ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2024-RTD-03

May 16, 2024

CITY OF MEDICINE HAT

Case File Number 032945

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

[2] For the reasons outlined in this decision, the Public Body is required to respond to all five access requests in accordance with the *FOIP Act*. As I have no jurisdiction to consider access request 04-2024 under section 55(1), the Public Body is required to respond to it in accordance with the *FOIP Act.* The Public Body has not met its burden under section 55(1) with respect to access requests 03-2024, 11-2024, 13-2024 and 14-2024, and is therefore required to respond to them in accordance with the *FOIP Act.*

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

[4] On February 12, 2024, the Public Body submitted its application for authorization to disregard the five access requests which are briefly summarized below:

03-2024 (received January 5, 2024) – for the years 2021 – 2023:

- For each Department or Business Unit - information about bonuses, severance and termination pay including the number of employees receiving such payments;
- For Managing Directors and Council (including the Mayor) – information about base salaries, bonuses, severance and expenses as well as the number of employees paid for each year. In addition, for the Council and Mayor, honoraria, per diem allowance rates, and information about whether the annual base salary increase was declined (and by how much) was requested;
- The estimated cost for the preparation of the Council interim report; and
- A copy of the city contract(s) in place with a third party service provider.

04-2024 (received January 5, 2024) – in reference to a letter sent to the Applicant in November, 2023, by the Public Body which limited communications with the Applicant, the Applicant requested copies of correspondence about them between specified employees, as well as additional information supporting or referenced in said letter.

11-2024 (received January 21, 2024) – a copy of a specified employee's employment contract and any revisions, a copy of another specified contract, a copy of the 2022 employee survey results, terms of reference and purpose of the Council Employee Committee and meeting minutes for the creation of the Council Employee Committee and appointment members, and dissolution of it.

13-2024 (received February 5, 2024) – a variety of city policies and/or bylaws, job descriptions, meeting minutes and supporting documents relating to certain positions or activities; a definition of the term "council positions", and a copy of specified organizational charts.

14-2024 (received February 5, 2024) – copies of the correspondence, meeting, and conversation records from specified employees leading to a February 1, 2024 communication with the Applicant.

[5] The Public Body provided copies of the access requests at issue, as well as confirmation of fees paid for the requests. It also included a spreadsheet of the eight access requests made to it since September 2023 by the Applicant.

Preliminary Issue – Jurisdiction

[6] A preliminary issue arose regarding my jurisdiction to consider this matter. The Public Body received access requests 03-2024 and 04-2024 on January 5, 2024. As the Public Body did not submit its application for authorization to disregard these requests until February 12, 2024, upon initial review, it was unclear as to whether it was submitted within the timelines set out by section 11(1) of the *FOIP Act.* There were no timeline concerns with the other three access requests (11-2024, 13-2024 and 14-2024).

[7] Section 55 of the *FOIP Act* does not establish a public body's timeline for bringing an application under this provision. Section 55(2) states:

> *55(2) The processing of a request under section 7(1) or 36(1) ceases when the head of a public body has made a request under subsection (1) and*
>
> *(a) if the Commissioner authorizes the head of the public body to disregard the request, does not resume;*
>
> *(b) if the Commissioner does not authorize the head of the public body to disregard the request, does not resume until the Commissioner advises the head of the public body of the Commissioner's decision.*

[8] The effect of subsection 55(2) is to cease the processing of a request once an application is made under subsection (1). This means that the usual timeline under the *FOIP Act* is no longer running; however, this only occurs *after* the application under section 55(1) has been made. As such, in my view, the statutory timelines for processing the access requests ceased on February 12, 2024 when the Public Body made its application under section 55(1). Prior to this application though, in my view, the usual timelines under the *FOIP Act* for processing these access requests applied.

[9] Section 11 of the *FOIP Act* sets out the timeline for a public body to respond to an access request as follows:

> *11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless*

> *(a) that time limit is extended under section 14, or*
>
> *(b) the request has been transferred under section 15 to another public body.*
>
> *(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.*

[10] Section 11(1) requires a public body to make every reasonable effort to respond to a request, and if it is not responded to within 30 days, or within the timelines contemplated by subsections (a) and (b), section 11(2) states that it is to be treated as a decision to refuse access to the record. That is, although a public body has not responded, its failure to respond is to be treated as a response: a decision to refuse access to the record. Where a public body has refused to provide access to a record, this triggers an applicant's right of review under section 65(1) of the *FOIP Act*.

