

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

Request for Authorization to Disregard an Access Request  
under section 37 of the *Personal Information Protection Act*

Association of Professional Engineers and Geoscientists of Alberta  
(OIPC File References 007730, 007731, and 007732)

July 4, 2018

- [1] The Association of Professional Engineers and Geoscientists of Alberta (the “Organization”) requested authorization under section 37 of the *Personal Information Protection Act* (“PIPA” or the “Act”) to disregard two access requests made by an individual (the “Applicant”).
- [2] The evidence before me includes a number of Court Orders, for example:
- i) An Interlocutory Order from Associate Chief Justice J.D. Rooke, dated December 16, 2016 which states at paragraph 3(c):

[The Applicant] is hereby enjoined and restrained from filing any affidavits or evidence and from commencing any appeal, action, application or proceeding with respect to APEGA, members of APEGA and anyone involved in the discipline proceedings against [the Applicant], whether as witness, investigator, employee of APEGA, counsel to APEGA or any of its Committees or member of any committee of APEGA, their colleagues and families without leave of the Court of Queen’s Bench of Alberta, on notice to APEGA, as set out herein. The Court may grant leave on any terms it deems just and reasonable in the circumstances.<sup>1</sup>

As of the date of this Decision, Justice Rooke’s Interlocutory Order is still in effect.

- ii) Two Court Orders from Associate Chief Justice J.D. Rooke dated May 24, 2017: One Court Order finding the Applicant in contempt for six breaches of the above noted Interlocutory Order, and a second Court Order clarifying and confirming the original terms of the above noted Interlocutory Order.<sup>2</sup>
- iii) A Court Order dated June 8, 2017 from Justice Riley in the Supreme Court of British Columbia declaring the Applicant to be a vexatious litigant and preventing him from instituting legal proceedings in the Supreme Court of British Columbia or the Provincial Court of British Columbia against any of the named defendants in Action

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<sup>1</sup> The Interlocutory Order from the Court of Queen’s Bench of Alberta was filed on December 22, 2016 in Court File Number 1603 21383. It was later registered as an Order of the Supreme Court of British Columbia on March 13, 2017.

<sup>2</sup> Both Court Orders from the Court of Queen’s Bench of Alberta were filed on June 6, 2017 in Court File Number 1603 21383.

No. 19623, or any related entities and their directors, officers, employees, agents or legal counsel.<sup>3</sup>

- iv) A Court Order dated June 5, 2017 from Justice Riley in the Supreme Court of British Columbia enjoining the Applicant from commencing in the Province of British Columbia any appeal, action, application or proceeding with respect to APEGA.<sup>4</sup>

[3] In addition to Court Orders, the evidence before me includes a decision from Justice Young in the *Acapella Holdings*<sup>5</sup> decision from the Supreme Court of British Columbia, in which the Applicant was held in contempt of a Court Order. In particular, I note the Court's comments at paragraphs 23 and 34, which state:

[23] I have set out this correspondence to establish that [the Applicant] was aware of the Injunction and to illustrate his taunting behaviour. The emails imply that he is endeavoring to find loopholes in the Injunction to permit him to continue the activity which was sought to be enjoined.

[...]

[34] I find [the Applicant's] explanation to be disingenuous. I have read the taunting emails and the response to this notice of application which reads like a blog post. I do not believe for one minute that [the Applicant] was confused by the wording of paragraph 6 of the Injunction.<sup>6</sup>

[4] The evidence before me also includes a number of Affidavits filed in various court actions, and volumes of correspondence between the Applicant and others, including my office. The Affidavits are from:

- A legal assistant with the law firm of the Organization's counsel which attaches approximately 63 documents of correspondence between the Applicant and others. This affidavit alone fills up more than one 3.5 inch binder.
- Legal Counsel for the Director of Investigations of the Organization, who was retained to prosecute allegations of unprofessional conduct against the Applicant. The Affidavit outlines how this lawyer was subjected to numerous allegations and threats from the Applicant, and attaches numerous emails from the Applicant supporting the statements in the Affidavit.

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<sup>3</sup> This Court Order was filed on July 19, 2017 in Action No. 19623.

<sup>4</sup> This Court Order was filed on June 23, 2017 in Action No. L170091, and paragraph 1 states in its entirety: "As set out in the Interlocutory Order, the Respondent [...], is hereby enjoined and restrained from filing in the Province of British Columbia any affidavits or evidence and from commencing in British Columbia, any appeal, action, application or proceeding with respect to APEGA, and anyone involved in the APEGA discipline proceedings against [the Applicant], whether as witness, investigator, employee of APEGA, counsel to APEGA or any of its Committees or member of any Committee of APEGA, their colleagues and families without leave of the Supreme Court of British Columbia, on notice to APEGA. The Court may grant leave on any terms it deems just and reasonable in the circumstances."

<sup>5</sup> *Acapella Holdings v. ["Applicant"]*, 2016 BCSC 1630 (Justice Young, Docket: S163524, Registry: Vancouver, Date: 20160901).

