ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2024-RTD-04

August 20, 2024

CAREWEST

Case File Number 033215

[1] Carewest (the "Public Body") requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the "*FOIP Act*") to disregard three 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 access requests 2024-F-002, 2024-F-003, and 2024-F-004 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
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> (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
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> (b) one or more of the requests are frivolous or vexatious.

Background

[4] The Applicant is a former employee of the Public Body. On January 8, 2024, the Applicant requested access to records arising from a workplace investigation, and the Public Body responded to that access request. On the same day, the Applicant made three additional access requests for the records of three specific employees of the Public Body. These three access requests are the subject of the Public Body's application under section 55(1) of the *FOIP Act.* On February 6, 2024, the Applicant made an additional access request for records arising from the Public Body's processing of the first access request, which the Public Body has characterized as a "foipping of the FOIPPA file". The Public Body responded to that fifth access request.

[5] The three access requests at issue are similarly worded (with the exception of the employee's names and personal cell phone numbers), and are for the records of three Public Body employees during the time period of October 1, 2023 – January 1, 2024. The access requests at issue before me in this matter are for the following:

> **2024-F-002/003/004**
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> Records from [Public Body employee]: All text (in any messaging application such as Whatsapp, Signal, Messenger, I-message), email, or Teams messages sent and received during the time period with any of the following keywords: [Applicant's initials], [Applicant's first name], manager, investigation, fired, terminated, meeting, [a different employee's name], complaint, reclassification, [a different employee's name and initials], or any synonym thereof. Text messages would have been sent via their 'personal' cell phone [phone number redacted] but as per a decision by the Saskatchewan Information and Privacy Commissioner in REVIEW REPORT 361-2021, personal cell phones used in the course of business can be subjected to FOIP. As the previous [Applicant's former job title redacted], I know and have evidence of this being true of the cell phone in question. Thus, the phone falls under the authority of Carewest Innovative Health Care to access messages to comply with a FOIP request. The information requested directly involved the investigation and was created by an officer/employee of the organization. The organization relied on various aspects of confidentiality and honesty to make a determination which the records held by this individual may show to be false.
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> Time Frame: October 1, 2023 – January 4, 2024

[6] The Public Body provided background as follows:

> The Applicant worked in a supervisory capacity at Carewest and was terminated for cause after a number of complaints came forward regarding [the Applicant's] conduct following a workplace investigation. Due to the Applicant's workplace conduct,

> Carewest has ongoing concerns regarding retaliatory behavior and reprisal against former colleagues.

[7] No additional information was provided regarding the Applicant's workplace conduct or the circumstances of the termination of the Applicant's employment.

Preliminary Issue – Jurisdiction

[8] A preliminary issue arose regarding my jurisdiction to consider this matter. The Public Body received the access requests at issue on January 8, 2024. The Public Body submitted its application to disregard these three access requests on March 7, 2024. This means that approximately two months had passed from the Public Body's receipt of the access requests.

[9] As it was not clear that I had jurisdiction to consider 2024-F-002, 2024-F-003, and 2024-F-004 under section 55(1) of the *FOIP Act*, I wrote the parties to explain this concern and requested submissions from them on this preliminary issue of jurisdiction.

[10] 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.*

[11] 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 three access requests ceased on March 7, 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.

[12] 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.

[13] 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*.

[14] Upon receipt of my request for additional information regarding the timeline in this case, the Public Body provided confirmation that it had decided to extend its timeline to respond for the access requests under section 14(1) of the *FOIP Act*. The Public Body provided a copy of the letters it sent to the Applicant on February 5, 2024, which had extended its timeline for responding by 30 days, to March 8, 2024. As such, the Public Body was within its statutory timeline under the *FOIP Act* when it requested authorization to disregard the three access requests.

[15] I find I have jurisdiction to consider these three access requests under section 55(1) of the *FOIP Act*.

Burden of Proof

[16] 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 8; and Rudichuk v Genesis Land Development Corp, 2017 ABQB 285, para 27. The proponent of a motion needs evidence.

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

> 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".
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> 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.
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> 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.
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> 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.

[17] 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.

[18] 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.

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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

[19] 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. I agree with this approach.

[20] 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)

[21] Section 2 sets out the purposes of the *FOIP Act,* which includes allowing 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 set out in the *FOIP Act*.

[22] 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.
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> 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.
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> 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:

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

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

[23] In many of her decisions under section 55(1), former Commissioner Clayton observed that access and privacy rights have been deemed "quasi-constitutional" by the Supreme Court of Canada.[6] However, as she also often noted, that 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]

[24] 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

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[5] F2002-RTD-01 (Alberta Municipal Affairs), 2002 CanLII 7872 (AB OIPC), at pp. 3 and 4

[6] See, for example, F2018-RTD-09 (MacEwan University), 2018 CanLII 15765 (AB OIPC) at pp. 4

[7] See, for example, F2017-RTD-02 (Calgary Police Service), 2020 CanLII 97987 (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 (Alberta Justice and Solicitor General) 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

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]

[25] 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?

