

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD F2022-RTD-01

April 5, 2022

EDMONTON SCHOOL DIVISION

Case File Number 018899

- [1] Edmonton School Division (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 6 access requests, as well as any future access requests regarding the same issue, 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 the 6 outstanding access requests. The Public Body is authorized to disregard any future access requests from the Applicant relating to the same issue, that is, access requests that relate to the workplace investigation for which the Applicant was disciplined and the employees involved in that investigation, as well as records created as a result of responding to previous access requests from the Applicant.

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 is a teacher employed by the Public Body. The Applicant had previously been the subject of a workplace investigation. The Public Body states that a “number of allegations were made against [the Applicant] including concerns about his treatment of students and intimidation of colleagues”. The workplace investigation found that the

allegations regarding the Applicant were substantiated and resulted in a letter of reprimand. The Applicant disagreed with the result of the workplace investigation.

- [5] Following the workplace investigation, between May 30, 2018 and November 30, 2020, the Applicant submitted 15 access requests to the Public Body. The Public Body responded to 9 access requests, and then brought this application for authorization to disregard his most recent access requests. The Applicant requested reviews by my office of the Public Body's response to his first 3 access requests and also filed a complaint about the Public Body. The Public Body's position is that the Applicant "is improperly using the requests to retaliate against his co-workers and to punish and grind down the School and Division". It further states the Applicant's "initial interest was clearly to obtain records about the events leading to the workplace investigation and the workplace investigation itself, but now he simply appears to be requesting access to the records which flow from his previous requests and those that are created in responding to his previous requests."
- [6] The Applicant disputes this characterization of his requests and explained that he has larger workplace concerns as well as concerns regarding an ongoing matter. He states that he made his access requests in order to obtain information otherwise unavailable to him and that as he received responses to his access requests, he learned there was additional information that he had not yet received and so made additional requests.
- [7] Broadly summarized, the access requests at issue in this matter request all records about the Applicant from a number of Public Body employees dating from around the time of the workplace investigation or the conclusion of the workplace investigation to around the time of the access request. These access requests include records created in responding to the Applicant's previous access requests from the named employees.
- [8] The Public Body states that a number of the Applicant's co-workers were interviewed as part of the workplace investigation, and following the investigation, the Applicant filed complaints against 6 of those co-workers with the ATA (Alberta Teachers' Association) under the *Teaching Professions Act*. Each of these co-workers has been the subject of at least one of the Applicant's access requests, and in some cases, multiple access requests. The Applicant also filed complaints against two other employees of the Public Body, at least one of whom was also interviewed as a witness in the investigation.
- [9] In its initial submission, the Public Body provided an Affidavit of its FOIP Coordinator. This Affidavit provided information about the outcome of the workplace investigation, the Applicant's access requests, the matters that have been brought before my office for review or investigation, some limited information regarding his ATA complaints about employees who participated in the workplace investigation as well as observations about the effects of the access requests on Public Body staff.

[10] The FOIP Coordinator's Affidavit stated that the majority of the Applicant's access requests coincided with busy times on the school calendar. The FOIP Coordinator provided examples of access requests that had been made near the end of the school year, near the beginning of the school year or just before or after school breaks. The Applicant disputes the Public Body's characterization of the timing of his requests, stating, "I can advise that my FOIP requests were not timed in the way suggested. I purposefully tried not to make FOIP requests during holiday periods because I am respectful of people's holidays. I did not file any FOIP requests in July or during Spring Break or over the Christmas break. The timing of my FOIP requests were not calculated, as suggested by the ESD."

[11] The FOIP Coordinator's Affidavit also included six letters as evidence that the Applicant continued to request access to certain types of information to which he had already been informed he was not entitled to access.

[12] In its initial submission, the Public Body asked to provide an *in camera* submission and Affidavit. The Applicant objected. In some cases, where circumstances require that information not be disclosed to a party, *in camera* submissions will be allowed. I found this is one of those cases. After reviewing the parties' arguments, I issued a decision allowing the Public Body to provide an *in camera* submission and Affidavit. The Public Body was also required to provide a summary of its *in camera* submissions to the Applicant in order to allow him to respond.

[13] Generally, the Public Body's *in camera* submission and Affidavit focused on the effects that the Applicant's access requests have had on the individuals named in the access requests and on the operations of the school, including evidence about the timing of the Applicant's access requests. In particular, the *in camera* Affidavit discussed the following topics:

- Specific actions of the Applicant, in addition to the access requests, that had been observed to cause distress and stress to staff members at the school;
- Details of the observed effects of the access requests upon staff members at the school; and
- Details of the observed effects of the additional actions of the Applicant upon staff members at the school.