<sup>6</sup> *Ibid.*

- The Director of Enforcement and Permits for the Organization. Among other things, the Affidavit outlines the circumstances of the Applicant’s refusal to participate in his disciplinary hearing and the circumstances in which the Applicant’s disciplinary hearing proceeded in his absence. Two Affidavits from this individual are before me, one in Alberta, and one in British Columbia.
- The Director of Investigations for the Organization. Among other things, the Affidavit outlines how the affiant spent 4 to 6 hours per day for approximately six months dealing with issues related to the Applicant. It also attaches a number of supporting documents.
- A lawyer practicing in Calgary who made observations of the Applicant’s disruptive behaviour at an AGM of a corporation in 2015.
- A lawyer practicing in Edmonton who swore an Affidavit attaching correspondence between the Applicant and the Alberta College of Paramedics in support of the Organization’s enforcement of the December 16, 2016 Interlocutory Order.

### **Commissioner’s Authority**

[5] I do not have jurisdiction to determine whether a Court Order has been breached. Such a determination is for a Court to make.

[6] Section 37 of PIPA gives me the power to authorize an organization to disregard certain requests. Section 37 states:

*37 If an organization asks, the Commissioner may authorize the organization to disregard one or more requests made under section 24 or 25 if*

*(a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests, or*

*(b) one or more of the requests are frivolous or vexatious.*

[7] A decision under section 37 of PIPA is a discretionary “may” decision. An organization making a request under section 37 has the burden to establish that the conditions of either section 37(a) or (b) have been met. If an organization meets its burden, then I will decide whether to exercise my discretion to authorize it to disregard the request at issue.

[8] For the reasons set out in this Decision, I find the Organization has met its burden under section 37(b) of PIPA and has proven the Applicant’s requests are vexatious. I have decided to authorize the Organization to disregard the Applicant’s access requests.

## Background

- [9] On January 26, 2017, the Applicant made an access request to the Organization under PIPA for all of his personal information in APEGA's possession permitted under PIPA. The Applicant's five page email request went on to identify a number of individuals associated with APEGA, numerous lawyers, politicians, transcripts, meeting minutes, investigation files, communications and other assorted matters. Clearly, many of the items identified by the Applicant are not subject to a PIPA request.
- [10] On January 8, 2018, the Applicant made another access request to the Organization under PIPA which he divided into two parts: first, for access to "communications such as email, minutes of phone conversations & meetings and letters that contain my personal information", and second, for "any and all there [sic] additional information that contains my personal information". The access request also identified a number of individuals who were current or former employees of the Organization and other matters in which the Applicant was involved.
- [11] I note that both access requests were made after the Organization had obtained the December 16, 2016 Interlocutory Order regarding the Applicant.
- [12] The Organization did not respond to either of the Applicant's access requests.
- [13] On May 2, 2017, my office received a request for review and complaint from the Applicant regarding, among other things, the Organization's failure to respond to his access requests. File 005957 was opened regarding the Applicant's access requests and assigned to a Senior Information and Privacy Manager ("SIPM") within my office.
- [14] When the SIPM contacted the Organization regarding its failure to respond to the Applicant within the 45 day time limit set out in section 28 of PIPA, the Organization explained that as a result of Justice Rooke's December 16, 2016 Interlocutory Order, it took the position that the Applicant's access requests were a prohibited "proceeding", and that it was not required to respond to the Applicant under PIPA. However, in order to comply with the legislation, on February 7, 2018, the Organization applied to me under section 37 of PIPA to disregard the Applicant's access requests. The Applicant received a copy of the Organization's request.
- [15] My office opened Files 007730, 007731, and 007732 in response to the Organization's section 37 applications. Having reviewed the submissions before me, it appears one file would have been sufficient to deal with the Organization's section 37 request, although, the confusion is understandable given the voluminous materials before my office relating to the Applicant. These materials are mostly evidence from the Organization of the Applicant's communications with it, with individuals associated with the Organization, and with a variety of third parties.
- [16] In any event, for clarity, this section 37 Decision relates to the Applicant's January 26, 2017 and January 8, 2018 access requests to the Organization.

[17] The Organization outlined the background facts as follows:<sup>7</sup>

The Applicant is a Geologist by training and was a member of APEGA until [June, 2016] when his membership was revoked by APEGA for non-payment of membership dues. As a result of disciplinary proceedings against the Applicant, he is now permanently ineligible for registration unless explicitly allowed by the APEGA council. The Applicant did not appeal the disciplinary findings or sanctions ordered against him.

APEGA came into contact with the Applicant around September 2014. In the context of business disputes between the Applicant and various third parties, the Applicant began initiating multiple complaints with APEGA and sending excessive email correspondence to APEGA. The email correspondence was voluminous in terms of both frequency and the size of each email. In total, between 2014 and 2016, the Applicant laid approximately 12 complaints against about 107 APEGA members. Many times, the Applicant's correspondence and complaints related to conspiracies and matters completely outside of APEGA's jurisdiction and, in most cases, had some connection to the business disputes and persons with whom the Applicant was involved in litigation with. With respect to the complaints that the Applicant initiated against various APEGA members, these complaints were, in each case, investigated and dismissed. This work constituted a significant drain on APEGA's disciplinary investigating resources.

