

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD F2021-RTD-03

August 26, 2021

CALGARY POLICE SERVICE

Case File Number 014269

- [1] Calgary Police Service (“CPS” 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 19-P-3857 made by 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 access request 19-P-3857.

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 Public Body provided a copy of access request 19-P-3857. It begins as follows:

This request is for the production and release of all records pursuant to the FOIP legislation in the possession of the Calgary Police Service and their various departments (CPS, DCRT, PACT, PSS) which contain the Applicant’s Personal Information for the time period from 2014 – to present.

Including but not limited to all records related to or pertaining to all events such as, all Applicants and third-party; formally reported Events, Complaints, Police Occurrences, Police Reports, Police Witness Statements, Crown or Court Submissions or Applications,

all legal and health related Actions, submissions, and matters, all allegations and accusations made against or regarding the Applicant, and all formally reported events by any third-party regarding the Applicant, where the following was obtained, issued, or received;

Access request 19-P-3857 then details a lengthy and comprehensive 54 point list, 4 pages in total, specifying the types of records and individuals involved in the access request.

- [5] The Public Body reports that the Applicant made seven access to information requests over a period of approximately 18 months. It provided responses to those access requests and several of those responses are under review by my office either at the request for review or inquiry stage. While reviewing access request 19-P-3857, the Public Body conducted a search of its information databases to determine if there were any new reports or reports from the time frame specified by the Applicant that had not been previously provided, and determined there were no further records that had not already been provided to the Applicant. The Public Body states:

The most recent request that is the subject of this Application is for release of all records which contain the Applicant's Personal Information for the time period 2014 to the present. Given the broad nature of the request and the fact that the Applicant had previously requested and received a significant number of records from the CPS, the analyst assigned to file 19-P-3857 reached out to the Applicant to clarify her request and confirm that what the Applicant required was any records that had not already been provided. A copy of the analyst's correspondence to the Applicant is attached for your information. The response received from the Applicant is also attached. The Applicant was unwilling to clarify her request or narrow it to include only records that she has not previously received.

Following receipt of the Applicant's response to the request for clarification, the Analyst went through all prior access requests and responses and compiled a list of the records that had previously been sought and provided (that list forms the basis of Appendix A). The Analyst then conducted a series of searches of CPS information databases to determine if there were any new reports or reports from the time frame specified by the Applicant that had not been previously provided. No further records other than what had been provided to the Applicant in response to her prior requests were located. [Emphasis added]

- [6] The Applicant disputes the Public Body's characterization of her access request. She provided a detailed response to the Public Body's application including the history of events leading up to her access requests.
- [7] Although the contents of approximately 2 inches of records cannot be adequately summarized in a single paragraph, briefly, the Applicant was assaulted by her former partner in an incident of domestic violence. On the basis of the information before me, I understand the ensuing fallout involved criminal charges and a conviction for her former partner and other civil litigation with her former partner and other parties. During this

process, the Applicant had interactions with the Public Body. In her submission, the Applicant expressed her concerns, in part, as follows:

FOIP Access to Information Requests were issued and partially answered by the Calgary Police Service. However, the records provided demonstrated that additional records and information are required to address what was discovered in the records released, and that they were relevant and material to the Action. Discoveries in the records included:

- a) Tampering and access to my private and official records;
- b) Unauthorized changes to my home address and phone number in both Police and hospital records and the system on multiple occasions;
- c) Unauthorized changes to my name in AHS and PACT records;
- d) Intentional misplacement and failure in following proper procedures and protocol in relation to the filing and storing of my private medical records in official databases; and
- e) Strategic and premeditated planting of serious mental illness allegations and accusations in the Calgary Police Service, AHS, and PACT official and medical records and in the system, regarding me; later sharing said allegations and records with the court, and the general public.

[8] The Applicant noted her surprise at having received the Public Body's application under section 55(1) of the FOIP Act after being informed by the Public Body that she should obtain records through making access to information requests.