[14] The summary of the *in camera* submissions provided to the Applicant also stated the following:

The Submissions discuss how the additional evidence provided in the Affidavit supports the Division's positions that the access requests are strategically timed to cause stress; that the access requests are part of a larger overall campaign of harassment and retaliation against his colleagues, the School and the Division for the discipline he believes has improperly imposed upon him; and, that the access requests have

unreasonably interfered with the operations of the School and Division by causing stress and taking staff away from the important work of teaching.

Analysis

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

- [15] “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.
- [16] The Public Body submits that although the Applicant’s requests are not exactly the same, a number of them overlap and there are similar aspects to the requests. The Public Body provided examples demonstrating that a number of staff had been required to search for records multiple times. The Applicant states that his understanding, through discussions with the FOIP Coordinator, was that his requests were not repetitive, although he later needed to repeat requests for some information, as he believed it was not initially shared with him.
- [17] I have reviewed the Applicant’s access requests and agree that the access requests at issue contain at least some repetitious elements. Given the expanded time frames, and creation of new records in response to previous access requests, some portions of the access requests are new.
- [18] The Public Body states the Applicant’s access requests are “also clearly systematic”:

A review of the requests shows, and as described [in the FOIP Coordinator’s Affidavit], that many of the requests flow from the one(s) before. When new individuals are identified as creating, receiving or sending information about [the Applicant] through the records he receives in response to an access request, he then makes an access request in which that individual is specifically named. This type of behaviour has been recognized as being systematic by the OIPC [F2020-RTD-03 at para 12]. These patterns can be seen by examining the timing of a number of the releases and subsequent request dates as it was quite noticeable in the first series of requests.

[table of examples redacted]

Further, after receiving the response to a request, [the Applicant] then asks for any further information that has been generated about him (some of which will have been generated as individuals search for records in response to the request to search for records) for a time period following the time period of his previous request, thereby creating a never-ending loop.

[table of examples redacted]

In addition, as described in the [FOIP Coordinator's Affidavit], the timing of [the Applicant's] requests appears to be calculated to cause stress to the affected individuals as they have tended to arrive on or near key school year dates:

[examples redacted]

The Division suggests that when the timing of the requests is reviewed it cannot be considered to be anything other than deliberate.

- [19] I note the Applicant's objection to the Public Body's position that he deliberately timed his requests for busy time periods at the school.
- [20] Regardless of the Applicant's intent on timing his requests, if any, it is clear that he regularly made a number of access requests within a short time frame. Further, the types of information requested and the naming of individuals involved in the workplace investigation, including those named in multiple access requests demonstrates a deliberate pattern of conduct.
- [21] I find that the Public Body has met its burden to prove the Applicant's access requests are systematic.

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

- [22] 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.
- [23] As I have noted in numerous prior decisions under section 55(1), the fact that a request is repetitive can be abusive in and of itself. Accordingly, on the facts before me, based solely on the repetitiousness of the access requests, I would authorize the Public Body to disregard those portions of the requests to which it has already previously responded.
- [24] Using the FOIP Act for purposes other than access to information may be considered an abuse of the right to make those requests. The Applicant submits that his purpose is to seek information related to workplace concerns and an ongoing matter, although he provides few additional details. However, he is not required to do so. The Applicant bears no burden to prove any purpose for his access requests; rather, the Public Body bears the burden to establish that the conditions of section 55(1) are met.
- [25] The Public Body submits as follows:

The Division is of the view that the systematic nature of [the Applicant's] requests, and in particular, the timing of his requests and the way in which a response to a request will

then prompt another request, are, in and of themselves, an abuse of the right to access [F2020-RTD-03 at para. 25]. [The Applicant] appears to have timed his requests with the intention to cause the most anxiety to staff. They are generally received at key school dates throughout the year, such as the end of the school year, the beginning of the school year or just before or just after major holidays. These are times when staff are already busy with their teaching and school duties, and searching for records would understandably add additional stress. Further, as described in paragraph 13 of the Affidavit of [the FOIP Coordinator], the requests require the same employees to search for records over and over again. This is an abuse.

In addition to the access requests, [the Applicant] filed a privacy complaint with the OIPC [file number redacted] (the investigation of which determined that the Division collected [the Applicant's] personal information in accordance with FOIP – see [the Affidavit of the FOIP Coordinator], and has requested 3 reviews [file numbers redacted, see the FOIP Coordinator's Affidavit] and an inquiry [file number redacted]. Each complaint, review and inquiry generates a tremendous amount of work for the Division and it is a significant expense of resources to respond to each submission to the OIPC. The Division has demonstrated time and time again that it has strived to provide [the Applicant] with records that he has right to, yet his access requests continue.