The Applicant did not simply make complaints with APEGA, his campaign also extended to the Alberta Securities Commission ("ASC"). When the ASC investigated and did not proceed with respect to allegations he had made with them against former business partners, he retaliated by initiating a complaint against the individual who he had been corresponding with at the ASC.

In 2015, complaints were made against the Applicant to both APEGA and APEGBC (as it was previously called, it is now called Engineers and Geoscientists British Columbia or EGBC) alleging that individuals were being harassed by the Applicant, and that the Applicant's internet and email campaign against the individuals constituted unprofessional behaviour. APEGA investigated this complaint pursuant to its statutory duties set out in the EGPA [*Engineering and Geosciences Act*].

The Applicant did not cooperate with APEGA's investigation, and instead engaged in a counterattack against the individuals involved in the APEGA investigation. In this counterattack, the Applicant initiated complaints to APEGA against the following individuals:

- a. [name omitted], former Director of Investigations, who was involved in investigating complaints against the Applicant;
- b. [name omitted], an APEGA member in the employ of the Alberta Securities Commission (ASC) as an investigator. This was the complaint made in response to [that same person's] dismissal of the Applicant's complaint to the ASC;
- c. [name omitted], former Chief Executive Officer of APEGA; and

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<sup>7</sup> For ease of reading, in this Decision I have removed the Organization's numerous references to its supporting affidavits throughout its submission, and have substituted "the Applicant" where the Applicant is referred to by name by the Organization. Any other substitutions or omissions have been noted by square brackets.

d. [name omitted], former APEGA Registrar.

The Applicant's voluminous email correspondence to APEGA, and those involved in his disciplinary process, had common themes which are listed below:

- a. Allegations of criminal harassment by representatives of APEGA who were performing their statutory duties;
- b. Assertions that APEGA did not have authority to investigate or discipline the Applicant;
- c. Allegations that APEGA was corrupt, biased or otherwise acted in bad faith;
- d. Allegations that the parties working with APEGA, such as its legal counsel, were corrupt;
- e. Allegations of fraud on the part of APEGA or its legal counsel;
- f. Threats to file complaints with the Law Society of Alberta about APEGA's legal counsel;
- g. Threats to bring lawsuits against APEGA, its employees involved in the APEGA discipline process, or its legal counsel;
- h. Threats to bring forward criminal charges or otherwise report members of APEGA or its legal counsel to the RCMP;
- i. Demands that APEGA dismiss the investigation into him; and
- j. Demands for persons in administrative roles at APEGA [to] resign.

Ultimately, the Applicant filed a claim in Nelson, British Columbia that named, amongst others APEGA [and a number of individuals associated with APEGA].

The substance and volume of the Applicant's campaign became (and to some degree remains) an unreasonable draw on APEGA's resources. Therefore, APEGA banned the Applicant from communicating with it directly by email and sought and obtained a court-ordered injunction against the Applicant (see December 5, 2016 Interim Order and December 16, 2016 Interim Order).

The basis for APEGA's injunction application was that the Applicant's email campaigns were disruptive and reflected a total disregard for, and rejection of, APEGA's statutory role and obligations. The Applicant's campaign against APEGA has caused a significant amount of time and effort by various APEGA employees to be expended on managing the continual onslaught of correspondence and accusations. Further, the Applicant's actions alarmed APEGA's volunteers and some expressed concerns about becoming the Applicant's next "target". For instance, at the time the interlocutory injunction was sought, the Applicant was writing almost daily to legal counsel to the Discipline Committee and the lawyer engaged to represent APEGA in the Applicant's disciplinary hearing. The Applicant called these lawyers corrupt and threatened them with lawsuits and Law Society complaints. In his own disciplinary hearing, he made attempts to undermine the APEGA discipline process through delay and refusal to participate.

The Applicant has consistently represented that his aim in all of his activities, communications and complaints is to punish those individuals with whom he had past business dealings and who, he has concluded, wronged him in some way. [The Organization then provided five specific examples of such correspondence from the Applicant in its materials.]

[18] Throughout its submission, the Organization referred to its supporting Affidavits. I have reviewed the Affidavits and attachments, and all other materials before me. I accept the facts as set out by the Organization.

[19] The Organization then set out the history relating to the Court Orders it obtained against the Applicant as well the Applicant being found in contempt of a Court Order and stated, "The Applicant was served with a copy of this order and was made aware of all aspects of that process".

### **Applicant's Submissions**

[20] The Applicant's submission in this matter was originally due on March 20, 2018; however, my office did not receive any submissions from the Applicant by his first deadline. Upon learning he was represented by legal counsel, the Applicant's counsel was granted an extension to April 25, 2018. Following the expiry of the Applicant's second deadline without receiving a submission and learning that he was no longer represented by legal counsel on this matter, the Applicant's deadline to make a submission was further extended to May 18, 2018.

[21] The Applicant's communications with my office generally support the Organization's position.