[26] 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.

[27] The Public Body acknowledges that the Access Requests are not repetitious, but states they are systematic. The Public Body refers to *Bonsma v Alberta (Information and Privacy Commissioner),* 2010 ABQB 209 where the Court held, at paragraph 31, that although an access request was not technically repetitious, where the result would be repetitive, the request was systematic. The Public Body also points out that in F2020-RTD-05 (*Alberta Health Services)*, where an individual had requested all emails from his former workplace containing his initials or variants of the Applicant's name, former Commissioner Clayton held that the request was systematic. The Public Body further states:

> This is exactly what the Applicant has done with the Access Requests, which are broad and sweeping requests for information specifically from three former coworkers for all texts, emails and other messages containing [the Applicant's] name or synonyms of [the Applicant's] name, including [the Applicant's] initials. In this instance, the Applicant's requests are regular and deliberate, that is "intentional; done on purpose … fully considered; not impulsive" and as such are systematic in nature within the meaning of section 55(1)(a).

[28] I agree with the Public Body that the Access Requests are systematic. As such, I will consider whether the requests would unreasonably interfere with the operations of the Public Body or amount to an abuse of the right to make requests.

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

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"?

[29] The Public Body argues as follows:

> Due to the systematic nature of the requests, they unreasonably interfere with the operations of Carewest. Though there are three requests that are seeking records within a defined period of time, the search terms listed in the requests include short combinations of letters [the Applicant's and an employee's two letter initials] and broad terms that would reasonably be anticipated to appear in hundreds, if not thousands, of unrelated business records ("manager", "investigation", "fired", "terminated", "meeting", "complaint", "reclassification"). For example, one individual searched the phrase [Applicant's two letter initials] and returned 700 records alone. Amplifying the scale of the request is the fact that the Applicant has asked for "synonyms thereof". While a public body should generally not inquire as to the purposes of an access request, the Access Requests will yield records on a wide variety of Carewest's business matters that touch upon the personal information of patients and employees. The scale of review and redactions that will have to be made extend well beyond the capabilities of Carewest.
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> Furthermore the names of current employees [redacted] and [redacted] are included in the search terms, which would translate to a request for all emails to and from [those employees] between the time periods requested. The objectives of FOIPPA cannot be reasonably construed to allow an individual to seek such unfiltered access despite these employees being employees of a public body.
>
> Additionally, as the requested search is to be done on the individual's personal devices, searching for the records can only be performed by the named individuals, all of whom hold senior-level positions with Carewest and who would also have to take time away from day to day operational work and patient care in order to respond. Processing the requests would constitute a significant diversion of their time and attention, and consequently Carewest's limited resources, and would unquestionably interfere with Carewest's operations.

[30] The Applicant states they submitted the Access Requests separately to lessen confusion for both parties when reviewing the results. The Applicant explains that there was no intent to overburden the Public Body, but that they wished to review the information concerning the workplace environment during the time before and after the workplace investigation. The Applicant further states:

> The search terms requested were to help bring forward a fulsome record search as Carewest does use initials when discussing individuals. This is to protect the individual

> in case of breach and in case of FOIP requests. [The Public Body] states there were over 700 messages with "[Applicant's initials]", but no other terms were searched and only the one which could be seen to have the highest number of search terms are more specific and would yield some of the information requested under the FOIP requests. In responding to a FOIP request, organizations need to do their due diligence in finding records as requested without seeking ways to disregard. Carewest using the requested terms "[Applicant's initials"] to refute the request allows them to catastrophize the number of records which would need to be reviewed to address the request, at least partially, within timelines. At no time did Carewest request modification of the search terms on account of the number of records which I may have considered if the other search terms had been addressed.

[31] Public bodies have a statutory duty to respond to access to information requests under the *FOIP Act.* It is generally the case that almost any access request, by the inherent nature of requiring staff to search for, review, and often redact information, will interfere with a public body's usual operations. The Public Body bears the burden to prove that responding to the Access Requests will *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.

