ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2023-RTD-03

December 20, 2023

TOWN OF CROSSFIELD

Case File Number 031654

[1] The Town of Crossfield (the "Public Body") requested authorization under section 55(1)(b) of the *Freedom of Information and Protection of Privacy Act* ("*FOIP Act*" or "Act") to disregard an access request made by an applicant (the "Applicant"). To avoid disclosing the Applicant's identity through gender, while the Applicant is singular, the Applicant is referred throughout as they/them/their.

[2] For the reasons outlined in this decision, the Public Body's application for authorization under section 55(1) of the *FOIP Act* to disregard the Applicant's access requests is dismissed. The Public Body is required to respond to the access request in accordance with the *FOIP Act*.

[3] The Public Body also requested authorization to disregard all future requests that might be submitted by the Applicant. This application is dismissed. Should the Applicant make an access request in the future that the Public Body believes meet the criteria of section 55(1), the Public Body may request authorization to disregard it at that time.

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)(a) and (b) state:

> 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] The Public Body provided a submission and detailed Affidavit with communications between the Applicant and the Public Body including a number of emails sent by the Applicant to a Peace Officer. The Applicant provided a submission responding to the Public Body and providing an explanation for the access request.

[6] The Applicant states they are the representative of a citizen's group with concerns about a particular Peace Officer employed by the Public Body. The Public Body disputes that the Applicant represents any group, and alleges in its Affidavit that this 'citizen's group' is a pretense for the Applicant to carry out a campaign of abuse. For the purposes of this decision, I find nothing turns on this issue and it is irrelevant whether the Applicant represents a group or is acting in their own individual capacity.

[7] The Applicant made an access request on August 14, 2023 for the following information:

- Copies of all complaints on file regarding [the Peace Officer]
- Copies of everything on file related to disciplinary actions, temporary suspensions, warnings etc that have been taken related to [the Peace Officer]
- Copies of any legal actions taken against or by the town of Crossfield related to [a Peace Officer] including simple letters from a lawyer to or from the town regarding anything related to [the Peace Officer]
- Our citizens group would like to see copies of everything on file from the first day of [the Peace Officer's] employment with the town of Crossfield until today, August 14, 2023.

[8] The earliest communication provided by the Public Body is an email exchange from April 20 – 28, 2023 between the Applicant and an employee of the Public Body wherein the Applicant asked the employee to notify the Peace Officer of the Applicant's concerns about that Peace Officer. This email chain refers to previous emails between the parties, but none of those prior communications are before me. On April 28, 2023, the employee

confirmed that there had been a discussion that included the Peace Officer and that the employee was "confident in moving forward".

[9] The next communications before me are 23 emails from July 21, 2023 to August 4, 2023. They are from the Applicant to the Peace Officer (and copied to another employee of the Public Body). There are no responses from the Public Body. The emails are replete with vulgar language, expletives, and allegations about the Peace Officer. The Public Body describes the content of these emails as abusive, threatening, and harassing.

[10] The Applicant, in their submission addressed the email communications as follows:

> Please do not get the wrong idea about me based on those emails to the peace officer
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> While the emails will seem rude and too plentiful at first glance, they were carefully and professionally crafted to take the peace officers aggression level down a notch, which was needed

[11] Generally, I agree with the Public Body's characterization of the emails to the Peace Officer as abusive, threatening, and harassing.

[12] One email includes an acknowledgement by the Applicant of their abusive language: Exhibit I is a July 30, 2023 email from the Applicant to the Mayor and copied to other employees, including the Peace Officer. In this email they express their gratitude for being invited to a meeting and refer to historical grievances with the Peace Officer. They state, in part:

> The citizens in our group have legitimate problems with [the Peace Officer] as well…there's not many people willing to step up to him, some are afraid of what could happen, others are furious and ready to bite back.
>
> I wish to apologize for my rough language with [the Peace Officer], I cringe to make a lady read that, but my systems are well seasoned, I need his full attention for awhile.
>
> I'm no bully ma'am, but bullys [sic] stand no chance against me, never did… cuz I sink to their level, only I'm worse than they are…far worse.

