

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD F2022-RTD-05

July 27, 2022

VILLAGE OF CARBON

Case File Number 025524

- [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 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 March 10, 2022, the Applicant requested access to the Public Body’s financial records including invoices, cheques, credit card statements, receipts and expense claims for the period of November 26, 2021 to January 31, 2022.
- [6] The Public Body states that the responsive records consist of “approximately 110 un-redacted invoices, cheques, credit card statements, receipts and expense claims.”

[7] The Public Body submits 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-04, another decision involving the Public Body and an individual associated with the Ratepayers of Carbon.) The Applicant provided the following information regarding her involvement with the Ratepayers of Carbon group:

A Facebook Search determined that I was a member of the Ratepayers of Carbon group – a citizen’s advocacy group dedicated to lower taxes, less waste and fair, accountable government. This (my first) FOIP request was not submitted in relation to or subsequent to any request made on behalf of this group, either collectively or individually. Consequently, my request should not be processed based on speculation of what might become a pattern of behaviour for me. The list of Ratepayers submitted as part of Exhibit “G” of the CAO’s Affidavit includes that of [name redacted] who is currently a Village Councillor.

[8] Some background information provided by the Public Body follows:

By way of example, the Applicant is seeking un-redacted copies of credit card statements, cash register receipts for retail purchases, as well as detailed invoices for professional services and fees. The Municipality already makes accounts payable information public through a report, including one that was made public for the February 22, 2022 Council meeting. The Applicant’s Request seeks to further scrutinize the Municipality by requesting un-redacted copies of information already disclosed by the Municipality.

This Request must also be contextualized in the Municipality’s history with the Ratepayers of Carbon (the “Ratepayers”), of which the Applicant is a member. The Ratepayers is a group of individuals who both collectively and individually have engaged in a pattern of harassing and obstructing conduct directed at the Municipality’s Council and Administration. The Ratepayers have accessed several forums in this respect, having made complaints to Municipal Affairs, submitted petitions to the Municipality, made disciplinary complaints, and made repeated access to information requests. In total, eight requests to access information under the *FOIP Act* have been submitted to the Municipality since September 2019; two in the name of the Ratepayers as an organization and six by members of the organization in their personal capacity, including the Applicant.

[...]

Within the 8 access to information requests detailed above, the applicants routinely request detailed accounts payable (“AP”) information, as well as the disclosure of expenses claims, general ledger entries, invoices (including from the Municipality’s legal counsel), and other detailed accounting and financial information. While the Municipality does not take the position that the applicants would not be entitled to some of this information, as is discussed in Section C below, the purpose for which this information is being sought falls within the parameters of section 55 of the *FOIP Act*.

This conclusion holds true for the Applicant, [name redacted], and the request of March 10, 2022.

Prior to submitting the Request, the Applicant supported other measures targeted at the Municipality. A February 2, 2022 letter and petition, which the Applicant signed, called for the removal of the CAO of the Municipality based on allegations that she was overpaid, underqualified, lacked the necessary ethics, and interfered with a municipal election. The Municipality's position is that these allegations are completely baseless.

As is evident from the February 2, 2022 letter, the "community members" whose names are included in the petition take issue with the number of staff the Municipality employs, the decisions of Council, and the Municipality's public expenditures on various issues. For instance, the letter states "people feel council is spending too much on flowers" and that the Administration spent too much on its pandemic response and remote working support.

Respectfully, not every citizen of a Municipality must agree with Administration and Council's decisions; however, there are mechanisms built into Alberta's municipal government framework to address such matters. Most notably, Council is elected by citizens of the Municipality and, in turn, Council has oversight of the CAO. The current municipal Council was just recently elected in the fall 2021 election. The Ratepayers, the individual members, and the Applicant appear to take issue with the overall governance and administration of the municipality and have continually sought to use every available forum to obstruct and frustrate the Municipality's operations. Most relevant to these submissions is the repeated use of requests to access information in a manner akin to fishing expeditions and in an effort to justify their criticism of the Municipality.

- [9] The Applicant provided a submission. She explained that she respects the democratic process in this country. Her background includes office management and accounting and she understands financial reports and budgeting. The Applicant stated:

The purpose of my FOIP request of March 11, 2022, is to help me understand how the village spends money. It is the responsibility and right of the electors to ask questions regarding decisions made by the Village Council. The members of Council, in turn, have a responsibility to be transparent and forthcoming to the residents who are trusting them to do what is best for Carbon as whole.

Disclosing information, holding public meetings, and transparency about the operations of the Village could help dispel misunderstanding and suspicion. It would provide proof that the Council and Administration are acting in the best interests of the residents. It could help build trust and communication between the Village Council, Administration and the residents.

[...]