[11] On February 16, 2024, the Public Body provided additional information. The Applicant had not provided the fee for 03-2024 until January 18, 2024; therefore, as per section 11(3) of the *FOIP Regulation* (AR 186/2008), the Public Body was not required to process 03-2024 until that date. As such, assuming the Public Body's information is correct, the application to disregard 03-2024 was made within the section 11(1) timeline. I note the Applicant disputes the Public Body's position on this fee payment, and argues the fee was paid earlier. In any event, given my conclusion that the Public Body must respond to the access request, I do not need to decide this point.

[12] However, with respect to 04-2024, the Public Body confirmed that it had not extended the time to respond to this request and acknowledged that it could therefore be considered a decision to refuse access to the records under section 11(2). For the reasons set out above, I agree with the Public Body's assessment of 04-2024. As such, I find I do not have jurisdiction to consider access request 04-2024 under section 55(1) of the *FOIP Act*.

[13] I will consider the remaining four access requests, 03-2024, 11-2024, 13-2024 and 14-2024, under section 55(1) of the *FOIP Act*.

Burden of Proof

[14] 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: [1]

> The proposition that "he who asserts must prove" applies across all areas of law, unless there is a specific reverse onus: for example, see Garry v Canada, 2007 ABCA 234, para

[1] Citing former Commissioner Clayton, F2019-RTD-01 (Alberta Justice and Solicitor General, February 1, 2029); 2019 CanLII 145132 (AB OIPC), at pp. 7 and 8

> 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.

[15] 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.

[16] 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

[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; *Alberta Energy v Alberta (Information and Privacy Commissioner*), 2024, ABKB 198 at para 21 (appeal pending on other grounds)

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.

[17] My office has interpreted this decision as meaning that an applicant is not obligated to make a submission in response to an organization's request for authorization to disregard their access request.

[18] Although a public body has the burden of proof, the British Columbia Information and Privacy Commissioner has previously observed (with respect to British Columbia's equivalent provision), "if a public body establishes a *prima facie* case that a request is frivolous or vexatious, the respondent bears some practical onus, at least, to explain why the request is not frivolous or vexatious."[4] As such, if an applicant chooses to provide a submission in response to an application to disregard an access request, that submission may be considered along with that made by a public body.

Purpose of Section 55(1)

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

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

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

> Section 55 of the FOIP Act provides public bodies with a recourse in these types of situations.[5]

[20] Access and privacy rights have been deemed "quasi-constitutional" by the Supreme Court of Canada.[6] However, this does not mean that an individual's ability to exercise their rights is unlimited, and there is no right to make abusive requests.[7] This observation is consistent with the interpretation of access and privacy legislation in other jurisdictions across Canada. For example, in *Crocker v British Columbia (Information and Privacy Commissioner) et al*,[8] the British Columbia Supreme Court provided the following guidance with regard to how section 43 in British Columbia's *Freedom of Information and Protection of Privacy Act* should be interpreted.[9] This provision contains similar wording to the Alberta *FOIP Act*. The Court stated:

> Section 43 is an important remedial tool in the Commissioner's armory to curb abuse of the right of access. That section and the rest of the Act are to be construed by examining it in its entire context bearing in mind the purpose of the Legislation. The section is an important part of a comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance. The legislative purposes of public accountability and openness contained in s. 2 of the Act are not a warrant to restrict the meaning of s. 43. The section must be given the "remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects", that is required by s. 8 of [BC's] *Interpretation Act…*[10]

[21] BC's former Commissioner, David Loukidelis, added his views on how that provision is to be interpreted. Specifically he said that "any decision to grant a section 43 authorization must be carefully considered, as relief under that section curtails or eliminates the rights of access to information." Another past commissioner has cautioned that, "[g]ranting section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation."[11]

---

[5] F2002-RTD-01 (Alberta Municipal Affairs, March 21, 2002); 2002 CanLII 78173 (AB OIPC), at pp. 3 and 4

[6] See, for example, F2018-RTD-09 (MacEwan University, September 7, 2018); 2018 CanLII 152765 (AB OIPC) at pp. 4

[7] See, for example, F2017-RTD-02 (Calgary Police Service, November 29, 2017); 2017 CanLII 149832 (AB OIPC) at para 20, referring to Chief Justice McLachlin's comments in *Trial Lawyers Association of British Columbia* at para 47 and F2020-RTD-03 at para 9

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

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

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

(b) are frivolous or vexatious.

[10] *Crocker.,* at para 33

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

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

Section 55(1)(a) – Are the access requests repetitious or systematic in nature?

[23] As indicated, section 55(1)(a) authorizes me to exercise my discretion to authorize the Public Body to disregard an access request where the Public Body has established, on a balance of probabilities, that "because of their repetitious or systematic nature", one or more of the access requests "would unreasonably interfere with its operations or amount to an abuse of the right to make those requests". A request is repetitious 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.

