

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD P2020-RTD-01

July 15, 2020

BP Canada Energy Group ULC

Case File Number 015761

- [1] BP Canada Energy Group ULC (“BP” or the “Organization”) requested authorization under section 37 of the *Personal Information Protection Act* (“PIPA” or the “Act”) to disregard an access request from an individual whom I will refer to as the Applicant.
- [2] For the reasons outlined in this decision, the Organization has not met its burden to establish that the requirements of section 37 are met. As such, the Organization’s request to disregard the Applicant’s access request is dismissed. BP is required to respond to the Applicant in accordance with its obligations under PIPA.

Commissioner’s Authority

- [3] 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.

Background

- [4] The Applicant is an employee of the Organization and is currently on long-term disability leave. On April 8, 2020, the Applicant requested his personal information including: pension information, performance appraisals, attendance sheets, the contents of his personnel file and benefits file, computer screen prints of personal information, handwritten notes about telephone conversations and email correspondence. The Applicant further specified the particular types of emails he was requesting.

[5] On May 15, 2020, the Organization requested authorization to disregard the Applicant's access request as it considered the request to be vexatious. It submitted as follows:

Our evidence that the request is vexatious is as follows:

- [The Applicant] was originally hired as a BP employee on [date redacted]
- [The Applicant] has been on Long Term Disability since [date redacted]
- The insurer of the Long-Term Disability plan is [redacted]
- Long Term Disability benefits cease on the 65th birthday of the individual which is [redacted] in this case
- [The Applicant] sent a request on March 13th 2020 requesting that [the insurer] and BP continue his Long-Term Disability Benefits beyond [date redacted]
- BP Canada replied to this request directing [the Applicant] to [the insurer] as they are the insurer
- [The insurer] informed us they have also responded directly to [the Applicant]
- BP Canada received the access to personal information request on April 8th, 2020
- [The Applicant] has previously submitted access to personal information requests on [two in 2012 and one in 2013]
- [The Applicant] has made three previous privacy complaints against BP Canada, OIPC file references [OIPC File numbers redacted]
- On July 17th, 2013, we received a letter from your office confirming that [the Applicant] "has decided not to proceed further with files [OIPC File numbers redacted"]

We submit that the access to personal information request made by [the Applicant] to BP Canada on April 8th, 2020, was submitted purely to cause annoyance and as such this individual is abusing the right to make such requests. We believe this based on the following:

- The fact that [the Applicant's] request to continue Long Term Disability was redirected by BP Canada to [the insurer]
- The fact that [the Applicant] has made similar requests three times previously
- The fact that [the Applicant] has made three previous privacy complaints against BP Canada which he subsequently decided not to proceed with in 2013
- The fact that [the Applicant] has not been an active employee since going onto Long Term Disability on [date redacted]
- The fact that as [the Applicant] has not been an active employee for [redacted] years there is very little new personal information held by BP Canada that he has not already received.

[6] The Organization asserted that "there is very little new personal information held by BP Canada that he has not already received", but did not provide any further information about what it has previously provided the Applicant.

[7] The Applicant responded to the Organization's submission. He refuted the Organization's assertions. He stated that the facts relied on by the Organization were not evidence of vexatiousness and disputed the relevance of many of the Organization's statements. The

Applicant provided background information on his relationship with his employer and on the three matters that were before my office in 2012 and 2013 before they were withdrawn by the Applicant. He indicated that he had previously received his personnel file from the Organization, but that he had not received all records requested, and in particular, that he wanted access to emails.

- [8] Other than file numbers, the Organization provided no evidence regarding the Applicant's prior matters before my office. Based on the Applicant's submission, the three matters before my office in 2012 and 2013 related to a performance appraisal, a correction request for that same performance appraisal and a complaint about data being "contained off location in storage". Despite the Organization's assertion that the Applicant "has made similar requests three times previously", there is no evidence before me that the current access request relates to prior access requests or the prior matters before my office (which were withdrawn by the Applicant), other than the Applicant's acknowledgement that he previously received his personnel file.