[13] Ten minutes later, in a separate email sent only to the Peace Officer and one other employee (Exhibit J), the Applicant continued their abusive, threatening, and harassing language towards the Peace Officer.

[14] On the basis of the parties' submissions, it is clear that the Applicant bears animosity towards the Peace Officer who is the subject of the access request. While the circumstances and history of the underlying concerns and dispute are not before me, it is

also clear from these emails that the Applicant believes they and others have been wronged by and subjected to retaliation by the Peace Officer.

[15] On August 4, 2023, the Public Body sent the Applicant a letter to address the emails being sent to the Peace Officer. The Public Body provided some examples of the Applicant's abusive language and informed the Applicant that the emails were unacceptable, stating:

> To be clear, this is not acceptable. As [the Peace Officer] is an employee of the Town, the Town must ensure that he is provided with a safe work environment that fosters and maintains respectful and reasonable behaviour and is free of harassment. Your correspondences to [the Peace Officer], which are comprised of vulgar and distasteful insults and personal attacks, represent a serious form of harassing and bullying behaviour that the Town cannot ignore and will not tolerate. Further emails of this nature that are sent to [the Peace Officer] will result in further action by the Town.
>
> Any concerns you have with respect to peace officer conduct should be addressed not by harassing [the Peace Officer], but by issuing a complaint in writing to the Town, in its capacity as [the Peace Officer's] employer (not to [the Peace Officer] himself).

[16] The Public Body then provided additional details as to how a complaint could be made and what it should include and concluded with a request that future communications be civil and respectful.

[17] Shortly after this letter, on August 8 and 9, 2023, the Public Body's Affidavit includes an exchange between the Applicant and an employee of the Public Body regarding the access request under the *FOIP Act* (Exhibit O). The Applicant states they represent a group of concerned citizens and that the purpose of the access request is to present a report to the town council to seek removal of the Peace Officer. The tone of this email is civil and respectful.

[18] Exhibit P is an August 16, 2023 email from the Applicant to the Peace Officer (copying another employee) informing the Peace Officer that the citizen's group had made a FOIP Request for the Officer's entire file that morning. The Applicant states, "In about a month, we are going to know more about you than you do…complaints, disciplinary actions, legal actions, your entire record from day one".

[19] Additional emails, dated August 26, September 13 and September 14, 2023 from the Applicant to the Peace Officer and copied to another employee are of a similar vulgar tone to the previous 23 emails (that were sent between July 21 and August 4, 2023) and can be summarized as abusive, threatening and harassing.

Burden of Proof

[20] The *FOIP Act* is silent on the burden of proof associated with a request to disregard an access request under section 55(1). Former Commissioner Clayton, stated the following about where the onus lies for this provision.[1]

> The proposition that "he who asserts must prove" applies across all areas of law, unless there is a specific reverse onus: for example, see *Garry v Canada*, 2007 ABCA 234, para 8; and *Rudichuk v Genesis Land Development Corp*, 2017 ABQB 285, para 27. The proponent of a motion needs evidence.
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> As the moving party requesting my authorization, the onus is on the Public Body to prove, with evidence, the requirements of section 55(1)(a) or (b), on a balance of probabilities. As I stated in the *MacEwan University* Decision under section 55(1) Decision (September 7, 2018), "I cannot make arguments for any party before my office. I must make a decision based on the arguments and evidence the parties put before me".
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> Under section 55(1)(a), I am permitted to authorize the Public Body to disregard one or more of the Applicant's requests if they are repetitious or systematic in nature, and would unreasonably interfere with the operations of the Public Body or amount to an abuse of the right to make those requests. Under section 55(1)(b), I may authorize the Public Body to disregard one or more of the requests if they are frivolous or vexatious.
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> Because section 55 provides that I "may" give authorization, if the Public Body meets its burden I must then decide whether to exercise my discretion to authorize the Public Body to disregard the requests.
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> Applying this reasoning to section 55, if a public body meets its burden, I will then go on to consider whether there is any compelling reason not to grant my authorization to disregard a request. [emphasis in original]

[21] I agree with former Commissioner Clayton that it is up to the Public Body to establish, on a balance of probabilities, that the thresholds in section 55(1)(a) or (b) are met in this case and on doing so I must exercise my discretion about whether to authorize the Public Body to disregard the access request.

