ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD P2022-RTD-02

April 12, 2022

NORTON ROSE FULBRIGHT CANADA LLP

Case File Number 009364

[1] Norton Rose Fulbright Canada LLP (the "Organization") requested authorization under section 37 of the *Personal Information Protection Act* ("PIPA" or the "Act") to disregard an access request made by an individual whom I will refer to as the Applicant.

[2] For the reasons outlined in this decision, I have decided to grant the Organization authorization to disregard the Applicant's access request.

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

Background

[4] The Organization is a law firm that was involved in a lawsuit filed by the Applicant. During the course of that litigation, the Applicant submitted an access request under PIPA to the Organization for records containing her personal information. The Organization states it is adverse in interest to the Applicant.

[5] The Applicant's access request is three pages in length, but can be generally summarized as requesting all records containing the Applicant's name. The Applicant specifies that her access request includes records associated with a variety of reference numbers pertaining to various legal matters dating back to a 2014 arbitration, all legal bills, and any records

and emails with her name involving a large number of named individuals, including legal counsel involved with her litigation.

[6] The parties provided an exceptionally large volume of materials to support their positions.

[7] The Organization confirmed its relationship with the organization in a related matter, P2022-RTD-01. Given the factual similarity of the two matters before me, there was significant overlap in the evidence provided, but the Organization also provided independent submissions.

[8] The Organization provided a detailed summary of the Applicant's litigation history, as well as submissions specifically relating to this matter. The Applicant also provided lengthy and detailed submissions in response. While this matter was before me, the Alberta Court of Queen's Bench declared the Applicant to be a vexatious litigant.[1] In light of that decision, I provided the parties an opportunity to make additional submissions.

[9] The Organization provided updated information regarding the Applicant's expanding litigation, and made additional submissions as to how the court's declaration that she was a vexatious litigant related to this matter. The Applicant argued I should not consider the court's declaration that she was a vexatious litigant. She provided numerous and lengthy submissions outlining her position, which can be generally summarized as an argument that the court's vexatious litigant finding was invalid. The Applicant also, as she did in the related case, P2022-RTD-01, questioned how this decision came to my attention. As I did in P2022-RTD-01, I confirm the court's finding came to my attention due to its public availability.

[10] The Organization stated that an application under section 37 of PIPA was not an appropriate forum for the Applicant to challenge the validity of the court's Order. I agree, and have not considered the Applicant's arguments on that issue. I further note that the Alberta Court of Appeal denied the Applicant leave to appeal the vexatious litigant decision.

[11] A court's decision that an applicant is a vexatious litigant is neither binding on me, nor determinative of whether an organization will be authorized to disregard an access request. However, as I have found in prior decisions, a court's finding that an applicant is a vexatious litigant is a factor I may consider.[2] In this case, the court's findings are relevant and add further support to my conclusion, below, that the Applicant is abusing her access rights under PIPA.

[1] Court of Queen's Bench of Alberta citation ("Vexatious Litigant Decision"): 2020 ABQB 700; permission to appeal denied 2021 ABCA 202

[2] See, for example: P2021-RTD-01 at paras 5 and 23; F2021-RTD-02

Analysis

Section 37(a) – requests are repetitious or systematic in nature

[12] "Repetitious" is when a request for the same records or information is made more than once. "Systematic in nature" includes a pattern of conduct that is regular or deliberate.

[13] The Organization states that the Applicant has made at least eight previous access to information requests under the *Freedom of Information and Protection of Privacy Act* ("FOIP") to her former employer. It also relies on a prior unpublished decision from 2017 wherein I authorized her former employer to disregard an access request made by the Applicant under FOIP. In that decision I found the Applicant's access request was systematic in nature.

[14] The Organization noted that within a period of two days, in addition to making this access request, the Applicant made requests under PIPA for her personal information to four other organizations. One of those access requests is the subject of P2022-RTD-01, a related request for authorization to disregard. The Organization stated that all of the access requests were substantially similar to one another, and that the other four organizations were adverse to the Applicant in the ongoing litigation. It further states:

> In the leading and most relevant decision of Gowling WLG (Canada) LLP (Order 003172), (Gowling Decision), the OIPC considered an application to disregard an access request under Section 37 of PIPA and discussed the test for making such an Order. In that case, the OIPC indicated that access requests are considered "systematic in nature" when it indicates a pattern of conduct that is regular or deliberate. Similarly, the British Columbia Office of the Commissioner of Information and Privacy has identified that "[s]ystematic requests are those made according to a method or plan of acting that is organized and carried out according to a set of rules or principles.
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> Regarding the Access Request, in the [unpublished decision authorizing the Applicant's former employer to disregard her access request], the Privacy Commissioner previously recognized that [the Applicant's] conduct in relation to repeated FOIP requests against her previous employer was "systematic in nature". The Access Request is clearly part of a repetitious and systematic series of requests by [the Applicant] and falls within Section 37(a) of PIPA. Unlike in the Gowling Decision, where the individual requestor had only made a single previous access request under PIPA, [the Applicant] has in this case made multiple previous access requests of her former employer under FOIP (which the Commissioner authorized it to disregard), along with four other substantially similar (and nearly simultaneous) PIPA requests which all target organizations adverse to her in the Action. While the Access Request is the first PIPA access request received by the [Organization] from [the Applicant], it is clearly part of a broader strategy to obtain indirectly information which [the Applicant] has not been able to obtain directly through the course of the Action and related proceedings, or through the other quasi-judicial forum offered under FOIP. The evidence establishes that the Access Request is repetitions [sic] in nature and consistent with [the Applicant's] systemic approach of

