

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD F2022-RTD-04

July 27, 2022

VILLAGE OF CARBON

Case File Number 025250

- [1] The Village of Carbon (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 an access request made by an individual, whom I will refer to as the Applicant.
- [2] For the reasons outlined in this decision, the Public Body’s application for authorization to disregard the Applicant’s access request is dismissed. The Public Body’s request for authorization to disregard future access requests from the Applicant and from any individuals associated with the group Ratepayers of Carbon is dismissed.
- [3] The Public Body must respond to the Applicant’s access request in accordance with FOIP.

Commissioner’s Authority

- [4] 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

- [5] On February 22, 2022, the Applicant requested access to the following information:

Village of Carbon cheque listing for council – 2021 year
December 31/2021 bank statements
PCard statements for Mayor and CAO August 2019 to present
AP Vendor Report for Brownlee LLP 2018 – present

Time period: May 2018 – February 22, 2022

A portion of the access request for “Village of Carbon cheque listing for council – 2022 to date” is crossed out and is therefore unclear as to whether that is part of the access request.

[6] The Applicant is a member of a group called the “Ratepayers of Carbon”. (For clarity, the Applicant in this matter is not the same person as the applicant in Request to Disregard F2022-RTD-05, another decision involving the Public Body and an individual associated with the Ratepayers of Carbon.) Based on the information before me, the Ratepayers of Carbon appears to be a group of individuals with common concerns about the Public Body, particularly its use of public funds. The Public Body states the Applicant is a director of the group, but the Applicant denies this, confirming only that she is involved with the group.

[7] The Public Body summarizes the Applicant’s actions as follows:

Overall, the Applicant has submitted seven requests to access information, filed two Requests for Review, submitted a petition to Alberta Municipal Affairs to have the mayor disqualified from office, a petition to Council to have the CAO removed from office, a complaint to the Society of Local Government Managers against the CAO, a request to have an operational decision reviewed by the Provincial Ombudsman, and a complaint to the RCMP alleging the Municipality falsified records in response to a FOIP request.

[8] The Public Body states that this access request is the seventh request originating from either the Applicant or the Ratepayers of Carbon since September, 2019. The Public Body provided both a submission and a detailed affidavit, including a table summarizing the access requests as follows:

Date	Applicant	Requests
September 17, 2019	Ratepayers – signed by Applicant	<ul style="list-style-type: none">• Parkview Lodge Society minutes + bylaw;• Accounts payable printout for handyman at large [name redacted];• GL detail reports on accounts that those payments were charged against including a budget amount;• Authorized Village A/P listings + Parkview Lodge AP listings; and• GL printout of transfers of funds from Village to Parkview Lodge <p>From September 1, 2018 to present (continuous)</p>

January 2, 2020	Ratepayers – signed by Applicant	<ul style="list-style-type: none"> • Village of Carbon accounts payable listings <p>From October to December 2019</p>
February 22, 2021	Applicant	<ul style="list-style-type: none"> • Village of Carbon accounts payable cheque listings for 2020 calendar year; • AP listing approved January 18, 2021 Res. 2021-14 in the amount of \$372,184.20 <p>From January 1, 2020 to January 18, 2021</p>
May 23, 2021	Applicant	<ul style="list-style-type: none"> • Minutes – Parkview Lodge Society; • Parkview Lodge Society 2020 Financial Statement; • [name redacted]/handyman at large; • AP vendor purchases report and copies of invoices; • General ledger history listing 2020 Parkview Lodge <p>From January 1, 2020 to May 24, 2021</p>
August 4, 2021	Applicant	<ul style="list-style-type: none"> • Minutes – Parkview Lodge Society; • [name redacted]/handyman at large; • AP vendor purchase report and copies of invoices; • General ledger history listing 2021 Parkview Lodge; and copy of Parkview Lodge Society bylaw – current if new <p>From the Parkview Lodge Society for the period of May 25, 2021 to present.</p>
August 4, 2021	Applicant	<ul style="list-style-type: none"> • 2021 capital budget list of projects and funding sources; • 2021 AP listing to present; • Tenting cabin rentals for 2020 and 2021 and revenue; and • Name of contractor for cabin #2 and quote and copy of invoice; <p>From the Municipality for the period of January 1, 2020 to present</p>
February 22, 2022	Applicant	<ul style="list-style-type: none"> • Village of Carbon cheque listing for Council – 2021 Year; • December 31, 2021 bank statements

(Access Request at issue)		<ul style="list-style-type: none"> • PCARD statements for Mayor and CAO – August 2019 to present • AP Vendor Report for Brownlee LLP – 2018 to present <p>May 2018 – February 22, 2022</p>
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[9] I have carefully reviewed the parties’ submissions. The parties disagree as to the characterization and motivation of the access request.

