accepted the Public Body's *in camera* submission on the grounds that there was a statutory requirement that the information not be disclosed and that the circumstances of this case required that the information not be disclosed. Although I cannot reveal the contents of that submission, in my opinion the information provided therein is both relevant and sufficient for me to find the Public Body has met its burden under section 55(1) of the *FOIP Act*.

[10] The Public Body has also provided enough information in the portion of its submission disclosed to the Applicant such that I can explain my additional reasons for authorizing it to disregard the Applicant's access requests.

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

[11] "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.

[12] The Public Body's submission provides examples of some repetitious requests made by the Applicant, that is, the Applicant has requested the same records more than once.

[13] The access requests relate to the Applicant's involvement with Alberta Correctional Services. Twelve of the thirteen access requests were received within two days, and the thirteenth access request was received less than one month later. The Public Body states that the Applicant has a pattern of providing different and invalid mailing addresses for the responses to his access requests. Given the timing and the content of the access requests, I agree with the Public Body that they are all systematic in nature.

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

[14] An individual's right of access to information is not unlimited. No one has a right to make abusive access requests. Black's Law Dictionary (7th Ed.) defines "abuse" as "1. To depart from legal or reasonable use in dealing with (a person or thing); to misuse 2. To injure (a person) physically or mentally. 3. To damage (a thing)."

[15] In addition to its *in camera* submission, the Public Body relies on two main factors to demonstrate that the Applicant is abusing his right to make access requests. Those are his pattern of providing different and invalid mailing addresses for the Public Body's responses to his access requests, and death threats that the Applicant has sent to FOIP Office employees of the Public Body. The Public Body adds that the death threats engage its obligation to provide a safe workplace under Occupational Health and Safety legislation.

[16] The Applicant's actions in repeatedly providing invalid mailing addresses for the responses to his access requests, even after being asked to provide one valid address, indicate that his purpose in making access requests is for some reason other than to receive the information he is requesting. This is a misuse, and therefore an abuse of the *FOIP Act*.

[17] With respect to the death threats made to employees of the Public Body's FOIP Office by the Applicant, I find it is not even necessary to look to Occupational Health and Safety legislation on these facts. Threats of death or violence made against individuals are a far departure from any legal or reasonable use in exercising rights under the *FOIP Act*. The

Applicant's death threats made to employees of the Public Body in this case are a clear abuse of the rights granted under the *FOIP Act*.

- [18] Additionally, I note that following the Public Body's request for authorization under section 55(1) of the *FOIP Act*, the Applicant was subsequently declared a vexatious litigant by the Alberta Court of Queen's Bench (*[Applicant] Re*, 2018 ABQB 677).
- [19] 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.
- [20] 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*.

Request for Authorization to Disregard Future Access Requests

- [21] In addition to disregarding the 13 access requests at issue, the Public Body requested authorization to disregard all future requests until all Court proceedings related to the Applicant's death threat against the employees has concluded. Following the conclusion of those Court proceedings, the Public Body requests authorization to allow it to open and actively process one request at a time should the Applicant submit multiple access requests at any time. Finally, the Public Body requests authorization to disregard any access request made by the Applicant, or on his behalf, to the extent the request covers records or information to which the Public Body has already responded.
- [22] The Public Body's request for limitations on future requests that may be made by the Applicant is reasonable. It is clear that some limitations are required to control the Applicant's abusive actions, and these requested limits will still allow the Applicant an opportunity to exercise his rights under the *FOIP Act*.

Decision

- [23] 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 13 access requests: 2018-P-0497, 2018-P-0498, 2018-P-0499, 2018-P-0500, 2018-P-0501, 2018-P-0502, 2018-P-0503, 2019-P-0504, 2018-P-0506, 2018-P-0507, 2018-P-0508, 2018-G-0509 and 2018-G-0606.

[24] Further, as it requested, the Public Body is authorized to disregard any future access requests made by the Applicant as follows:

- i) The Public Body may disregard any future access requests made by the Applicant until all Court proceedings relating to the Applicant's death threats against employees of the Public Body are concluded;
- ii) On conclusion of the Court proceedings indicated above, the Public Body may open and actively process only one request at a time should the Applicant submit multiple access requests at any given time; and
- iii) If the Public Body has already provided a response to a request made by or on behalf of the Applicant, it may disregard any new request (or portion of) made by the Applicant or made on his behalf.

Jill Clayton
Information and Privacy Commissioner

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