> targeting any and all individuals and organizations involved with her previous employer and/or the Action. The multiplicity of the five access requests clearly militates against the fact a PIPA access request was made only once of each recipient. When considered as an overall pattern of behaviour, such a strategy is clearly repetitious and systemic.

[15] The Applicant states that this is the first time she has made an access request to the Organization and argues, therefore, that the Organization cannot bring an application under section 37(a). She further states, "the Organization can not claim Section 37(a) because they chose to stay in my law suit for over a year, even though they had an opportunity to have my law suit against them dismissed".

[16] Section 37(a) of PIPA does not restrict the consideration of "systematic in nature" only to the organization making the request. As I have stated in prior decisions, I may consider an applicant's other activities or matters, including access requests made to other organizations, public bodies or custodians when reviewing an application for authorization to disregard an access request.[3] It is unclear from her submission how the Applicant's second argument regarding her lawsuit is relevant to section 37(a) of PIPA.

[17] I find that the evidence of the Applicant's other access requests is relevant to the matter before me. I have reviewed the access request at issue as well as the other four access requests submitted by the Applicant to other organizations within the two-day time period. Each separate access request is for all records containing her name and is distinctly tailored to the Organization to which the request was directed, but the access requests contain common elements such as naming particular individuals associated with that organization, specifically listing litigation file numbers with that organization, and most of them also request legal bills.

[18] It is not necessary for me to consider the Organization's argument that the access request is repetitious, because on the basis of the evidence before me, I am satisfied that this access request is systematic in nature. The Applicant submitted five very similar access requests to organizations adverse in interest over two days. This access request is part of a pattern of conduct by the Applicant to make access requests to adverse organizations involved in her ongoing and expanding litigation.

Section 37(a) – the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests

[19] In addition to establishing that a request is either repetitious or systematic, under section 37(a), an organization must also provide evidence that the requests would unreasonably interfere with the operations of the organization *or* that they amount to an abuse of the right to make those requests.

[3] See, for example: F2020-RTD-03 at paras 15 and 16 and P2021-RTD-01 at paras 5 - 7

[20] Using the access rights under PIPA for purposes other than to obtain access to personal information may be considered an abuse of the right to make those requests. In a request to disregard an access request under section 37, it is the organization that bears the burden to establish that the criteria of the section are met. An applicant does not have a burden regarding their access request; that is, an applicant does not have to prove an access request is for a legitimate purpose, but merely has to show the request has merit.[4] In cases where an applicant chooses to make submissions, they will be considered along with those of the organization requesting authorization to disregard.

[21] The Organization provided submissions regarding the significant effort that would be required to respond to the access request, including locating the Applicant's name in all its legal files, assessing whether those records were responsive, and assessing whether such records were privileged or otherwise exempt from disclosure in whole or in part. However, because for the reasons below I have found that the access request is an abuse of the Applicant's right to make access requests, it is not necessary for me to decide in this case whether it would also unreasonably interfere with the Organization's operations.

[22] The Organization submitted as follows:

> In the Gowling Decision, the Commissioner defined "abuse" to mean misuse or improper use and referred to a previous decision where an applicant's access requests were part of a long-standing history and pattern of behaviour designed to harass and obstruct with the aim of wearing the organization down (Gowling Decision at para 36).
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> In order to demonstrate abuse, the organization must prove that the requestor had an ulterior improper motive for making the access request (Order P2016-01). In the [unpublished decision authorizing the Applicant's former employer to disregard her access request], the Commissioner also indicated that: "… [the Applicant] does not have to prove her request was for a legitimate purpose, she merely has to show merit". Additionally, the Commissioner indicated that the "inability to show merit (of an access request) is problematic when considering motive" and that "the systematic nature of access requests, in and of itself, may amount to an abuse of the right to make those requests". Further, in *Request for Authorization to Disregard an Access Request – University of Alberta* (September 23, 2015), the Commissioner recognized that "[a]ccess requests made for the purpose other than obtaining access are abusive".