[22] This Office's 2011-2012 Annual Report reported an oral decision of the Court of Queen's Bench, a judicial review of a section 55(1) decision issued under the *FOIP Act*.[2] In that decision, the Court expressed its view that a person defending what amounted to a summary dismissal under the *FOIP Act* need do no more than show merit. Former

[1] F2019-RTD-01 (Alberta Justice and Solicitor General); 2019 CanLII 145132 (AB OIPC), at pp. 7 and 8.
[2] *Clarence J Bonsma v The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office*, an oral decision of Clackson J. in Court File No. 1103-05598.

Commissioners of this Office have interpreted this decision as meaning that an applicant is not obligated to make a submission in response to an organization's request for authorization to disregard their access request. I agree with this approach.

[23] Although a public body has the burden of proof, the British Columbia Information and Privacy Commissioner has previously observed (with respect to British Columbia's equivalent provision), "if a public body establishes a *prima facie* case that a request is frivolous or vexatious, the respondent bears some practical onus, at least, to explain why the request is not frivolous or vexatious."[3]

[24] As such, if an applicant chooses to provide a submission in response to an application to disregard an access request, that submission may be considered along with that made by a public body.

Purpose of Section 55(1)

[25] In this office's first published decision under section 55(1) of the *FOIP Act*, former Commissioner Frank Work made the following observations on the purpose of this provision.

> The FOIP Act was intended to foster open and transparent government (Order 96-002 [pg. 16]). Section 2(a) and section 6(1) of the FOIP Act grants individuals a right of access to records in the custody or under the control of a public body. The ability to gain access to information can be a means of subjecting public bodies to public scrutiny.
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> However, the right to access information is not absolute. The Legislature recognizes there will be circumstances where information may be legitimately withheld by public bodies and therefore incorporated specific exceptions to disclosure to the FOIP Act. Section 2(a) of the FOIP Act states the right of access is subject to "*limited and specific exceptions*" as set out in the FOIP Act. Section 6(2) of the FOIP Act states that the right of access "*does not extend to information excepted from disclosure"* under the FOIP Act.
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> 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 objects of the FOIP Act. In Order 110-1996, the British Columbia Information and Privacy Commissioner wrote:
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> *"…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…"*

[3] Auth (s. 43) (02-02), [2002] BCIPCD No. 57 at para 4

> Section 55 of the FOIP Act provides public bodies with a recourse in these types of situations.[4]

[26] In many of her decisions under section 55(1), former Commissioner Clayton observed that access and privacy rights have been deemed "quasi-constitutional" by the Supreme Court of Canada.[5] However, as she also often noted, that does not mean that an individual's ability to exercise their rights is unlimited, and there is no right to make abusive requests.[6] This observation is consistent with the interpretation of access and privacy legislation in other jurisdictions across Canada. For example, in *Crocker v British Columbia (Information and Privacy Commissioner) et al*,[7] the British Columbia Supreme Court provided the following guidance with regard to how section 43 in British Columbia's *Freedom of Information and Protection of Privacy Act* should be interpreted.[8] This provision contains similar wording to the Alberta *FOIP Act*.