[22] On May 9, 2018, the Applicant's email to my office stated:

I do have one additional request, can you please send me a digital copy (pdf) of OIPC File No. 007730/007731/007732 so I can determine exactly what I am dealing with here since as you can appreciate this matter has ballooned beyond ones wild imagination as supported by 100's of pages of complete nonsense from [APEGA's counsel] who appears to be personally attacking me in her submissions to the OIPC. To that point I have attached "**Unfield [sic] written brief**" a court document that was authored by [APEGA's counsel] for APEGA v. [Applicant] but not filed which is from December 2016. Please do include this as part of my submissions as evidence for the personal nature of [APEGA's counsel's] attacks which are also criminal in nature. I draw the OIPC's attention to **IV. Law and Analysis** respecting **Further Comments: Criminal Code and Vexatious Litigants.**

It is kinda summed up here after [APEGA counsel] argues that my actions against APEGA are criminal in nature citing Criminal Extortion and Criminal Obstruction of Justice and Criminal Obstruction of Government investigations, "*...while this is not a criminal proceeding, it is submitted that if, on a balance of probabilities, if the Court is convinced that the actions of [the Applicant] fall within the prohibitions outlined in the Code and would satisfy these sections of the Code then that is a matter which should weigh in the balance between the public interest of APEGA remaining capable of carrying out its mandate and [the Applicant's] personal freedoms.*

Interestingly out of the hundreds of pages submitted by [APEGA's counsel] I can't see this one very key document that argues that I am a criminal which I believe is pertinent to OIPC's [sic] review of this matter which is why I believe the "unfixed written Brief" of [APEGA's counsel] should be included as part of my submissions as it speaks to [APEGA's counsel's] vexatious and frivolous personal attacks against me and indirectly against my family because

of course I am a Professional Geologist and APEGA [APEGA's counsel's client] has effetyly [sic] banned me from working as a Professional Geologist in Alberta.

All that being said I have heard worse threats and allegations against me from others associated with [APEGA counsel] and who I believe [APEGA counsel] is protecting. Here is an example:

*"Amongst others I have forwarded these emails to APEGA, AAPG CSPG questioning their rules regarding the harassment of individuals making a complaint to the governing body of geologists. I am sure [redacted] will also be warmed [sic] by your attempt to discredit him."*

*"...When that happens (not if, but when) I will personally send a copy of the results ot APEGA, AAPG, CSPG and the TSX."*

*"As I have told you before, I do not believe a word you say. You remain in my opinion a talentless joke and the absolute worst example of a businessman or individual I have ever encountered. Frankly I look forward to our court appearance and you being exposed for what you are."*

*"The only remaining tangible asset of the company is its claim against [the Applicant] As long as I am President that claim will be pursued. There will be no respite offered [the Applicant]; all the shareholders have my word on that."*

*"If you are truly concerned about your friends and families "hard earned money", then give us everything you have on [the Applicant] to assist us in winning our lawsuit."*

*"I am going to remind you that you are being sued for embezzlement, theft, fraud and breach."*

*"Whatever thoughts you have of any career or employment in energy will be over. Thieves are not entitled to sit on boards, be directors or officers. Professional organizations rescind membership. Companies do not knowingly hire thieves. Banks do not knowingly lend to thieves. That is your future."*

*"...we will pursue both you and your wife for the money."*

*"The witnesses against you in court will have impeccable reputations. And they will all say the same thing and we will all have nothing to lose because we will be telling the truth. And we have records to back it up."*

*"Going forward all your email addresses and your wife's have been blocked. I will not waste another second of my time on you."*

*"...[The Applicant's] unlawful conduct of sending menacing and harassing correspondence to either my clients or third parties."*



*“He (referring to me) continues to menace, harass and defame my clients, but now perhaps even more troubling is that he has set his sights on (Can’t identify) and seems to want to stalk and harass her, presumably to affect not only her but also my clients. These people are alarmed by your client’s unreasonable and irrational behaviour and are considering all of their legal rights and remedies, including seeking court ordered protection from [the Applicant].*

Plus its been alleged that committed [sic] a \$10 million dollar extortion against a guy who has since committed suicide plus many other extortion allegations that I have lost count, and that I stalked and harassed a women [sic] who lives in New York and that I had a gun and was “damn scary” and threatened to kill Professional Geologists by putting bullets in their heads...Pretty certain if any of this was actually true that I would be in jail for a very long time especially since the RCMP have already investigated me for all of the above two years ago including that I defrauded [redacted organization] which is my friends and families company. In fact here is the RCMP Access to Information Request that records the complaint filed against my [sic] by [redacted] in July 2015 with the Calgary RCMP. [Redacted] is the former President of [redacted], again, who [APEGA counsel] and APEGA is protecting and is likely the reason why [APEGA counsel] is working so hard to see the OIPC’s reviews Re: 007730/007731/007721 quashed.

[...]