[24] The Public Body asserts that the access requests are both repetitious and systematic. Little additional evidence is provided regarding the repetitious nature of the requests, other than for 03-2024. For 03-2024, the Public Body states:

> This request asks multiple questions about employee and council wages and allowances. Some of this information is readily available on the city's website. This request is also similar to #19-2023 (attached). Unrelated to this, it also requests cost details for preparing a council interim report and for a copy of a contract between the city and a third party service provider. Ironically, the cost to the municipality for compiling a response to this submission negatively impacts the city's finances by drawing on its finite resources to process such requests.

[25] I have reviewed the Applicant's previous request 19-2023. For the years 2020 – 2023, it requests salary and wage information for certain full time employees of the Public Body, including premium and benefit details and costs as well as bonuses paid to Public Body employees. It also requests information about communications regarding utility rates, campaign contributions made to a certain employee and expense reports for another employee. There is some overlap between access requests 19-2023 and 03-2024. The time frames both include 2021 – 2023 and both request information about bonuses paid to employees. The requests are not identical though. Different records are also requested in each request.

[26] To the extent there is overlap between the responsive records in 03-2024 and 19-2023, I find that those portions are repetitious.

[27] The Public Body provided evidence that the Applicant made eight requests between September 2023 and February 2024. Given the number of requests within a relatively

short time frame, I find that this is a pattern of conduct that is regular or deliberate, and that the access requests are systematic.

Section 55(1)(a) – Would the requests "unreasonably interfere with the operations of the public body or amount to an abuse of the right to make requests"?

[28] In addition to establishing that a request is either repetitious or systematic, under section 55(1)(a), a public body must also provide evidence that the requests would unreasonably interfere with the operations of the public body *or* that they amount to an abuse of the right to make those requests.

[29] The repetitious nature of an access request, in and of itself may be sufficient to establish that an access request is an abuse of the right to make requests.[12] In this case, I have found that there is some repetition between 19-2023, and 03-2024; however, the Public Body also provided the following information about the Applicant's previous requests 13-2023 and 19-2023:

> Also of note, there were two FOIP requests in late 2023 (not included in the request to disregard) that may provide further context and evidence of the overlapping nature of the submissions from [the Applicant]. FOIP Request #13-2023 (attached) from [the Applicant] was lengthy and complex. It asked for detailed utility rate information and compensation for utility employees. Due to the complexity of that request, the city hired an external FOIP consultant to process the request at significant cost to taxpayers. Request #19-2023 asked for salary and wage information. When presented with the estimate to compile all the records, no payment was received and the records were therefore, not provided.

[30] The Public Body's evidence is that the Applicant has not received a response to 19-2023 because the request was abandoned. Therefore, although there is some repetition between access requests 19-2023 and 03-2024, the Applicant has not yet received any of the responsive records. As such, I do not find that the repetitious parts of 03-2024 rise to the level of an abuse of the right to make requests. I will now consider whether the Public Body has otherwise established that the requirements of section 55(1)(a) are met.

[31] The Public Body submits as follows:

> In the four year period from 2020 – 2023, the City of Medicine Hat received between 23 and 30 FOIP requests each year, with an average of 26 requests annually. In 2024, we have so far been inundated with 17 requests. Since September, 2023 [the Applicant]

[12] F2023-RTD-05 (Calgary Police Service, October 21, 2021); 2021 CanLII 107789 at para 13

> has submitted a total of eight requests to the City of Medicine Hat, including the five noted in 2024 alone.
>
> […] We have a steep learning curve regarding the processes and nuances of FOIP management but are gradually developing and improving our FOIP program.
>
> […] Ultimately, due to the repetitious and systematic nature of these requests, their complexity, frequency and length, they unreasonably interfere with the operations of the municipality. We believe these requests amount to an abuse of the right to make such requests and enter into the realm of being frivolous and vexatious. In support of our position, I also make reference to s. 10(2)(b) of the Act. Again we strongly feel that the compilation of all these records is unreasonably interfering with the operations of the municipality.

[32] The Public Body states it is committed to its mission "to deliver value through exceptional public service" and that its ability to provide such exceptional public service is compromised if it is obligated to spend an unreasonable and disproportionate amount of time to accommodate the demands of a single resident. The Public Body further noted that some of the information and records being requested are already publicly available on its website.

[33] I have reviewed the Public Body's spreadsheet of the Applicant's eight access requests. Of the three prior access requests, the Public Body's evidence is that it provided records for two requests (13-2023 and 22-2023) and the other request, 19-2023 was abandoned after the Applicant did not pay the fee estimate. The remaining five access requests are currently part of this application to disregard.