Analysis

- [9] The Organization has not made any submissions regarding section 37(a), therefore I will only consider whether the Applicant's access request is vexatious under section 37(b).
- [10] A vexatious request is one that in effect abuses or misuses legal processes.¹ Vexatious requests include those made in 'bad faith', such as for a malicious motive. Prior decisions from my office have defined a request as vexatious when the primary purpose of the request is not to gain access to information but to continually or repeatedly harass a public body (or organization) in order to obstruct or grind a public body (or organization) to a standstill.² In 2005, the former Commissioner made the following comment in considering an application to disregard a request under the equivalent provision of the *Freedom of Information and Protection of Privacy Act*:³

"In considering whether the Applicant's requests are "vexatious", I am mindful of the following comments from the Ontario Information and Privacy Commissioner:

"...Government officials may often find individual requests for information bothersome or vexing in some fashion or another. This is not surprising given that freedom of information legislation is often used as a vehicle for subjecting institutions to public scrutiny. To deny a request because there is an element of vexation attendant upon it would mean that freedom of information could be frustrated by an institution's subjective view of the annoyance quotient of a

¹ 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, July 4, 2018 at para 29.

² F2019-RTD-02 at para 39.

³ Request for Authorization to Disregard Access Requests under section 55 of the *Freedom of Information and Protection of Privacy Act* – Edmonton Police Service, November 4, 2005 at paras 24 and 25.

particular request. This, I believe, was clearly not the Legislature's intent."
[Order M-618]

A request is not "vexatious" simply because a public body is annoyed or irked because the request is for information the release of which may be uncomfortable for the public body."

- [11] Similarly, although an access request under PIPA is limited to an applicant's own personal information, an organization's subjective view that a request is intended to cause annoyance is an insufficient ground on which to grant an application under section 37.
- [12] In an application under section 37 of PIPA, an organization bears the burden of proof to establish that the conditions of that provision have been met. For example, in OIPC File #006847 (a section 55(1) decision available on my website, www.oipc.ab.ca), I dismissed a public body's application because although it had provided a great deal of evidence, it failed to provide me with an explanation (argument) as to how the evidence it provided related to section 55(1). I said in that case:

"It may be, perhaps, that the Public Body felt the background information and records it provided were self-evident in establishing the conditions of section 55(1) were met. This is not so. A public body must still 'connect the dots' and link its evidence to its application. That is, a public body must provide some argument regarding its evidence.

...

The onus is on a public body to make the link between its evidence and its application under FOIP. I cannot make arguments for any party before my office. I must make a decision based on the arguments and the evidence that parties put before me. The burden lies on the public body making an application under section 55(1) to explain why it believes the criteria have been met. Although the Public Body provided extensive background information and documentation, it cannot simply provide evidence without explaining how that evidence relates to the legislative provision under which it is bringing an application."

- [13] The same principles apply to an application to disregard a request under PIPA. In this case, the Organization has asserted that the request is vexatious, but has failed to provide any evidence to support its position. It cites as evidence of vexatiousness the facts that the Applicant is on long-term disability and that he has been redirected to the insurer. These are background facts, but alone, do not establish vexatious intent. Further, without more, the fact that the Applicant has made three previous access requests in 2012 and 2013 (7 and 8 years ago), and three complaints to my office that were subsequently withdrawn does not establish vexatiousness, particularly without any information from the Organization about those matters and how they apply to its current application under section 37. Individuals have a right to request access to their personal information from organizations. Without more, the Applicant's choice to exercise his rights under the legislation is not evidence that his request is vexatious.

Decision

- [14] The Organization has provided insufficient evidence and argument to support its application under section 37 of PIPA. The application under section 37 of PIPA is dismissed.
- [15] The Organization is required to respond to the Applicant in accordance with PIPA. As the Applicant indicated in his submission that he previously received some personnel file records from the Organization, the parties should work together to determine whether there is overlap from prior access requests and if so, whether this access request can be narrowed.

Jill Clayton
Information and Privacy Commissioner

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