I should also mention that I am today a Professional Geologist and member of good standing of the EGBC (formerly APEGBC) who is also the lead investigator at [redacted] that specializes in investigating mining and oil and gas frauds nothing that I am an associate member of the Association of Certified Fraud Examiners (ACFE). Pretty certain I did NOT defraud [redacted] and or extort APEGA or obstruct justice of government investigations at APEGA or threaten to kill Professional Geologists and/or members of APEGA. Please also note that I can’t possibly make all of this stuff up, I don’t have the imagination or the skill to keep all the lies straight....noting that I would not be a member of the EGBC today if I was a Professional Liar and if what [APEGA counsel] has said about me in her attached unfiled brief had any truth. [Emphasis in original]

- [23] A further email from the Applicant the same day (May 9, 2018) described an access request made to the Organization by a different individual to which the Organization had responded, and was contrasted to the Organization’s failure to respond to the Applicant’s access requests under PIPA. The Applicant then commented on the background of the Organization’s Privacy Officer, concluding:

Lastly, it ought to be noted that [the Privacy Officer] prior to working at APEGA was part of the Management Team at [redacted] as Vice President of Systems and Technology. The reason I bring this up is it speaks to [the Privacy Officer’s] credibility as a Privacy Officer @ APEGA which it’s my belief [the Privacy Officer] has no experience in her role [...]. It also speaks to corruption at [redacted] & APEGA which is a whole other story that I won’t get into at the moment because wrt to the OIPC and the matters at hand it has no relevance.

- [24] The next day, May 10, 2018, the Applicant emailed further comments to my office, which are reproduced in part:

- January 19, 2016, APEGA's Registrar [redacted] bans me from sending email communications to anyone at APEGA noting that at the time I was a Professional Member of APEGA – see attached

Note that this was a letter from the same Registrar of APEGA who sent me an email on March 13, 2015 (less than a year earlier) stating that I was a member in good standing of APEGA – see attached. I believe that [redacted] was fired from APEGA in April 2017 as a result of these matters and she's never been heard from since as she has all but disappeared which has happened to many people involved in this case at APEGA over the last few years, as I can name 7 of them including APEGA's CEO [redacted] and Director of Investigations [redacted] who also disappeared mysteriously @ APEGA noting again that they were all intimately familiar and engaged in my case @ APEGA so there is no chance of a coincidence. [...]

Here is where things start getting weird and relevant to the OIPC again nothing again that since January 2016 I've been banned from sending emails to APEGA and in December 2016 I was prohibited from having any communications with APEGA whatsoever because of the APEGA injunction, except through APEGA's lawyer.

- On **January 26, 2017** I sent a PIPA request to [APEGA's counsel] and have copied same below in its entirety for the OIPC to view. Its is this [sic] PIPA request that is the subject of the review by the OPIC [sic] that [APEGA counsel] is trying to see quashed and after reading this I trust it becomes obvious why [APEGA counsel] is trying to quash the OIPC request because of course [APEGA counsel] is the very reason why I filed the OIPC complaint in the first place because of course [APEGA counsel] did not respond as per PIPA to this PIPA request and or did not forward the PIPA request to APEGA's Privacy officer which is presumably [redacted]. Note that up to this time I had no idea that [redacted] was APEGA's FOIP Advisor however once I discovered same in December 2017 from [redacted's] response from [redacted] I subsequently sent a second PIPA Request directly to [redacted] in spite of the injunctions on January 8, 2018. See **Subject: PIPA REQUEST & DEMAND FOR PARTICULARS copied below in full.**
- I can't not mention that in May 2017 [APEGA's counsel] tried to convince the Judge in APEGA v. [the Applicant] that I should spend 60 days in jail for Contempt of Court for breach of the APEGA injunction but I was spared after I plead guilty for 6 charges of contempt that I did NOT do and after I apologized to the Court and to [APEGA counsel] for the charges that I did NOT do...however the Judge did threaten me that the next time I was before him in court that I should "bring my toothbrush" which of course did not mean that it was an invite to the Judges home the next time I was in Edmonton if you get what I am saying. All of this is recorded in transcripts of Court on May 24, 2017 in APEGA v. [the Applicant] along with [APEGA's counsel] arguing on behalf of APEGA that I should be imprisoned for 60 days.

Lastly, it also ought to be noted that along with the PIPA request I also made a Demand for Particulars which in the BC Rules of Court is similar to the Alberta Rules of Court as the Notice to Produce Documents which is of course a way to get the opposing parties to produce documents for in my case the [Applicant] v. APEGA et al claim. Again APEGA and or [APEGA's counsel] did not respond to the PIPA Request and or Demand for particulars as if she was above the Privacy Laws in Alberta and the Rules of Court in BC yet she is the lawyer

and I am not which makes no sense that the Self-Represented Litigant is following the Law while the lawyer is not, go figure?!

A final commentary on this matter: I believe that because [APEGA counsel] is clearly **desperately** trying to see the OIPC's reviews quashed with her voluminous submissions I would submit that based on this disclosure that [APEGA's counsel] is in an egregious conflict of interest because of course [APEGA counsel] is the lawyer and member of the Law Society of Alberta who was supposed to respond to my PIPA request (on behalf of APEGA) that I made directly to her after having no choice but to communicate with her respect APEGA due to an injunction that she herself filed on behalf of APEGA. Moreover [APEGA counsel] as a lawyer who should know better and as a member of the Law Society of Alberta is also supposed to stay clear of conflicts, and this appears to me to be an egregious conflict of interest as a result of her submissions to the OIPC to see the OIPC's reviews of these matters outright and blatantly quashed. To that point I believe this is enough to have the OIPC quash [APEGA's counsel's] submissions and deem them inadmissible as a result of the conflict. [Emphasis in original]