[9] The Applicant provided extensive evidence to support her position that her attempt to obtain record production for civil and criminal matters by filing an Originating Application in the Court of Queen's Bench was unsuccessful. In particular, I note that paragraph 2 of the Court Order dismissing that application (filed October 15, 2019) states as follows:

2. The Application for production of all other records identified in the Originating Application is adjourned until the Applicants demonstrate that all applicable complaint, investigative, appeal or review processes and remedies available under the *Freedom of Information and Protection of Privacy Act*, the *Health Information Act*, the *Access to Information Act*, or any other applicable access to information legislation, have been exhausted. For greater clarity, the Applicants may not bring this matter back before the Court for determination until such time as an application for judicial review of any final decision from an administrative tribunal in respect of the Applicant's request for records would be available in this Court or in the Federal Court.

The Parties' Submissions

[10] The Public Body provided the following submissions in support of its application under section 55(1):

The Applicant is engaging in [sic] a systemic abuse of the right to access information. Her request is repetitive in nature in that she is re-requesting records that have already been provided to her in responses to her many prior access requests. The Public Body took steps to work with the Applicant to ensure the current request was not repetitious; however, the Applicant refused to engage in any meaningful conversation with the Public Body.

The Applicant is engaging in a systemic course of action that has seen her requests become more complicated and lengthier even though she has received comprehensive responses to her prior requests. The repeated requests and the unwillingness to work with the Public Body to avoid repetitious requests amounts to an abuse of process and it is submitted that the requests are frivolous and vexatious.

In Application by Alberta Municipal Affairs to Disregard an Access Request made by an applicant under the *Freedom of Information and Protection of Privacy Act*, then Commissioner Work addressed the rationale behind section 55 of FOIP. He said:

In my view, the Legislature also recognizes that there will be certain individuals who may use the access provisions of the FOIP Act in a way that is contrary to the principles and object of the FOIP Act. In Order 110-1996, the British Columbia Information and Privacy Commissioner wrote:

... The Act must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act ...

The repetitious nature of the requests seeking information from the CPS when there is no new information to provide demonstrate a disregard for the true intent of the Act and it has reached the point where it is causing the Public Body harm through repeated and onerous access requests. The CPS receives thousands of access requests a year and has limited resources to process all those requests. When an individual becomes a repetitive and abusive applicant, that unreasonably interferes with the ability of CPS to respond to the legitimate requests it receives.

In Application by the Town of Ponoka to Disregard an Access Request made by an applicant under the *Freedom of Information and Protection of Privacy Act* the applicant had made just five access requests. The Commissioner at the time noted that while the specific wording in the requests varied from request to request, the subject matter was essentially the same. Commissioner Work said:

The Applicant's five access requests span a period of approximately two-and-one half years. I agree with the Town that the Applicant's access requests amount to a pattern of conduct. Accordingly, I find that the Applicant's access requests are also systematic in nature, that is, regular or deliberate.

Having determined that the Town made every reasonable effort to search for records relating to the issues raised by the Applicant in relation to the prior requests, the Commissioner authorized the town to disregard the new request. It is important to note that requests do not have to be identical in order for s. 55 to apply. When access

requests are systemic, that is regular and deliberate, as they are in this case, the requests become abusive and ought to be disregarded. The current situation is very similar to the situation in the Town of Ponoka matter except that the Applicant in this case has made more requests than the Applicant in that case.

The Applicant has been given access to the information she has requested through responses to a series of prior request for access. The Public Body's responses are at review or inquiry in 3 separate requests for review. To the extent there are any concerns about the responsiveness of the Public Body; those concerns can be dealt with through the review process.

The Public Body has been very patient in terms of responding to the multiple requests for access to information but it is clear that the Applicant's requests are becoming repetitive and they are unreasonably interfering with the operations of the CPS. Attempts by the CPS to work with the Applicant to avoid the repetitive nature of the request were essentially ignored by the Applicant. There are no legitimate rights of access being pursued by the Applicant any longer.

[11] In specific response to the Public Body's application, the Applicant submitted as follows:

[The Public Body's] Application to the Commissioner dated December 19, 2019, his reliance on section 55(1) of the Freedom of Information and Protection of Privacy Act for the Commissioner to authorize the Calgary Police Service to disregard my request under section 7(1) or 36(1), and his submissions in support of his request, as filed by [the Public Body], are without merit, have not been filed in good faith, and is simply another attempt to frustrate my access request for records and all future efforts and attempts made by me to access my Calgary Police records. The Calgary Police Service continues to demonstrate that they are completely unreasonable, their prejudice against me continues to further waste my time and resources with no resolve in sight.