[34] The Public Body provided additional information for each of the access requests subject to this application. I have reviewed and considered these submissions (other than for 04-2024), but will not quote them verbatim. Generally, the Public Body states that some responsive records are available on its website, it has not yet prepared an estimate of the time required to respond to some as they are subject to this current application, the initial fee has not been paid on one (13-2024, and I also note the Applicant disputes this claim) and broadly, responding to these requests will require time, staff, and resources.

[35] The Public Body states that responding to these access requests will unreasonably interfere with its operations, but it has provided little specific information on this factor. It asserts it will take time to locate and review responsive records, resources including financial resources will be required, as well as time and support from its Information and Technology Department. These concerns, however, are common to almost all access requests. The Public Body is required to provide evidence that responding to the access

requests would *unreasonably* interfere with its operations. This is a higher threshold than the usual actions required in the normal course of responding to any access request.

[36] Section 14 of the *FOIP Act* sets out circumstances where timelines for responding under section 11 may be extended. It should be further noted that although a head of a public body may delegate duties under the *FOIP Act*, the head is required to ensure that those delegates are able to meet those duties.[13] Staffing, including staff delegated to have the authority to respond to access requests under the *FOIP Act*, is an issue which is within the control of the public body.[14]

[37] It will usually be the case that a request for information will pose some disruption or inconvenience to a public body; that is not cause to keep information from a citizen exercising his or her democratic and quasi-constitutional rights.[15] I accept the Public Body's submission that responding to the access requests will require limited resources and time of staff, but I am not satisfied, on the basis of the evidence provided to me, that responding to these access requests will *unreasonably* interfere with the Public Body's operations. Because public bodies have a statutory duty to respond to access to information requests under the *FOIP Act*, any access request will require some use of limited resources and time.

[38] The Public Body did not provide any specific argument as to how these access requests amount to an abuse of the right to make requests.

[39] I find that the Public Body has not met its burden to establish under section 55(1)(a) that the access requests would unreasonably interfere with its operations or that they are an abuse of the right to make those requests.

[40] I will consider the access requests under section 55(1)(b) of the *FOIP Act*.

Section 55(1)(b) – frivolous or vexatious

[41] A frivolous request is typically associated with matters that are trivial or without merit. Information that may be trivial from one person's perspective, however, may be of importance from another's. Although the Public Body states the Applicant's requests "enter into the realm of being frivolous and vexatious" its arguments under section

[13] Order F2018-10 (Alberta Health, February 16, 2018); 2018 CanLII 7385 (ABOIPC) at paras 18 and 19
[14] Order F2021-46 (Health, November 30, 2021); 2021 CanLII 125173 (AB OIPC) at para 32
[15] Request to Disregard F2022-RTD-04 (Village of Carbon, July 27, 2022); 2022 CanLII 69806 at paras 25 – 27, citing F2019-RTD-01

55(1)(b) are geared towards an argument of vexatiousness. As there are no specific arguments that the access requests are frivolous, I will not consider this ground further.

[42] A vexatious request is one in which the Applicant's true motive is other than to gain access to information, which can include the motive of harassing the public body to whom the request is made. A vexatious request may also involve misuse or abuse of a legal process. The common law provides additional guidance on the meaning of vexatious:

[43] For example, in *Canada v Olumide*, 2017 FCA 42 the Federal Court of Appeal provided the following comments:

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

[44] The Federal Court of Appeal's comments were made specifically in relation to section 40 of the *Federal Courts Act*, but in my view, a broad interpretation of "vexatious" is applicable to applications to disregard an access or correction request. Similarly, the Alberta Court of Appeal (in speaking to the jurisdiction granted to the Court under the *Judicature Act,* not the *FOIP Act*) cautioned that too strict an adherence to indicia of vexatious may invite a formalistic analysis which does not focus on the individual litigant.[16] While these judicial comments are not directly applicable to the *FOIP Act*, they provide support for the interpretation that there are many ways in which an access or

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

correction request may be considered vexatious. Such a finding will always depend on the specific facts of the case.

[45] The Public Body states the Applicant was involved in an unsuccessful recall petition of the Mayor and a request to have the Public Body investigated by the Minister of Municipal Affairs. It expressed its belief that some of the responsive records to these access requests appeared "unlikely to serve any reasonable purpose other than to be used against the municipality in some way". The Public Body "also opine[d] that the motive and purpose of these requests and additional actions is to harass and embarrass the Municipality, rather than serve a constructive purpose".