- [25] An email submission from the Applicant with numerous attachments received the following day, on May 11, 2018 primarily focusses on his grievances with various entities including the Organization, the Alberta Securities Commission, other third parties, individuals and legal counsel associated with them. However, a portion of the Applicant's submission that appears to relate to this matter is as follows:

Facts are that I have **not** been under the influence of alcohol (or drank alcohol) for that matter since on or about October 26, 2013 nor have I used drugs just to be clear that I was completely sober on June 30, 2015. Also the facts are that the charges of making crude and vulgar comments are not supported by an audio tape that was recorded by a shareholder at the AGM but the facts are that after the AGM I did sternly warn [redacted] because on August 16, 2014 [redacted] sent me an email that threatened my wife and children which I took to the RCMP but the RCMP would not do anything so I took matters into my own hands and told the RCMP same yet there is no mention of me essentially threatening [redacted] at all in the APEGA Disciplinary Decision yet I have witnesses to me attempting to provoke into an altercation in broad daylight on 9<sup>th</sup> avenue in Calgary on a bright sunny day in front of many people walking down the street. I was attempting to provoke a physical altercation so that he would never threaten me or my family again but he would not "man-up" and [redacted] ran away with his tail between his legs which is a breach of [redacted]'s organized crime code of honour which is also to not threaten kids and to man up when the family he threatened comes after him to protect his family which is what I was doing that also appears to have been sanctioned by the RCMP because I told them what I was going to do. That's the facts noting that I have disclosed these same facts to my other current Professional Associations noting I didn't do any of the above in my Professional capacity but rather in my personal capacity as a Father and a Husband which anyone in my situation would have done (including [APEGA counsel]) as protecting my family from APEGA is my purpose in life at this moment which is why I filed the PIPA request in the first place to defend and protect my family from the years of attacks by APEGA and APEGA lawyer [redacted], its really that simple. That being said after becoming a Christian after this nightmare experience with APEGA I have learned that my battle is not with flesh and blood

but with powers and principalities and the battle is not mine or mine alone but rather it is God who in the end will settle this matter with APEGA and APEGA will be held to account for what APEGA has done to my family and I.

[...]

I have also attached the APEGA/APEGBC complaint of [redacted] from July 2, 2015 just days after the [redacted] AGM where he complains that I bullied him and claimed I was impersonating Police and defrauding [redacted] which can all be summed up in this line copied from the complaint, ***“He should be stripped of his P. Geol. credentials [i.e. APEGA and APEGBC credentials] and held to account for all of his actions, utterances and behaviours both civil and criminal.”*** Remember this is the person that [APEGA counsel] and APEGA is protecting in these matters and who I believe has had many more communications with APEGA that I am trying to attain from APEGA via my multiple PIPA requests which are being argued to be “vexatious and frivolous”.

Point of all this is to say that [redacted] is, at best, in an egregious conflict of interest having been retained by [redacted organizations] at the same material times nothing that the entire APEGA disciplinary hearing is entirely about allegations against me of unprofessional conduct and criminal conduct alleged by [redacted organizations]. At worst I believe that [redacted] is complicit in the crimes at [redacted organizations], that have not only been committed against me, but the shareholders of [redacted organizations]. It also speaks to the credibility of [redacted] as a witness at the APEGA disciplinary hearing respecting the allegations that I was charged with at the hearing that I did not attend to defend myself noting that this is why I am making the PIPA request in the first place which is to get access to ALL of my personal information that APEGA holds in order to get to the bottom of what is going on at APEGA which also explains why [APEGA counsel] is trying hard to quash the OIPC’s review of this matter. Again, this is the person that [APEGA counsel] and APEGA is attempting to protect by seeing the OIPC review of this matter quashed....and this is not even the worst of it!!!

- On January 29, 2016 [redacted] filed an email complaint with the TSX and APEGA and RCMP alleging that I had a gun and was scary and threatened to put bullets in the heads of Professional Geologists. According to the RCMP it was found that there was no merit to the complaint but that did not stop the RCMP from attending my families house on Easter Sunday March 26, 2016 to threaten that they were close to arresting me for criminal harassment and criminal extortion which also led to a 6 month investigation by the RCMP noting again that there had already been multiple criminal complaints filed against me prior to that time mostly alleging I defrauded [redacted organizations]. [...]

Note that because APEGA has simply refused me the transcript of the APEGA hearing I cannot confirm that this evidence was heard at the disciplinary hearing hence why I am made [sic] the PIPA request in the first place to in part attain a copy of the 3 day APEGA hearing transcripts in August 2016 that I did not attend because I was on holidays and not because I “refused” to attend as APEGA alleges as that is nonsense!! As an aside, who in this world would refuse to attend a disciplinary hearing in their name to not defend themselves against completely false and frivolous charges of criminal and unprofessional conduct that they never did in the first place?! Again note that I am a Professional member today of APEGBC and I have been since May 2015 and I am a member in good standing at APEGBC and APEGBC has all of the same information that APEGA has....so please explain

how my former Professional Association can attack me in such a way yet my current Professional Association has taken no action against me. Makes no sense unless APEGBC has a very different view of what is really going on here from APEGA.

[...]