It is also important to note that not only was I prejudiced in court by the way the Application was handled in court but I was also prejudiced against [sic] as a result of when I was served the Pronounced Order. The order was served on me 30 days after it was pronounced by the Honourable Judge. As a result of the delay in the order being served on me, I was denied the opportunity to appeal the order. When I questioned the reason for the delays, I was advised that the Respondents were waiting on the Honourable Judge to sign the Order. When I finally received a copy of the pronounced order I was surprised to see that Justice Hillier did not sign the order, someone else did. Being denied the opportunity to appeal the Judges decision due to receiving the order after 30 days further hindered my chances to appeal the decision due in part to not having legal counsel.

Furthermore, I deny that the Calgary Police Service attempted to work with me to avoid the repetitive nature of the request and that those supposed attempts were essentially ignored by me. The Public Body did not take steps to work with me to ensure the current request was not repetitious. Furthermore, after 3 years of energy and resources invested in hopes of receiving clarity from the Calgary Police Service, I am appalled that

the Public Body would accuse me of refusing to engage in any meaningful conversation with them, and I put Calgary Police Service to the strict proof thereof. Those statements as outlined in the Application are false and misleading. I ask for the dismissal of [the Public Body's] request for authorization to disregard my access request, and such further and other remedy the Commissioner deems just in the circumstances.

If [the Public Body] is going to take issues about me making FOIP Requests and explaining that I was not being cooperative with the Calgary Police Service's analyst, the [the Public Body] should really explain clearly and specify exactly in his application to the Commissioner what it is I was doing or not doing wrong. [The Public Body] also did not enclose a copy of my communications with the analyst in his Application and failed to copy me when he provided that information to the OIPC, therefore, I cannot comment on that without seeing the evidence that he is referencing in his Application which he had ample opportunity to provide.

[The Public Body] failed to include a copy of my communications with the analyst in his Application. He also failed to copy me on submissions to the OIPC office related to this Application and [sic] those communications with said Analyst. He has also failed to include a copy of my FOIP request dated November 27, 2019 in his Application, in failing to do so the OIPC office and the Commissioner would not be able to confirm that my most recent FOIP request is NOT repetitious or systematic, frivolous or vexatious. I have reviewed the items in my request and I can say with confidence that what I am seeking has not been previously provided by Calgary Police Service and I have evidence that those records exist and are in the possession of the Calgary Police Service.

It is also important to note that [the Public Body] references "Reports" when addressing the records I am seeking in my FOIP request and that the analyst's search in the Calgary Police System was for "Police Reports". It is important to confirm that "Reports" are but one item in my FOIP request and are not the focus of my submission for records. [The Public Body] also has confirmed that the analyst's search in the Calgary Police System was only done for "Police Reports". This confirms that a thorough search for the requested records was not done by the Calgary Police Service analyst as of yet making [the Public Body's] statement "No further records other than what had been provided to the Applicant in response to her prior requests were located" untrue and inaccurate.

[The Public Body] indicated that my requests have become more complicated and lengthier, however, while acknowledging it would take more time and attention to detail, [the Public Body] is not saying that it can't be done, but only that it might take more time. Given the circumstances and need for investigation of the matter, I believe that the extra time being spent here to put this matter to bed for all involved is wise and needed.

[The Public Body] refers to my FOIP request for these records as interfering with the operations of the public body, I ask, what specific 'operations' is [the Public Body] referring to that would affect the public body?

What I believe has become systematic in nature is the Calgary Police Service's repetitive and ongoing Pattern of prejudice and discrimination and continuous attempts to have

my honest and sincere efforts in wanting to understand why I continue to be blocked and manipulated through half truths, slander and defamation. The Calgary Police have purposely and intentionally targeted me for absolutely no reason. They have withheld information, disclosure, records, investigation into reported illegal activities, protection and lastly, have failed to fulfil their duties as outlined in the Police Act.