[27] The Court stated:

> Section 43 is an important remedial tool in the Commissioner's armory to curb abuse of the right of access. That section and the rest of the Act are to be construed by examining it in its entire context bearing in mind the purpose of the Legislation. The section is an important part of a comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance. The legislative purposes of public accountability and openness contained in s. 2 of the Act are not a warrant to restrict the meaning of s. 43. The section must be given the "remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects", that is required by s. 8 of [BC's] *Interpretation Act…*[9]

[28] BC's former Commissioner, David Loukidelis, added his views on how that provision is to be interpreted. Specifically he said that "any decision to grant a section 43 authorization must be carefully considered, as relief under that section curtails or eliminates the rights of access to information." Another past commissioner has cautioned that, "[g]ranting

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[4] F2002-RTD-01, at pp. 3 and 4.

[5] See, for example, F2018-RTD-09 at pp. 4.

[6] See, for example, F2017-RTD-02 at para 20, referring to Chief Justice McLachlin's comments in *Trial Lawyers Association of British Columbia* at para 47 and F2020-RTD-03 at para 9.

[7] "*Crocker",* 1997 CanLII 4406 (BCSC).

[8] Section 43(1) of the British Columbia's *FOIP Act* reads: If a public body asks, the commissioner may authorize the public body to disregard one or more requests under section 6 or section 32 that

(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or

(b) are frivolous or vexatious.

[9] *Crocker* at para 33.

section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation."[10]

[29] I concur with the above decisions. These interpretations, in my view, accord with the purposes of the *FOIP Act* and the legislative scheme of the access to information provisions therein.

Section 55(1)(b) – Is the access request frivolous or vexatious?

[30] The Public Body has applied only under section 55(1)(b); therefore, I do not need to consider section 55(1)(a).

[31] 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.

[32] A vexatious request is one in which the Applicant's true motive is other than to gain access to information, which can include the motive of harassing the public body to whom the request is made.

[33] A vexatious request may also involve misuse or abuse of a legal process. While I agree with these comments and others made by former Commissioners, the common law also provides guidance in capturing the meaning of "vexatious". For example, in *Canada v Olumide*, 2017 FCA 42 the Federal Court of Appeal provided the following comments:

> [32] In defining "vexatious" it is best not to be precise. Vexatiousness comes in all shapes and sizes. Sometimes it is the number of meritless proceedings and motions or the reassertion of proceedings and motions that have already been determined. Sometimes it is the litigant's purpose, often revealed by the parties sued, the nature of the allegations against them and the language used. Sometimes it is the manner in which proceedings and motions are prosecuted, such as multiple, needless filings, prolix, incomprehensible or intemperate affidavits and submissions, and the harassment or victimization of opposing parties.
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> [33] Many vexatious litigants pursue unacceptable purposes and litigate to cause harm. But some are different: some have good intentions and mean no harm. Nevertheless, they too can be declared vexatious if they litigate in a way that implicates section 40's purposes: see, *e.g. Olympia Interiors* (F.C. and F.C.A.) above.
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> [34] Some cases identify certain "hallmarks" of vexatious litigants or certain badges of vexatiousness: see, for example, *Olumide v Canada*, 2016 FC 1106 at paras. 9-10

[10] Office of the Auditor General of British Columbia, Order F18-37, 2018 BCIPC 40 (CanLII), at para 11.

> where the Federal Court granted relief under section 40 against the respondent; and see paragraph 32 above. As long as the purposes of section 40 are kept front of mind and the hallmarks or badges are taken only as non-binding *indicia* of vexatiousness, they can be quite useful.

[34] The Federal Court of Appeal's comments were made specifically in relation to section 40 of the *Federal Courts Act*, but in my view, a broad interpretation of "vexatious" is applicable to applications to disregard an access or correction request. Similarly, the Alberta Court of Appeal (in speaking to the jurisdiction granted to the Court under the *Judicature Act,* not the *FOIP Act*) cautioned that too strict an adherence to indicia of vexatious may invite a formalistic analysis which does not focus on the individual litigant.[11] While these judicial comments are not directly applicable to the *FOIP Act*, they provide support for the interpretation that there are many ways in which an access or correction request may be considered vexatious. Such a finding will always depend on the specific facts of the case.