Added bonus: In February 2016 [redacted] sent this communications to the **Minister of Justice** of Alberta, alleging I was harassing [redacted], which I was able to attain from an access to information request to the Minister of Justice office just like my APEGA PIPA request.

[...]

In Summary, I trust the OIPC gets the point of this disclosure as it is clear there are a lot of people who are attempting to destroy my credibility and Professionalism for whatever reason(s) especially in January 2016 long before my blog which gave them an excuse to attack me. I believe this disclosure however speaks to the credibility of key complainants and witnesses and their testimonies at the APEGA Disciplinary hearing that is entirely false and completely fabricated and defamatory which attests to the reason why APEGA and [APEGA's counsel] would be working so desperately (pulling out all of the stops) to see the OIPC's review of these matters quashed. Because I believe as they say "**where there is smoke there is fire**" and this is enough smoke filed in court documents in multiple lawsuits and criminal and professional complaints against me to attest to the fact that there are definitely many more communications with APEGA that contain my personal information that APEGA is clearly trying desperately for me not to attain which should speak [sic] volumes to the OIPC as to what is really going on here and why APEGA is attempting to shut this matter down with the OIPC.

Lastly I swear on what I have disclosed in this submission is information that is true and correct to the best of my knowledge and put my credentials as P. Geo and Assoc. of the ACFE on the line. [Emphasis in original]

[26] On May 14, 2018, the Applicant was directed to send his correspondence in this matter to a general administrative account. Most of his subsequent communications with my office in this matter were focused on his demand for my office to name a particular individual with whom the Applicant could correspond rather than sending his correspondence, as required, to the administrative account.

### **Application of Section 37 of PIPA**

[27] Section 37 of PIPA contains wording that is similar to section 55(1) of the *Freedom of Information and Protection of Privacy Act* ("FOIP"); however, as was stated by former Commissioner Work, an interpretation of section 37 of PIPA must also be guided by the purpose of PIPA. PIPA seeks to balance an individual's right to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable.<sup>8</sup> The FOIP Act, on the other hand, was

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<sup>8</sup> See, for example, Request for Authorization to Disregard an Access Request, Gowling WLG (December 12, 2016), OIPC File 003172 at paragraphs 11 and 12 and Request for Authorization to Disregard an Access Request, Manulife (November 29, 2005), OIPC File P0197 at paragraph 25, available online at [www.oipc.ab.ca](http://www.oipc.ab.ca)

intended to foster open and transparent government, and to provide access to records in the custody or control of a public body as a means of subjecting public bodies to public scrutiny.

[28] Although the Organization has applied to me under both sections 37(a) and (b) of PIPA, I do not find it necessary to determine whether section 37(a) is applicable. I am satisfied by the evidence before me that the Applicant's access requests are vexatious within the meaning of the Act.

[29] The Organization provided a helpful overview on the jurisprudence about the meaning of "vexatious". It stated<sup>9</sup>:

Previous decisions of the Commissioner have stated that a request is "vexatious" when the primary purpose of the request is not to gain access to information but to continually or repeatedly harass a public body in order to obstruct or grind a public body to a standstill (Calgary Police Service at para 35).

In Order 110-1996, the British Columbia Information and Privacy Commissioner wrote: "...The Act must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act."

The foregoing statements are consistent with judicial jurisprudence on vexatious litigants. In *Jamieson v. Denman*, 2004 ABQB 593, Watson J. (as he then was) described vexatious in the following terms at para 126:

I consider the word 'vexatious' to carry with it a normative concept as well as a legal one. It seems to me that a party can be said to have acted in a vexatious manner, not merely that they acted in a manner which might be characterized as mean-spirited or nasty, but also that in fact the nastiness conveyed itself through to the legal process itself. In other words, that the legal process was being misused.

In *O'Neill v. Deacons*, 2007 ABQB 754, Associate Chief Justice Wittman (as he then was) stated at para 25:

What the various common law and statutory criteria suggest is that vexatious litigants are those who persistently exploit and abuse the processes of the court in order to achieve some improper purpose or obtain some advantage. Vexatious litigants tend to be self-represented, and quite often the motivation appears to be to punish or wear the other side down through the expense of responding to persistent, fruitless applications. This is why the failure to pay costs for such applications is a significant element in determining whether a litigant is vexatious.

In *Kavanagh v. Kavanagh*, 2016 ABQB 107, Shelly J. stated at para 64:

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<sup>9</sup> For ease of reading, I have corrected minor errors in quoted cases and removed the Organization's references to specific tabs in its Appendix.

What unites these subcategories [of vexatious litigants] is their effect. All misuse legal procedure in a manner that has no valid purpose, and, as a consequence, causes harm to involved litigants and the waste of court resources. While non-legal dictionary definitions of “vexatious” focus on an act being wrongful, harassing, malicious, or intended to annoy, the legal meaning is this word is broader. A vexatious proceeding is one that in effect abuses or misuses legal processes.