[10] The Public Body provided detailed submissions regarding a variety of concerns and allegations raised by the Applicant and/or the Ratepayers of Carbon in relation to the current council members. Throughout its submissions, the Public Body repeatedly states that the various concerns and allegations are unfounded and baseless. Broadly, the Public Body’s position is that the Applicant has engaged in a campaign of harassment with the seven access requests:

- It points to two Requests for Review brought before my office regarding its responses to previous access requests. In one of those cases, my office found that incorrect records had been provided in error, and the Public Body corrected this error. It states that the Applicant alleged this error was due to intentional falsification of records and was an offence under the FOIP Act.
- Beginning in May, 2018, the Public Body states that the Applicant and the Ratepayers of Carbon began questioning the day to day practices of the Public Body including Council decisions. It states this correspondence originated around the same time as there were issues with an individual closely related to the Applicant.
- In September, 2019, the Ratepayers of Carbon wrote Municipal Affairs alleging the current mayor was ineligible for office.
- In February, 2022, the Applicant was among others who signed a petition to remove the Public Body’s current CAO from office.
- The Applicant further filed a complaint with the Society of Local Government Managers against the Public Body’s CAO.

[11] The Applicant provided a submission in response, explaining in detail the reasons for her concerns with the Public Body. The Applicant explained her background and understanding of a municipality’s operations. Broadly, the Applicant explains that a number of residents of the village have concerns with the administration and operations of the Public Body. The Applicant outlined the amount of time spent by council in closed sessions as well as a large number of concerns including details of financial accountability by the Public Body.

- [12] Although I have only summarized the parties' positions, I have very carefully reviewed their submissions. It is very clear on the evidence before me that there are many issues between the Applicant/Ratepayers of Carbon and some of the individuals who are administering the Public Body. The Public Body takes the position that all of the Applicant's concerns are unfounded and baseless allegations. The Applicant has provided reasons for her concerns and the concerns of the Ratepayers of Carbon.
- [13] Contrary to the repeated assertions of the Public Body, I note that nowhere in the evidence provided is there a finding that these concerns are unfounded or baseless; rather, individuals have been directed as to the proper means of addressing these concerns. For example, Exhibit "O" of the Public Body's Affidavit contains a letter from the Minister of Municipal Affairs explaining that sections 174 and 175 of the *Municipal Government Act* govern disqualification of a councillor, but there is no conclusion regarding the complaint. Similarly, at paragraph 30 of the Public Body's Affidavit, the CAO explains that a complaint to the Society of Local Government Managers of Alberta was withdrawn for a procedural issue, but that the Applicant intends to bring forward new complaints.
- [14] The evidence before me does not indicate one way or another as to whether any of these concerns have any merit. It may very well be the case that, as repeatedly asserted by the Public Body, the concerns of the Applicant and the Ratepayers of Carbon are baseless and unfounded. As Information and Privacy Commissioner, my role is not to make findings regarding the financial administration of the Public Body or other concerns or to resolve the issues between the parties. I make no findings as to the validity of the Applicant's concerns or whether any of the allegations against the Public Body are founded. There are other means by which these concerns may be addressed and the evidence before me indicates that the Applicant and/or the Ratepayers of Carbon are engaged in the process of addressing their concerns through a variety of democratic means available to them.
- [15] In this case, my role is to determine whether the Public Body has met its burden to establish that the criteria of section 55(1) are met, and if so, whether I will exercise my discretion to authorize it to disregard the access request.