[35] The Public Body argues, in part, as follows:

> The explicit content contained within the emails is itself evidence of the Applicant's actions and intent towards the Officer and Municipality and can be summarized as follows:
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> a. Indicating that the Officer is not qualified to work for the Municipality;
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> b. Stating that the Applicant will not stop harassing the Officer and nothing can be done to stop him;
>
> c. Directing insults and threats at the Officer;
>
> d. Making unfounded accusations of impropriety against the Officer; and
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> e. Claiming that the Officer and Municipality are targeting the Applicant.
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> Generally, the Municipality acknowledges that one purpose of the *FOIP Act* is to allow for a level of public scrutiny of public bodies, including employees with delegated authority under the *Municipal Government Act,* RSA 2000 c. M-26 ("MGA"). The FOIP Request itself is within the scope of the *FOIP Act*; however, the Municipality's position is that the Applicant's intentions, behaviour and inappropriate conduct bring the FOIP Request within the scope of section 55 of the *FOIP Act*.
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> Respectfully, not every citizen of a Municipality must agree with the actions and decisions of a municipality and its employees. Nevertheless, what is a certainty is that

[11] *Jonsson v Lymer*, 2020 ABCA 167 at para 40.

all employees and citizens of the Municipality are entitled to respect, to feel safe, and to be free from abuse, threats and harassment. Notably, there are provisions under the *Municipal Government Act* and the *Peace Officer Act*, SA 2006, c P-3.5, that provide for the proper oversight of Peace Officers employed by a municipality.

The Applicant is not entitled to repeatedly and belligerently direct threats and abusive comments at the Officer, nor [are they] entitled to use the *FOIP Act* as a mechanism to enable [their] abusive, threatening and harassing conduct. The Applicant's conduct towards the Officer is such that the Request is being made contrary to the intention and purpose of the *FOIP Act*.

[…]

The Municipality submits that the Applicant's filing of the FOIP Request is pre-dated by a series of emails aimed at abusing, threatening and harassing the Officer; behaviour that demonstrates a deliberate pattern of conduct and an improper motive. These emails are evidence of abuse given the "message" of the Applicant's communications is entirely focused on harassing the public body and one of its employees. The FOIP Request is simply the latest forum by which the Applicant seeks to do this. For the reasons that follow, the Applicant's intentions and FOIP Request itself are nothing but frivolous and vexatious attempts to harass the Municipality and the Officer.

The use of the FOIP Request to further this conduct driven [sic] is not in keeping with the purpose of the *FOIP Act*. Allowing the FOIP Request to proceed would in effect aid the Applicant in further harassing the Officer and vindicating this motive.

The July 28, 2023 email indicates that the Applicant believes the Officer and the Municipality have caused [them] some harm and indicates that [they are] prepared to retaliate against the Officer and the Municipality. The use of the FOIP Request to attempt to retaliate against the Officer is an abuse of the right to make a request, particularly where the Applicant holds an unfounded and irrational belief that [they] will uncover information that will justify [their] conduct.

The Applicant is not simply seeking access to information, rather [they are] seeking, through any mean possible, an avenue to harass the Municipality and the Officer. As demonstrated by the Applicant's July 21, 2023 email and September 13, 2023 emails, the Applicant has indicated that [they] will not or cannot be stopped in [their] pursuit of continually harassing the Officer. [Their] purpose in filing the FOIP Request – as evidenced in the August 16, 2023 email – is to attempt to find any information regarding the Officer that the Applicant perceives can be used to further [their] stated goal of harassing the Officer.

> The FOIP Request is frivolous for this reason – that it is being used for a purpose other than gaining access to information and the emails set out in [the Affidavit] provide the necessary context of establishing that purpose. [footnotes omitted]

[36] The Applicant chose to make a submission, explaining that they are concerned with the Peace Officer and intend to provide a report to the Council. The Applicant states that they cannot provide "a complete, accurate picture of the problem without accessing the public records" and that they want to bring the "information to the local authorities for use in stating our case for a fresh new peace officer". The Applicant further argues that their "emails have little or nothing to do with our FOIP request and are definitely not grounds for taking away my legal FOIP rights until the end of time". Finally, the Applicant states "I'm not interested in playing games, such as getting someone else to re-apply, or asking the mayor to step in, there is no need for any of that, a perfectly lawful request has been submitted".