The Accounts Payable information made public on the Agenda for the Feb 22, 2022 Council meeting did not provide enough information to know what the expenditures were for. Attachment "A" to this letter is a copy of that Cheque listing. Invoice descriptions like Amazon, Costco, Nest, Princess Auto, Eventbrite Net World Sports and Canadian Tire give no indication what was purchased from these vendors. My FOIP request was for cash register receipts and invoices which (to my knowledge) have not been requested before. These would give complete details. I understand that is the responsibility of Council to scrutinize spending and to verify its legitimacy. However, there was no discussion in the meeting regarding the Accounts Payable report.

The small sample of time that my request covers would provide only a general idea how much it costs to run the village, what the village spends money on and (perhaps) why they spend it. If the cost to operate independently is skyrocketing, then it might be time for a Viability Review. The residents might be better served as a subset of Kneehill County.

[...]

The CAO **believes** the purpose of sending letters and making inquiries about the Village operations by the Ratepayers was to "obfuscate, frustrate, and harass" them. And based on a screenshot from Facebook, believes that is also my intention.

I was not aware of and was not involved in submitting either of the two FOIP requests by the Ratepayers of Carbon. I have not seen the information provided by the Village for these Requests. Based on [name redacted's] affidavit, I know now that other individuals submitted requests for information. Exhibits "D", "E", and "F" of the affidavit show that the information I asked for is not the same as what was previously requested because the dates are different.

[10] The Applicant provided additional information in her submission. Some information, such as allegations of a disclosure of personal information cannot be dealt with in the context of this section 55 matter. The Applicant may choose to bring a complaint before my office or another relevant administrative body if she wishes the matter to be reviewed.

[11] The Applicant described the amount of time spent in camera during Council meetings without resolutions or motions being made public. The Applicant stated that the Public Body had only selectively disclosed portions of a response from the Minister of Municipal Affairs in response to a petition to remove the CAO. She stated:

This letter was read by [the Mayor] at the April 19 meeting. He did not read the final paragraph which says "I trust council will acknowledge the community concern demonstrated by the petition. I encourage council to be responsive and engage with residents to provide the effective leadership your citizens deserve and expect." I believe that by leaving that off the readout, the full message of the Minister's letter was not delivered. In addition, none of the councillors pointed out to the mayor that he had not finished reading the letter. Nor did anyone make suggestions as to how they might

address the discontent felt in the Village. This behaviour further reinforces that this Council and Administration does not value or encourage public input.

[12] The Applicant also addressed the Public Body's position that allegations made about the Public Body (or individuals within it) are baseless as follows:

The letter to the Privacy Commissioner from [the Public Body's counsel] states that this petition was based on allegations that are unfounded. An allegation (by definition) is a claim that someone has done something illegal or wrong. It must be proven to be true or to be false. An **unfounded allegation means an allegation has been investigated, and the investigation provided no proof that it was true.** Providing information is a way for the Village to start to **dispel** claims of misconduct and mismanagement. It is an opportunity to be transparent, forthcoming, and available. If they want to restore the confidence of the citizens of Carbon, then the Village Council and administration must provide evidence to establish that the allegations of misconduct and mismanagement are not true.

One response to such a petition might be to hold a Town Hall to find out why over 100 people signed it. [Name redacted], Village Council and the public could have an open discussion on ways to restore trust in her ability to fill the position. I understand that the CAO is chosen by Council. Her performance review is their responsibility. However, a show of this much dissatisfaction is significant. It should not be dismissed by the Village.

The Village is requesting authorization to disregard my current request as well as all future requests. Ruling to allow the Village to disregard future requests would enable them to reject my inquiries simply because I am making the request. They would not be required to consider the merit of the query. The Municipality is making the following **assumptions:**

- 1) That I will flood the Municipality with requests
- 2) That future FOIP requests will be in relation to other requests presented on behalf of the ratepayers of the individuals the Village has identified as members of this group.
- 3) That my intention is to disrupt the operations of the Council and administration of Carbon

The Village, while not required to do so, has engaged legal counsel to ask to disregard my FOIP request. In essence, the Village is using public money in an attempt to block information from a member of the public. This could be interpreted as an attempt to intimidate me or make me feel that I am doing something wrong for requesting information. It could also indicate that the Village feels that disclosing this information holds legal ramifications for the Carbon Council and Administration. At the very least, it represents a decision to incur an unnecessary expense for the Village of Carbon.

[13] I have carefully reviewed and considered the parties' submissions. There is clearly disagreement regarding the characterization and motivation behind the Applicant's access request. As in Request to Disregard F2022-RTD-04, it is very clear on the evidence before

me that there are many issues between the Applicant and the Ratepayers of Carbon and some of the individuals who are administering the Public Body.