Shelley J. referred to *Chutskoff* where Michalyshyn J. reviewed the following principles and factors are relevant to test whether a person is a vexatious litigant (at para 66):

1. the entire history of a dispute, including activities both inside and outside court;
2. other litigation and court history is relevant;
3. a person is presumed to intend the natural consequences of their acts; and
4. features and traits of vexatious litigation, which include:
  - a. collateral attacks on previous judicial decision-making, including attempts to circumvent the effects of court orders;
  - b. hopeless proceedings that cannot be expected to provide the form or scale of relief sought, involve disproportionate remedies and/or cost claims, or that are incomprehensible;
  - c. escalating proceedings, where grounds and issues re-appear in subsequent litigation, and/or new parties, subjects and issues are added;
  - d. proceedings with improper purposes, such as to frustrate litigation, for an ulterior motive or to obtain a collateral advantage, or which are intended to extort a benefit, as revenge, harassment, or to cause harm;
  - e. “busybody” lawsuits that relate to third parties;
  - f. failure to abide by court orders;
  - g. spurious appeals;
  - h. inappropriate courtroom behaviour;
  - i. unsubstantiated allegations of conspiracy, fraud, and misconduct, including allegations of bias, harassment and offensive and defamatory allegations;
  - j. scandalous or inflammatory language in pleadings or before the court;
  - k. OPCA arguments; and
  - l. attempts to use court processes to further criminal activity. [Emphasis added]

[30] As one example of the Applicant’s improper purpose in making his access requests, the Organization referred me to an email dated August 23, 2017 wherein the Applicant stated the following to legal counsel for the Organization’s Disciplinary Committee:

[Mr. Lawyer], I would kindly ask that APEGA delay enforcing the Order and seeking sanctions as APEGA in [sic] under investigation for a number of serious breaches of my privacy as protected under PIPA by Alberta’s privacy commissioner ...

Again I ask that APEGA hold off with enforcement of the Order and Sanctions until the Privacy Commissioner finalizes the investigation into [redacted] (Director of Investigations who is responsible for the investigation by APEGA) and others at APEGA for multiple breaches of my privacy under PIPA.

I will not be paying any of the ordered costs until the investigation is complete as would be expected if this was a “normal” Professional Association and these were “normal” circumstances

...

[Mr. Lawyer], clearly you will also be investigated by the Privacy Commission as you are named in the complaint as one of APEGA’s lawyer is leaking information to [redacted] (breaching my privacy) and [redacted’s lawyer]. I would advise that you and other APEGA lawyers recuse yourselves from this matter until the investigation is complete.

[31] The Organization stated, with respect to above quoted email from the Applicant:

This email is illustrative of the Applicant’s motives. Further, it is APEGA’s submission that the Applicant’s requests violate the purpose of PIPA because they are attempts to use the legislation to further harass APEGA and its representatives, avoid enforcement of sanctions ordered against the Applicant and circumvent the Court Order which was sought and obtained to prevent this type of obtrusive behaviour. The affidavits APEGA has previously filed contain extensive evidence of the Applicant’s campaign against APEGA which has included voluminous email campaigns against APEGA representatives, threats of legal proceedings and complaints against the same and a multitude of allegations of conspiracies, collusion and bad faith concerning APEGA and its employees, representatives and lawyers.

[32] I further note that shortly after submissions closed in this matter, the Applicant contacted my office to inquire about withdrawing this matter in an effort to settle with the Organization. This evidence of the Applicant using his matters before my office as a bargaining tool corroborates the Organization’s position that the Applicant had improper motives in making his access requests. The Applicant was informed that only the Organization making the request under section 37 of PIPA could withdraw its request.

[33] As an example of the Applicant initiating hopeless proceedings, the Organization stated:

The Applicant initiated proceedings in British Columbia naming APEGA and seven other defendants including past and present APEGA representatives. These proceedings have since been withdrawn and the Applicant was declared a vexatious litigant. In May 2017, the Applicant attempted to seek leave of the Court of Queen’s Bench of Alberta to commence another civil claim in the Supreme Court of British Columbia naming APEGA and others as defendants. In this action, the Applicant purported to claim damages including \$144,680,000 for loss in shareholdings, \$400,000 for loss of enjoyment of life, \$400,000 for emotional pain and suffering, stress, and trauma, and various other damages totaling millions of dollars.

[34] The Organization provided additional examples of unsubstantiated allegations of corruption made by the Applicant regarding the Premier of Alberta, the Prime Minister of Canada, and members of the judiciary. I do not find it necessary to quote these in detail. Suffice it to say, I agree with the Organization that the Applicant’s access requests are vexatious.

[35] I am particularly persuaded by the December 16, 2016 Interlocutory Order of Associate Chief Justice Rooke (which is still in effect) restraining the Applicant from filing any proceeding



involving the Organization. Despite this active Interlocutory Order, the Applicant has filed Requests for Review and Complaints about the Organization (as well as other third parties that may or may not be covered under the Interlocutory Order) before my office. I am also persuaded by the Supreme Court of British Columbia's declaration that the Applicant is a vexatious litigant, and that same court's decision in *Acapella Holdings*<sup>10</sup>, which discusses behaviours of the Applicant that are similar to those before my office.

### **Commissioner's Decision**

[36] I authorize the Organization, under section 37(b) of PIPA, to disregard the Applicant's access requests made on January 26, 2017 and January 8, 2018.

Jill Clayton  
Information and Privacy Commissioner

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<sup>10</sup> *Supra*, note 5.