

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2024-RTD-02

May 3, 2024

TOWN OF DIDSBURY

Case File Number 032736

- [1] The Town of Didsbury (the “Public Body”) requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the “*FOIP Act*”) to disregard access request 2023-17, as well as any future access requests made by an applicant (the “Applicant”).
- [2] For the reasons outlined in this decision, the Public Body is required to respond to access request 2023-17 in accordance with the *FOIP Act*. The Public Body is not, at this time, authorized to disregard access requests that the Applicant may make in the future.

Commissioner’s Authority

- [3] 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 and Burden of Proof

- [4] The Public Body’s submission consists of a one page letter, copies of some of the Applicant’s requests since 2019, and a spreadsheet setting out similar information (the subject of the Applicant’s access to information requests and the dates they were made).

[5] The Public Body states as follows:

The Applicant has submitted 33 requests since 2019 many of which were made on the same day. The nature of the requests varies, but are always cumbersome for Administration to produce such requests. Please find attached a spreadsheet of the requests made by the Applicant since 2019.

The Town of Didsbury is finding these requests unreasonably interfere with the operations of the public body, especially the requests made in June 2023 and the most recent on December 21, 2023. The Applicant notes on occasion that they understand that the information which they request is available publically [sic] online but continues to imply through correspondence to the Public Body that there ought to be additional documentation where there is none. The frequency and volume of the requests is burdensome, as the resources for gathering the information and processing the information entirely consumes the time of one or two individuals.

With the total number of requests from the Applicant totaling 16 in 2023, the superfluous and repetitive nature of the requests is harmful to operations and is negatively impacting the workload and morale of those who are impacted by the requests. There is a recurring pattern of conduct with these requests to gather information and reports on Town facilities, staffing and most recently financial information/spending of the public body.

To date the Applicant has received the information requested unless the record does not exist. This most recent request is a follow-up to the previous request as the information provided did not satisfy the Applicant, even though the information and record was accurate.

[6] The Public Body further noted that the Applicant was no longer a resident of the municipality. This is an irrelevant consideration under the *FOIP Act*.

[7] The *FOIP Act* is silent on the burden of proof associated with a request to disregard an access request under section 55(1). In prior decisions, I have held that:

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.

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”.

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.

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.

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.¹

- [8] Therefore, 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.
- [9] In this case, the Public Body has provided only assertions that some of the criteria under section 55(1)(a) and (b) are met; there is no further explanation as to how it believes access request 2023-17 meets the requirements of section 55(1) of the *FOIP Act*.
- [10] The Public Body provided a copy of access request 2023-17, which is for “copies of credit card statements” with a date range from February 2020 to December 2023. The evidence before me does not include any additional information as to the scope of the request, such as whose credit card statements are requested. I note the Public Body’s statement that 2023-17 “is a follow up to the previous request”; however, it is unclear to which previous request the Public Body refers. The Public Body’s spreadsheet lists an access request made on October 27, 2023, for the “CAO’s Expenses Credit Card Statements 2019 – 2023”, but a copy of this access request was not included with the other copies of the Applicant’s access requests. In any event, assuming the Public Body refers to an access request in the spreadsheet, the Applicant’s current vague request for credit card statements is broader than a specific request for the CAO’s expenses/credit card statements, and may have different responsive records.

¹ Citing former Commissioner Clayton, F2019-RTD-01 (Alberta Justice and Solicitor General); 2019 CanLII 145132 (AB OIPC), at pp. 7 and 8

- [11] 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 quashing that section 55(1) decision of former Commissioner Work, the Court expressed its view that an application to disregard an access request amounts to a summary dismissal (or disposition) application. Given the similarity of a request for authorization to disregard an access request and a summary disposition application, Alberta's case law provides some guidance as to the evidentiary requirements of a public body in a section 55(1) matter. The law in Alberta is clear that parties to a summary disposition application must 'put their best foot forward'.³ However, in the *Bonsma* decision, the Court further expressed its view that a person defending what amounted to a summary dismissal under the *FOIP Act* need do no more than show merit. In other words, that person did not have a burden to show that the request was for a legitimate purpose.
- [12] The Applicant provided a submission in response to the Public Body's application, but given my findings below, there is no need for me to consider it.
- [13] I have noted that 2023-17 is vague, but this factor alone is insufficient to authorize the Public Body to disregard the request under section 55(1). The *FOIP Act* contemplates circumstances where an applicant does not give enough detail to enable a public body to identify a requested record. The Public Body will likely require additional clarification from the Applicant to determine the scope of the records sought.
- [14] There is insufficient information before me to determine whether access request 2023-17 meets the requirements of section 55(1). The Public Body has not met its burden of proof. For the same reason, I decline to consider whether the Public Body should be authorized to disregard any future access requests the Applicant may make.

Decision

- [15] The Public Body is required to respond to access request 2023-17 in accordance with the *FOIP Act*.

Diane McLeod
Information and Privacy Commissioner

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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

³ See, for example, *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49 at para 37