[46] The Public Body explained that in November, 2023, as a result of the Applicant's frequent communications with the Public Body, which were taking up a disproportionate amount of staff time, it notified the Applicant it would no longer respond to their communications. The Public Body provided a copy of that letter. In that letter, the Public Body states that many of the Applicant's inquiries have been "accusatory and unconstructive", and referred to other specific concerns it had with the Applicant's actions. Other than this letter, there is no additional evidence before me supporting the Public Body's views of the Applicant's accusatory or harassing nature of communications. I further note that in this letter the Applicant was informed that the Public Body would still provide City services and that access requests submitted by the Applicant would be processed in accordance with *FOIP Act* requirements.

[47] The Applicant chose to make a submission, explaining concerns with the Public Body and providing background information as to why the information was requested. As I have stated in previous cases where applicants have made access requests to municipalities due to concerns with the Public Body's administration, I make no findings and have no comments on the merits (or lack thereof) of these concerns.[17] For example, in F2023-RTD-02 I stated:

> [10] I have not reviewed either party's evidence with respect to fact-finding regarding any allegations of financial or other impropriety. In some respects, the issues between the Applicant and Public Body are similar to those in F2022-RTD-04 and F2022-RTD-05. In those cases, taxpayers were also concerned with public spending. Former Commissioner Clayton held:
>
> > [14] The evidence before me does not indicate one way or another as to whether any of these concerns have any merit. It may very well be the case that, as repeatedly asserted by the Public Body, the concerns of the Applicant

[17] F2023-RTD-03 (Town of Crossfield, December 20, 2023) at para 47; F2023-RTD-02 (Village of Beiseker, October 27, 2023) at para 10

> and the Ratepayers of Carbon are baseless and unfounded. As Information and Privacy Commissioner, my role is not to make findings regarding the financial administration of the Public Body or other concerns or to resolve the issues between the parties. I make no findings as to the validity of the Applicant's concerns or whether any of the allegations against the Public Body are founded. There are other means by which these concerns may be addressed and the evidence before me indicates that the Applicant and/or the Ratepayers of Carbon are engaged in the process of addressing their concerns through a variety of democratic means available to them.
>
> [15] In this case, my role is to determine whether the Public Body has met its burden to establish that the criteria of section 55(1) are met, and if so, whether I will exercise my discretion to authorize it to disregard the access request.

[48] Similarly, in F2023-RTD-03, despite that applicant's vexatious behaviour, I found that the access request was for a legitimate purpose in order to hold that public body to account.

[49] In considering the Public Body's application, it is helpful to review the purpose of access to information legislation. Section 2 sets out the purposes of the *FOIP Act*. Included within this provision is section 2(a), which states:

> 2(a) to allow any person a right of access to the records in the custody or under the control of a public body subject to the limited and specific exceptions as set out in this Act.

[50] In an early foundational case, the Supreme Court of Canada spoke to the principles underlying access to information legislation:[18]

> 61 The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps ensure, first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. As Professor Donald C. Rowat explains in his classic article, "How Much Administrative Secrecy?" (1965), 31 *Can. J. of Econ. and Pol. Sci.*479, at p. 480:
>
> > Parliament and the public cannot hope to call Government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of

[18] *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358: Although LaForest J. was writing for a dissenting minority on another point, the majority agreed with this comment. Numerous subsequent decisions have confirmed this opinion (for example: *Lavigne v Canada (Office of the Commissioner of Official Languages),* 2002 SCC 53; *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3; *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, 2024 SCC 4).

> policy and legislation if that process is hidden from view. See also: Canadian Bar Association, *Freedom of Information in Canada: A Model Bill* (1979), at pp. 178 – 179.

[51] Access to information is essential for meaningful participation in a functional democracy. While a "vexatious" request may "come in all shapes and sizes",[19] the evidence before me in this case is insufficient to convince me that the access requests are vexatious. I accept that the Applicant has made the access requests for a legitimate purpose, to participate in the democratic process. That is, the Applicant seeks information about decisions the Public Body has made in order to hold the Public Body to account.

[52] The Public Body has not met its burden under section 55(1)(b).

Decision

[53] For the reasons stated above, as I do not have jurisdiction to consider access request 04-2024 under section 55(1) of the *FOIP Act,* the Public Body is required to respond in accordance with the *FOIP Act.*

[54] After consideration of the relevant circumstances, and for the reasons stated above, the Public Body is required to respond to access requests 03-2024, 11-2024, 13-2024 and 14-2024 in accordance with the *FOIP Act*.

Diane McLeod
Information and Privacy Commissioner

/ak

[19] *Canada v Olumide*, 2017 FCA 42 at para 32