Members of the Calgary Police Service have also used tactics to infiltrate and influence other organizations and the general public through gossip, slander, and defamation to influence them into not providing me with assistance and help. The Calgary Police Service have denied my access to my records and constitutional rights by denying me the right to the justice system when I need it most.

The Calgary Police Service can't refuse to perform their duties and fulfil their obligations and then decide to also refuse to release the records necessary for the public to take the matter in their own hands and investigate the matter independently. The public's safety depends on the release of those records. I am confident that the Commissioner can sympathize and understand the need for the public to insure and demand that safety and security are not breached or at risk. The Calgary Police Service's track record with respect to my file has made it very difficult to trust their actions and information as they have without hesitation refused to acknowledge the obvious safety concerns and refused to speak to them or properly investigate them. For those reasons I am forced to investigate the matter independently and have since the assault in 2017.

If the Calgary Police Service spend their time and resources investigating the matter and insuring my safety has not been compromised then they would not need to spend so much on keeping me stuck chasing the answers while they try to paint me as a person engaging in a systematic abuse of the right to access information and they would not feel the need to fabricate and alter information and history to accomplish that task.

- [12] Following receipt of the Applicant's submission, the Public Body confirmed to my office that it would ensure the Applicant had received a complete copy of the Public Body's application, including those documents that were already in her possession. The Public Body also provided my office with a copy of the original access request 19-P-3857.

Analysis

- [13] The sole issue before me in this matter, that being the Public Body's application for authorization to disregard access request 19-P-3857, is whether the Public Body has met its burden to establish that the conditions of section 55(1)(a) or (b) are met, and if so, whether I will exercise my discretion to authorize it to disregard the access request. I acknowledge the Applicant has provided an extensive submission of her history and concerns with the Public Body and others; however, the Court of Queen's Bench has previously stated that a person defending what amounts to a summary dismissal

application under section 55 need do no more than show merit. In other words, that person does not have burden to show the request is for a legitimate purpose.¹

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

[14] “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.

[15] The Applicant believes that the Public Body has additional records that it has not provided to her. The Public Body states it conducted a search of its information databases and found “[n]o further records other than what had been provided to the Applicant in response to her prior requests were located”.

[16] I accept the Public Body’s submission that it has already provided the Applicant with all of its records that are responsive to her access request and it has no new records that have not already been provided to her. As such, I find that the Applicant’s access request for records that have already been provided to her is repetitious. There is no need for me to consider whether the request is also systematic in nature.

Section 55(1)(a) – the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests

[17] In addition to establishing that a request is either repetitious or systematic, under section 55(1)(a), a public body must also provide evidence that the requests would unreasonably interfere with the operations of the public body or that they amount to an abuse of the right to make those requests.

[18] The Public Body asserted that it has limited resources and that the Applicant’s repetitive access request unreasonably interferes with its ability to respond to the legitimate requests it receives. The Public Body did not provide any further information or evidence to support its assertion; consequently, I find there is insufficient evidence before me to find that the request would unreasonably interfere with its operations.

[19] The Public Body also argued that there are no legitimate rights of access being pursued by the Applicant any longer and that the repetitious nature of the requests seeking information from it when there is no information to provide demonstrate a disregard for the true intent of the Act.

[20] Among other things, FOIP allows individuals to access their own personal information within the custody or control of public bodies. It is also intended to promote transparency and accountability. Further, an individual’s right of access is not unlimited. When an individual has already exercised their right of access, and has received the

¹ See Court File 1103-05598, as summarized in my Office’s 2011-2012 Annual Report.

records to which they are entitled, it becomes an abuse of the FOIP Act to repeatedly request the same records that have already been provided. As the Applicant has already been provided access to these records, and there are no more records held by the Public Body that are responsive to her access request, I agree with the Public Body that there are no longer any legitimate rights of access being pursued by the Applicant.

[21] I find the Public Body has met its burden to establish that the conditions section 55(1)(a) of the FOIP Act are met. Access request 19-P-3857 is repetitious and is an abuse of the Applicant's right to make access requests.

[22] 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

[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 access request 19-P-3857.

Jill Clayton
Information and Privacy Commissioner

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