[4] See, for example, my office's 2011-2012 Annual Report which summarized the Alberta Court of Queen's Bench unreported judicial review of an section 55 decision (*Clarence Bonsma v The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office, Court File 1103-05598)*. In that decision, the court said that if requests are not the same, then the fact that there are numerous requests made regularly cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive. That is where the second part of section 55 becomes important. The ulterior motive is what establishes the abuse. The court further expressed its view that a person defending what amounted to a summary dismissal application under section 55 need do no more than show merit. In other words, that person did not have a burden to show the request was for a legitimate purpose.

> [The Applicant] has not provided the [Organization] with the specific purpose of her Access Request (nor is she obligated to do so), however it is apparent from [the Applicant's] history with [her former employer] that the Access Request appears to be either merely an extension of her past attempts to access documents relating to her employment with [her former employer], or designed to harass the [Organization] and other parties involved in the Action, and not a *bona fide* request for her personal information. The general nature of [the Applicant's] request (i.e. for any legal file that contains her name) suggest that her desire is to obtain as many legal files of [her former employer] as possible. While general access requests are not automatically without merit, any assessment of [the Applicant's] motives must be informed by the context of her litigation history with [her former employer], the near simultaneous submission of five PIPA access requests to organizations who are all party to the Action, the series of previously unsuccessful access requests (as noted in the [unpublished decision authorizing her former employer to disregard an access request]), and the fact that [the Applicant's] request is for information "related" to her and not "about" her (as discussed in further detail below).
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> Accordingly, we submit that [the Applicant's] conduct continues to be systematic in nature in such a manner that is tantamount to abuse. Further, the Access Request is without merit and its broad nature indicates that [the Applicant's] motive is not to obtain her legitimate personal information but rather to continue to harass [her former employer], to obtain information that has previously been properly withheld in litigation and access proceedings and to obtain information about opposing litigants in the action and their counsel.

[23] The Applicant stated that she requested her information "solely to gain access to her information".

[24] As noted above, the Applicant disputed the ability of the Organization to make submissions under section 37(a). She also argued that the Organization could not use evidence about other access requests she had made to support its request for authorization to disregard. I do not agree with the Applicant on this point. As noted above, I may consider an applicant's other activities and matters when deciding whether to grant authorization to disregard an access request.[5]

[25] The Alberta Court of Queen's Bench decision declaring the Applicant to be a vexatious litigant is an additional factor that assists me in determining whether her access request is an abuse of her right to make access requests. For example, at paragraph 11 of that decision, the court noted an argument that the Applicant's problematic conduct included attempts to obtain privileged documents via FOIP applications and reviews.[6]

[5] *Supra*, note 3
[6] Vexatious Litigant Decision at para 11

[26] The court made specific findings that the Applicant has an "established pattern of persistent, ongoing, and expanding abusive litigation".[7] The court further stated:

> [39] First, the record illustrates very clearly, and I have found as a fact, that [the Applicant] has a pattern of expanding the range of litigation targets whom she sues. When [the Applicant] has exhausted her dispute activities with one target, she adds additional targets, or switches to new targets. She changes the legal basis for her claims. These facts mean limiting the scope of steps that manage [the Applicant's] litigation will simply lead her to engage novel targets, very plausibly via a new mechanism or process.
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> [40] I believe it is also fair to observe that [the Applicant] has proven creative in how she reframes her original employment dispute in unusual directions, such as the 1801 Action switching from an employment and labour law context to a spurious *Business Corporations Act,* RSA 2000, c B-9, s242 oppression claim that I rejected in [a prior case].

[27] Although the court's decision was in relation to the Applicant's litigation activities, I have observed similar actions by the Applicant in her matters before my office. I am aware that, from the time of her original employment dispute, the Applicant has brought more than 20 complaints or requests for review before my office involving a number of different organizations or public bodies. It is clear that the Applicant's matters, in one way or another, and although broadly expanded, generally arise from her original employment dispute.

[28] For example, the Applicant focused much of her voluminous submissions on her broader litigation activities and her arguments in support of those actions. I note the Applicant's statement that her sole purpose in making the access request was to obtain her personal information, but the overwhelming amount of evidence before me does not support her position. The Applicant's submissions do not assist her in establishing that her access request has merit.

[29] On the basis of the evidence before me, I find that the Applicant's purpose in making the access request to the Organization was not to obtain access to her personal information, but was a means of further expanding her original employment dispute.

[30] I find the Organization has met its burden to establish that the requirements of section 37(a) are met. The Applicant's access request is systematic and is an abuse of her right to make access requests.

[7] Vexatious Litigant Decision at para 36.

Section 37(b) – frivolous or vexatious

[31] Both the Organization and the Applicant provided extensive submissions on this provision. However, given my finding under section 37(a), it is not necessary for me to consider these arguments.

Decision

[32] On the basis of the evidence before me, I have decided to exercise my discretion under section 37(a) of PIPA. The Organization is authorized to disregard the Applicant's access request.

Jill Clayton
Information and Privacy Commissioner

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