[37] The basis for the Public Body's application under section 55 is the abusive language that the Applicant has used against the Peace Officer. A number of previous decisions and orders from this office have reviewed abusive language in access requests.

[38] Order F2015-16 (Alberta Justice and Solicitor General) reviewed the abusive language contained within an access request. The public body had refused to process the request until it was resubmitted without abusive language and the applicant in that case had refused to do so. Commissioner Clayton ordered the public body to sever the abusive language from the access request and then process it without the abusive language. She further ordered that any future requests from the Applicant must be free of abusive language in order for the public body to process them.

[39] F2018-RTD-05 (Alberta Energy Regulator) discussed the impact of abusive language by applicants. In that case, the applicants had used hostile and abusive language in their access requests towards the employees of a public body. That public body had previously responded to an access request made by the applicants. When the applicants made a second request, the public body sought clarification on its scope. Rather than respond to the public body's request, the applicants responded with further ridicule and abuse of the public body's employees. Commissioner Clayton found the access request was vexatious under section 55(1)(b).

[40] Of note, however, in F2018-RTD-05, although the Commissioner held the access request was vexatious, the public body was not authorized to disregard the request in its entirety. Rather, the Commissioner exercised her discretion to impose certain conditions on what the applicants would be required to provide the public body by a deadline, and if those

conditions were not met, the public body was authorized to disregard the access request in its entirety.

[41] In F2022-RTD-02 (Town of Crossfield), an applicant had submitted 20 access requests, 15 of which the public body had provided a response, and 5 which it had applied to disregard. The public body was authorized to disregard 4 on the ground that they were repetitious and an abuse of the right to make those requests. The fifth request had been made after the public body sought authorization to disregard under section 55(1), and this fifth request was for every single email ever sent or received by the public body containing the applicant or his child's name. In that decision, Commissioner Clayton noted that within that same week, the applicant had sent approximately 16 emails to the public body containing expletives and allegations of unfair treatment. Given those circumstances, including the inflammatory language, abusive nature of the communications and the timing of the fifth request (after the public body had already brought an application under section 55(1)), the Commissioner held that the request was vexatious.

[42] Having reviewed previous cases before this office involving abusive language towards FOIP employees, it is clear that this can be considered a sufficient ground on which to find an access request is abusive. Here, the evidence demonstrates that the Applicant's communications with employees other than the Peace Officer are civil and respectful, but the abusive language is directed towards the Peace Officer, the subject of the access request.

[43] One of the cases relied on by the Public Body is F2019-RTD-03 (Calgary Police Service) at paragraph 38. In that case, Commissioner Clayton considered vexatious behaviours "such as hostility toward the other side, extreme and unsubstantiated allegations and conspiracies involving large numbers of individuals and institutions". She also considered "a history or an ongoing pattern of access requests designed to harass or annoy a public body, excessive volume of access requests and the timing of access requests".

[44] A further distinguishing factor from these previous section 55(1) decisions is that applicants in those cases had repeatedly exercised their rights of access. Repetition is a factor that may be considered under section 55(1)(a), which is not at issue before me. While the repetitiousness of access requests is not necessarily a factor to be considered under section 55(1)(b), it may be considered. In the matter before me, there is no evidence that the Applicant has previously made any access requests to the Public Body related to the subject of their access request or otherwise. This factor assists in establishing the legitimacy of the request, that is, it suggests that the Applicant genuinely seeks access to the requested records.

[45] Based on the evidence provided by the Public Body, I have already found that the Applicant's communications to the Peace Officer were abusive, threatening, and harassing. That is, the Applicant's *behaviour* can be characterized as vexatious, but in my view, this does not necessarily lead to a conclusion that the *access request* is vexatious.