It is clear to the Division that [the Applicant's] motives in making these multiple access requests are improper. The individuals identified in the 15 repetitive and systematic access requests are all connected in some way to the workplace investigation. When this is taken into consideration along with [the Applicant's] actions in filing complaints with the ATA against the colleagues who participated in the workplace investigation; filing complaints against others with the Division and filing a privacy complaint against the Division, the Division submits that [the Applicant] is using the process to arguably harass his co-workers and to retaliate against his colleagues, the School and the Division for the discipline he believes was improperly imposed upon him (notwithstanding that he failed to avail himself of the grievance process under the collective agreement). This conclusion is supported by [the FOIP Coordinator's] observations of the staff she has interacted with when processing the access requests [see the FOIP Coordinator's Affidavit]. As described by [the FOIP Coordinator], she observed that the affected staff appear to be distressed and experiencing extreme emotions when faced with searching for records. An improper motive for making requests makes the requests themselves abusive.

Finally, [the Applicant] continues to insist that he is entitled to have access to records to which he is not entitled; a fact which has already been explained to him. In a letter dated April 9, 2020 [included in the FOIP Coordinator's Affidavit], [the Applicant] expressed his frustration that records provided to the ATA were not provided to him. Despite being advised on several occasions that he is not entitled to the records he is seeking he continues to inquire about them and has attempted to use access to information requests [numbers redacted] to attempt to obtain records he knows the Division cannot provide. The advice to [the Applicant] is detailed in [the FOIP Coordinator's Affidavit], and the Exhibits referred to in that paragraph.

Repeated access requests will not change the Division's position on providing access to records. [The Applicant's] repeated requests for records to which he is not entitled is an abuse of the right to request access.

[26] Despite the initial reasonableness of the Applicant's access requests, I am satisfied on the basis of the evidence before me that his current purpose in seeking information is not to obtain access to the information he requests. I accept the Public Body's submission that the Applicant has received the vast majority, if not all, of the records that exist to which he is entitled in relation to the workplace investigation and the staff involved in that matter. I agree with the Public Body that the Applicant's access requests have become part of a "never-ending loop". That is, each time the Applicant makes an access request, new records will be created as a result of that access request. The utility in gaining access to such records *in these circumstances* is negligible. Certainly, there are cases where an access request to obtain records created in response to, or as a result of, an access request may be valid. I do not find that this is the case in this matter.

[27] In this case, the systematic nature of the Applicant's access requests, and my finding that his purpose has become something other than obtaining access to information means that he is abusing his access rights under the FOIP Act. I find the Public Body has met its burden to establish that the conditions under section 55(1)(a) of the FOIP Act are met.

[28] As I have found the Applicant is abusing his rights, there is no need for me to consider the Public Body's argument that the Applicant's access requests are unreasonably interfering with its operations.

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

[29] Similarly, as I have found the Public Body has met its burden under section 55(1)(a), there is no need for me to consider the Public Body's arguments under section 55(1)(b) that the Applicant's access requests are vexatious.

Request for Authorization to Disregard Future Access Requests

[30] The Public Body also requested authorization to disregard any future access requests from the Applicant "with respect to the same issues". I take this to mean the same issues on which the Applicant's prior access requests have been based, that is, access requests that relate to the workplace investigation for which the Applicant was disciplined and the employees involved in that investigation, as well as records created as a result of responding to previous access requests from the Applicant.

[31] The Public Body submits, in part, as follows:

Although the Division understands the importance of the right to make access requests, the Division requests that [the Applicant] be prevented from making any future access

requests about the same issues. [The Applicant] has been provided with a significant number of records dealing with the circumstances leading up to the workplace investigation and to the extent possible, about the workplace investigation itself. Subsequent requests have been observed to simply cause distress among his co-workers and will require significant effort to produce little additional information. This is not an appropriate use of resources on behalf of the Division or an appropriate exercise of the right to access information.

[32] I am persuaded that, with respect to future access requests, the Applicant has exhausted his access rights under FOIP with respect to the records relating to the workplace investigation and the employees involved in that matter. Additionally, as I noted above, in these circumstances there appears to be little remaining utility in the Applicant's ongoing access requests for information that consists of records created in relation to a prior access request.

Decision

[33] 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 20-03-P, 2020-08-P, 2020-09-P, 2020-10-P, 2020-11-P and 2020-12-P.

[34] The Public Body is authorized to disregard future access requests from the Applicant that relate to the same issue as his previous access requests, that is, access requests that relate to the workplace investigation for which the Applicant was disciplined and the employees involved in that investigation, as well as records created as a result of responding to previous access requests from the Applicant.



Jill Clayton
Information and Privacy Commissioner

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