Analysis

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 submits:

The nature of the Requests evinces a pattern of conduct that is regular, deliberate, and systematic in nature. The Applicant has made repeated and continual requests for

accounts payable and other detailed financial information concerning the operations of the Municipality. The information is being requested in the context of the Applicant's own personal disagreement with how the elected Council and municipal administration operates the Municipality.

[18] Since 2019, if the two requests from the Ratepayers of Carbon (signed by the Applicant) are included, the Applicant has made seven access requests to the Public Body. Generally, all of these requests are for financial disclosure of the municipality's management of its funds. Similar types of information have been requested from year to year.

[19] I find the access requests are systematic. There is, however, no evidence before me that any of the Applicant's or the Ratepayers of Carbon's access requests have been repetitious. The history of access requests does not show that the same information is being requested, rather, it shows that the access requests have been for new or updated information, generally regarding the Public Body's finances, or for meeting minutes regarding specific operations of the Public Body.

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

[20] 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.

[21] The Public Body summarized prior decisions on this section as follows:

Section 55(1)(a) contemplates that the systematic nature of access requests, in and of themselves may amount to an abuse of the right to make those access requests. Further, while s 55(1)(a) says nothing about improper motive, an improper motive would clearly establish abuse.

The Commissioner has previously found that continuous access requests, the processing of which generates processing records, to which an applicant then requests access is an abuse of the right to make requests. The Legislature did not intend for the FOIP Act to be used to continually monitor or check up on public bodies.

Further access requests may amount to an abuse of the right to make those access requests if there is evidence that the applicant's requests are retaliatory in nature, aimed at harassing a public body and its employees.

[22] Prior to my analysis on this matter, one point must be clarified. It is not necessarily an abuse of the Act for an individual to request access to a public body's processing of a prior access request. It *may* be an abuse, and I have found that to be the case in some previous decisions, but it is not always an abuse of the Act. There have also been cases before my

office where an applicant's request for information about the processing of a prior access request has been entirely valid. Such cases always depend on the specific facts. In any event, there is no evidence or argument before me that the Applicant has requested access to information about the Public Body's processing of prior requests.

[23] The Public Body submits as follows:

These repetitious and systematic requests in and of themselves are an abuse of the right to make requests. Further, there is evidence that the Applicant is abusing the process under the *FOIP Act*, trying to intimidate/harass the Municipality and its employees, and acting for an improper purpose:

- The requests represent a fishing expedition on the part of the Applicant to uncover evidence of misconduct on behalf of Council or the administration.
- Three of the requests make direct reference to [an individual], the current Mayor of the Municipality, who has also worked as a handy man for the Municipality. [Name redacted] assumed the role of mayor following the resignation of [an individual related to the Applicant].
- The Applicant is seeking information from the Municipality in support of her unfounded allegations of misconduct on behalf of Council and the administration, which she has made known to Alberta Municipal Affairs, the RCMP, and the Society for local Government Managers.
- The Applicant by her own admission in her pursuit of a Request for Review with the OIPC disagrees with the elected Council's decisions regarding the expenditure of public funds. To this end, she has used a request to access information and the Request for Review process to advance baseless claims that the Municipality has falsified documents.
- The Municipality believes that the requests are related to ulterior motives besides access to information. Specifically, the Municipality believes the Applicant is using the Requests for the purposes of harassing the Municipality including its employees, taking up the time and resources of the Municipality, and causing harm to the Municipality.

Further, the Municipality submits that continually processing the Applicant's requests, including the Request for Review, continues to unreasonably interfere with the operations of the Municipality. The requests are for substantial amounts of information and combined with the other FOIP requests and duties of the small administrative staff of the Municipality the cumulative effect is to impair the ability of the Municipality to operate. The Municipality only employs three administrative staff and does not have a full-time employee dedicated to processing FOIP requests. As such the repeated requests of the Applicant have a substantial impact on the day to day operations of the Municipality.

[24] The Public Body, both in its submission and in a sworn Affidavit, argued that the access request would unreasonably interfere with its operations. The Affidavit stated:

Further, I do verily believe that the Applicant's continued filing of requests under the *FOIP Act* are obstructing, taking up limited time and resources, and causing harm to the operations of the Municipality. The Municipality employs three administrative staff, including myself as CAO, and has devoted substantial efforts to responding to the Applicant's request for information as well as her numerous other complaints.