[46] Section 55(1)(b) allows me to exercise my discretion to authorize a public body to disregard an access request if one or more *of the requests* are frivolous or vexatious. However, there is a distinction between vexatious behaviour and a vexatious access request. This distinction is analogous to the distinction the courts have made between vexatious litigants and vexatious litigation.[12]

[47] As indicated by the Applicant in their submissions, their goal in obtaining the information is to use it to create a report about the Peace Officer in order to attempt to convince the Public Body to terminate the Peace Officer's employment. As such, and without commenting on the merits of the Applicant's stated goal, I find the access request is for a legitimate purpose. That is, the Applicant seeks to obtain the information they have requested for the purpose of holding the Public Body to account related to its employment of a community peace officer. As such, I find that the access request is not frivolous.

[48] The issue, then, is whether the Public Body has met its burden to establish that the applicant's vexatious behaviour is such that a legitimate access request can be found vexatious.

[49] The Applicant made the access request within days of receiving the Public Body's August 4, 2023 letter asking them to cease sending their abusive emails and explaining how to file a complaint about the Peace Officer. This is indicative of good faith behaviour. However, the evidence is also clear that even following the receipt of the Public Body's August 4 letter, the Applicant continued to send several abusive emails to the Peace Officer. In fact, in the August 16, 2023 email to the Peace Officer, the Applicant states that the FOIP request had been made that morning, and comments about the anticipated results of the requested records.

[50] The facts in this case are difficult. The evidence is clear that the Applicant's communications are abusive and vexatious. However, as indicated above, I find the evidence shows that the access request is for a legitimate purpose.

[12] See, for example, *RO v DF*, 2016 ABCA 170 at para 38; *Biley v Sherwood Ford Sales Limited*, 2019 ABQB 95 at paras 42 – 44; *Unrau v National Dental Examining Board,* 2019 ABQB 283 at paras 596 - 605

[51] I am mindful of the purpose of access to information legislation. Section 2 sets out the purposes of the *FOIP Act*. Included within this provision is section 2(a), which states:

> 2(a) to allow 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.

[52] In an early foundational case, the Supreme Court of Canada spoke to the principles underlying access to information legislation:[13]

> 61 The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps ensure, first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. As Professor Donald C. Rowat explains in his classic article, "How Much Administrative Secrecy?" (1965), 31 *Can. J. of Econ. and Pol. Sci.*479, at p. 480:
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> > Parliament and the public cannot hope to call Government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view. See also: Canadian Bar Association, *Freedom of Information in Canada: A Model Bill* (1979), at pp. 178 – 179.
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> *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC)

[53] The facts establish that the Applicant seeks information in order to participate in the democratic process, that is, to hold the Public Body to account for decisions made concerning a community peace officer. In my view, although the content of the emails are highly inappropriate and quite frankly somewhat shocking, this behavior, on its own, is not enough to deprive the Applicant of their quasi-constitutional and legitimately exercised right of access to information.

[54] I find the Public Body has not met its burden under section 55(1)(b) to prove that the *access request* is frivolous or vexatious.

[13] *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC)

Request to Disregard Future Access Requests

[55] The Public Body requested authorization to disregard future requests made by the Applicant. For the reasons above, I will not grant authorization to disregard future access requests at this time.

[56] However, should the Applicant continue their campaign of abusive communications to the Peace Officer and make another access request to the Public Body, it may well be in a position to meet its burden of proof in a future application under section 55(1). Should that circumstance arise, the Public Body may apply to me at that time for authorization to disregard that request under section 55(1).

Decision

[57] After consideration of the relevant circumstances, and for the reasons stated above, the Public Body is required to respond to the access request in accordance with the *FOIP Act*.

[58] At this time, the Public Body is not authorized to disregard future access requests that the Applicant may make; however, if it believes that any future access requests meet the criteria under section 55(1) of the *FOIP Act*, it may request to disregard them at that time.

Diane McLeod

Information and Privacy Commissioner