- [14] 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 argues that the Public Body cannot conclude they are baseless until they are investigated. 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 Applicant has made only one access request to the Public Body. However the Public Body submits that this access request should be considered in the context of other access requests made by the Ratepayers of Carbon:

The Municipality acknowledges that the Applicant has submitted a single request to access information, but submits that when the Request is considered in light of the collective effort on behalf of the Ratepayers and its individual members, there is a pattern of using access to information requests in a repetitious and systematic manner.

Specifically, the conduct displayed by the Ratepayers and the Applicant is deliberate in that they have repeatedly made requests for detailed financial information concerning the operations of the Municipality. The information is being requested in the context of the Ratepayers and the Applicant's ongoing disagreement respecting the operation of the Municipality by the elected Council and municipality's Administration.

This conduct is systematic in nature given that it is a collective effort by a group of individuals with the aim to unreasonably interfere with the operations of the Municipality. The motive behind the Ratepayers and the Applicant's use of requests to access information is improper, which is an indicator of abuse under section 55.

[18] In its Affidavit, the Public Body provided a Facebook screenshot showing that the Applicant is a member of the Ratepayers of Carbon group. The Applicant confirmed she is a member of the group, but denies that her access request was made on behalf of the Ratepayers of Carbon. The Applicant states that, based on the Public Body's evidence, a number of individuals, including a current councilor of the Public Body are members of the Ratepayers of Carbon group.

[19] On the basis of the evidence before me, I am not satisfied that the Applicant's access request was made as part of a collective effort on behalf of the Ratepayers of Carbon. As the Applicant has made only one access request, I find that it is neither repetitious nor 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

[20] There is no need for me to consider whether the Applicant's access request would unreasonably interfere with the operations of the Public Body or amount to an abuse of right to make those requests because I have found that the Public Body did not meet its burden to prove the request is repetitious or systematic.

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

[21] 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.

[22] The Public Body submits that the Applicant's request is both frivolous and vexatious. The Public Body argues as follows:

The broader context of the Applicant's request, combined with the Ratepayers' campaign of filing complaints and requests to access information, indicate that the group and its member's goal is not to access information so much as it is to harass the Municipality given that they may disagree with the Council and Administration's operation of the Municipality. The Ratepayers have taken the position that they oppose the decisions of the elected Council and CAO and continually aim 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 the Request is motivated not by a desire to access very detailed financial information, but rather to examine every decision and action of the Municipality with a magnifying glass. In doing so, this Request is aimed at obstructing the Municipality from continuing to operate in a reasonably efficient manner and at harassing the CAO and Council as they carry out their duties. 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.

The use of the *FOIP Act's* process to request access to information is being used by the Applicant and the Ratepayers in a manner that amounts to a fishing expedition for information that they believe further their objection to how the Municipality is being run. This is a misuse of the *FOIP Act* process, which is to be considered a vexatious use.

In keeping with the guidance of the Courts concerning determinations of vexatious actions, the Municipality submits that it is important to consider the entire history of the Applicant's actions with the Municipality, including those of the Ratepayers, who she associates with. The Applicant supported a petition against the CAO of the Municipality that is based on unsubstantiated allegations of misconduct, fraud, and conspiracy, the intent of which was to harass the CAO. As a result, the motive behind the Request is clouded in bad faith given these attempts to use the *FOIP Act* to engage in a fishing expedition. For this reason, the Request should be considered frivolous and vexatious.

In summary, the Municipality submits that the Applicant has made the Request for purposes of ulterior motives besides access to information, and more specifically for the purposes of:

- a. harassing and obstructing the Municipality;
- b. taking up the time and resources of the Municipality;
- c. causing harm to the Municipality; and
- d. advancing unsubstantiated allegations of mismanagement and misconduct.

The Municipality therefore requests that it be authorized to disregard the Request on the basis that it is frivolous and vexatious.

[23] The Public Body's argument is premised on its position that the Applicant's concerns are baseless and unfounded. While this may be the case, as I have noted in this matter and in F2022-RTD-04, the evidence before me does not indicate one way or another whether there is any basis to the Applicant's concerns. I have not made any findings as to whether any of the concerns regarding the Public Body are valid.

[24] Although the Applicant does not have a burden in this matter, she has explained the purpose for her access request. She explained that the information provided by the Public Body at a public meeting did not provide sufficient detail to understand what the expenditures were for and that there was no discussion of these expenditures.

[25] 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.

[26] On the evidence before me, I am not satisfied that the Applicant's access request is frivolous or vexatious. 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

[27] The Public Body also requested authorization to disregard any future access requests from the Applicant. This request is denied.

[28] 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 this access request, that does not mean that the situation may not change in the future.

[29] 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

[30] The Public Body is required to respond to the Applicant's access request in accordance with the FOIP Act.

Jill Clayton
Information and Privacy Commissioner

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