[25] In F2019-RTD-01 I addressed the evidentiary requirements for a public body to demonstrate an access request would unreasonably interfere with the operations of the public body under section 55(1)(a). I stated:

There is good reason why the Public Body must meet a high threshold of showing "unreasonable interference", as opposed to mere disruption. Access and privacy rights have been identified as "quasi-constitutional" by the Supreme Court of Canada: *Douez v Facebook Inc.*, 2017 SCC 33, paras 4 and 50; *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers*, 2013 SCC 62, para 19. Citizens must have access to information in order to participate meaningfully in the democratic process, and to hold the state accountable: *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403, para 61. Accordingly, as I have said before, the power that has been granted to me under the *FOIP Act* to authorize a public body to disregard an access request is not one I take lightly: *Request for Authorization to Disregard an Access Request – Calgary Police Service* (November 29, 2017), para 4.

It will usually be the case that a request for information will pose some disruption or inconvenience to a public body; that is not cause to keep information from a citizen exercising his or her democratic and quasi-constitutional rights.

[26] In that decision I also noted that section 14 of the *FOIP Act* outlines various circumstances where a public body may extend the time limit for responding to an access request.

[27] I accept the Public Body's submission that responding to an access request uses limited resources and takes up the time of a small number of administrative staff; however, for the same reasons provided in F2019-RTD-01, I am not satisfied that the evidence provided by the Public Body establishes that responding to the access request at issue would *unreasonably* interfere with its operations. Because public bodies have to a duty to respond to access to information requests under *FOIP*, any access request will require some use of limited resources and time.

[28] The Public Body also argues that the access request is an abuse of the right to make requests. My office's 2011-2012 Annual Report summarized the Alberta Court of Queen's Bench judicial review of a section 55 decision of the former Commissioner in *Clarence J. Bonsma v The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office (Bonsma)*, an oral decision of Clackson J. in Action Number 1103-05588) as follows:

Alberta Employment and Immigration (the Public Body) applied to the Commissioner under section 55 of the FOIP Act to disregard the Applicant's access request. The Commissioner decided to authorize the Public Body to disregard the request.

On judicial review of the Commissioner's decision, the Court of Queen's Bench quashed the decision. The Court said that if requests are not the same, then the fact that there are numerous requests made regularly cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive. That is where the second part of section 55 becomes important. The ulterior motive is what establishes the abuse.

Since the request here was not repetitious, summary dismissal was dependent upon regular and deliberate requests and motivation. On the record, there was no basis to conclude that the Applicant was improperly motivated. Therefore, the Commissioner's conclusion that the Applicant's request was abusive was not reasonable.

Furthermore, the Court expressed its view that a person defending what amounted to a summary dismissal under section 55 need do no more than show merit. In other words, that person did not have a burden to show that the request was for a legitimate purpose.

- [29] The Public Body points to the number of access requests and a variety of other complaints and allegations made by the Applicant as evidence that the Applicant is abusing her rights under the Act. However, I find this information also supports a finding that, whether or not these concerns are founded, a number of individuals including the Applicant have genuine concerns regarding the Public Body's operations.
- [30] The Applicant responded to the Public Body's position in detail and confirmed that she and the Ratepayers of Carbon have a number of concerns regarding the administration of the Public Body and particularly its use of public funds. The Applicant outlined numerous other concerns. These include allegations of conflicts of interest regarding some financial transactions, as well as some of the evidence used by the Public Body against her in this matter as being provided in contravention of the *Municipal Government Act*.
- [31] As I noted previously, I have not made any findings as to whether any of the Applicant's allegations are substantiated. I am satisfied however that the Applicant and/or the Ratepayers of Carbon themselves have a genuine belief that their concerns are valid.
- [32] The Applicant noted that some information which had previously been made available only through access to information requests is now made available by the Public Body. I note that the Applicant did not request that information under the FOIP Act after the Public Body proactively disclosed it. I find that this further supports a conclusion that the access requests have not been made abusively, but indicate that it is the information that is sought, not the act of requiring the Public Body to respond to an access request.

[33] Section 2(a) of the FOIP Act entitles “any person a right of access to the records in the custody or under the control of a public body subject to the limited and specific exceptions as set out in this Act”. In F2002-RTD-02, one of the earliest section 55 decisions published by this office, the former Commissioner stated the following:

The FOIP Act was intended to foster open and transparent government (see Order 96-002 at page 16). By giving an applicant a right of access to records in the custody or under the control of public bodies (subject to limited and specific exceptions), public bodies can be subjected to public scrutiny.

[34] Whether or not the Applicant’s concerns regarding the Public Body, including its expenditure of public funds have any basis, the Applicant has a right to request access to information about the Public Body’s use of public funds. I am not satisfied, on the evidence before me, that the Applicant’s access requests, including the one at issue in this matter have been made for the purpose of harassing or abusing the Public Body or individuals within it. Rather, I find that the access requests have been made for the purpose of obtaining access to the information requested.

[35] I find that responding to the access request would not unreasonably interfere with the public body’s operations and that it is not an abuse of the Applicant’s right to make access request.

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

[36] A frivolous request is typically associated with matters that are trivial or without merit. Information that may be trivial from one person’s perspective, however, may be of importance from another’s. A vexatious request is one in which the Applicant’s true motive is other than to gain access to information, which may include the motive of harassing or obstructing the public body to whom the request is made.

[37] The Public Body submits that the Applicant’s requests are both frivolous and vexatious. It states that the Applicant’s allegations are unfounded and are based in a bad faith attempt to harass and obstruct the Public Body. It refers to the various complaints lodged by the Applicant or the Ratepayers of Carbon against the Public Body or individuals within it. The Public Body states, in part:

The broader context of the Applicant’s requests, combined with their attempts and intention to have the mayor and CAO dismissed, indicate that the Applicant’s goal is not to access information so much as it is to harass the Municipality given that the Applicant may disagree with the Council and administration’s operation of the Municipality. The Applicant’s personal views toward the Municipality are, in her own words, that she is “appalled by how the [Municipality] conducts business” and does not view the CAO as qualified. Simply put, the Applicant has deep seated negative personal feelings towards the Municipality and continually aims to use various forums to air her complaints.

Further, this context demonstrates a motive on behalf of the Applicant that is rooted in bad faith such that her continued requests for access to information have become harassing and obstructing in nature. In keeping with the prior decisions of the Commissioner, where the purpose of a request is to harass and obstruct a public body, the requests are defined as vexatious.

[38] The Public Body's argument is premised on its position that the Applicant's concerns are baseless and unfounded. I have not made any findings as to whether any of the Applicant's concerns or those of the Ratepayers of Carbon are valid. However, as discussed above, I accept that the Applicant believes her concerns are valid. I have already found, on the basis of the evidence before me, that the purpose of the Applicant's access request is to obtain access to the information that has been requested. Regardless of the validity of the Applicant's beliefs, the FOIP Act provided individuals with the right to request access to information, subject to limited and specific exceptions, including financial disclosure that subjects a public body to public scrutiny.

[39] I find the Public Body has not met its burden to establish that the conditions of section 55(1)(b) of the FOIP Act are met.

Request for Authorization to Disregard Future Access Requests

[40] The Public Body also requested authorization to disregard any future access requests from the Applicant or from anyone associated with the Ratepayers of Carbon group.

[41] As the Public Body has not established that the conditions of section 55(1)(a) or (b) are met with the access request at issue, at this time I will not authorize it to disregard any future access requests from the Applicant or the Ratepayers of Carbon.

[42] The evidence before me is clear that there are issues between the parties. While I am not satisfied on the current evidence and information before me that the access requests have reached the level of authorizing the Public Body to disregard the access request, that does not mean that the situation may not change in the future.

[43] If the Public Body receives an access request in the future that it believes meet the criteria of section 55(1), it may request authorization at that time to disregard that access request.

Decision

[44] The Public Body is required to respond to the Applicant's access request in accordance with the FOIP Act. If the scope of the Applicant's access request is not clear, the Public Body should request clarification from the applicant.

Jill Clayton
Information and Privacy Commissioner

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