[32] In F2019-RTD-01, the former Commissioner noted that branch-wide searches for records in a public body amounted to an unreasonable interference with that public body's operations, especially where an applicant could name the individuals who may possess the requested information.[12] That decision also held:[13]

> There is good reason why the Public Body must meet a high threshold of showing "unreasonable interference", as opposed to mere disruption. Access and privacy rights have been identified as "quasi-constitutional" by the Supreme Court of Canada: *Douez v Facebook Inc*., 2017 SCC 33, paras 4 and 50; *Alberta (Information and Privacy Commissioner v United Food and Commercial Worker*s, 2013 SCC 62, para 19. Citizens must have access to information in order to participate meaningfully in the democratic process, and to hold the state accountable: *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403, para 61. Accordingly, as I have said before, the power that has been granted to me under the FOIP Act to authorize a public body to disregard an access request is not one I take lightly: Request for Authorization to Disregard an Access Request – Calgary Police Service (November 29, 2017), para 4.

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[12] F2019-RTD-01 (Alberta Justice and Solicitor General), 2019 CanLII 145132 (AB OIPC) at page 10
[13] *Ibid* at page 11

> 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.

[33] While I agree with the Public Body that the Access Requests encompass a broad scope of search terms, particularly those that result in all emails sent or received by two of the named employees, I also note that the Applicant has limited these access requests to the three employees who may have responsive information and has restricted the time period of the Access Requests to approximately three months (October 1, 2023 to January 4, 2024). This relatively short time period indicates that the Applicant is legitimately seeking access to specific records. This is substantiated by the Applicant, who explained why they had requested records:

> The requests were not made in haste nor in any capacity except to find all records held at Carewest or by its officers relating to myself. Carewest's assertion that I am trying to, "not to gain access to the records but is rather to interfere and grind Carewest and its employees" is not at all what I am attempting to accomplish. I am attempting to have legitimate access to records which directly relate to myself and on a significant instance at a point in time.
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> […]
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> [The Public Body] goes on at length to describe the requests as vexatious and as harassment of Carewest due to the nature of the termination of my employment. They also assert I am looking to "exact punishment or permit harassment of a public body" but this is not the case as I seek to find the records used in the investigation and regarding the environment which was considered in the outcome as per Carewest. The concern I am being vexatious is not accurate as I am not seeking these records to punish Carewest but to see for myself there was a fulsome understanding of the scope of the investigation. Carewest may assure me this was the case but the records, as requested, would allow me to see if this is factual or is Carewest attempting to protect themselves by using a lawyer to submit a Section 55 request and potentially to make the information inaccessible. As noted in a recent decision regarding the University of Calgary [F2024-RTD-01], I feel this request is to facilitate democracy and allow accountability for officers of Carewest in the process they deem was done correctly.

[34] On the basis of the evidence before me, I am not convinced the Public Body has met its burden to show that responding to the Access Requests would *unreasonably* interfere with its operations under section 55(1)(a) of the *FOIP Act*.

[35] The Public Body argues that the Access Requests amount to an abuse of the right to make requests, stating:

> Carewest further submits that due to the systematic nature of the requests, they also amount to an abuse of the right to make access requests. "Abuse" has been defined as meaning "misuse" or "improper use" [F2007-RTD-01]. An abuse of the right to make requests may also be established through conduct indicating that the applicant intends to be burdensome or harassing. The Applicant is attempting to make improper use of FOIPPA. The purpose of the Access Requests is not to gain access to records but is rather to interfere and grind Carewest and its employees. This does not accord with the access principles in FOIPPA and is an abuse of the right to make requests.
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> As evidenced by the tone of the Applicant's requests, the Applicant is aggrieved by the actions of Carewest and its employees. The Access Requests can reasonably be construed to be an effort to retaliate against or harass, Carewest and its employees. This too amounts to an abuse of the right to make access requests under FOIPPA. [F2020-RTD-04]

[36] The Applicant denies the Public Body's characterization of the Access Requests and (as quoted above) has explained why they are seeking the requested records.

[37] The Public Body states it terminated the Applicant's employment for cause. It is not my role to make findings regarding the Applicant's termination, and the fact that the Public Body determined it had cause is, on its own, insufficient for me to find the Applicant is abusing their rights under the *FOIP Act*. I have no other information before me as to the circumstances regarding the termination. The Public Body asserts that these Access Requests are abusive; the Applicant asserts they are not and has provided an explanation as to why they seek the records.

[38] The Public Body asserts that the Applicant is harassing or retaliating against the named employees, but provides no further evidence to substantiate the claim. It is plausible that these Access Requests could be harassing or retaliatory, but it is also plausible that the specific employees have been named because they are the ones most likely to have the responsive records requested by the Applicant.

[39] Recently, the Court of King's Bench confirmed that public bodies are required to provide evidence, not mere assertions when they withhold access.[14] While these comments were made in the context of a review of a public body's decision to refuse an applicant access to responsive records, I find they are equally applicable in the context of a public body seeking authorization to disregard an access request. It is plausible that the Applicant's

[14] *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198 at paras 15 – 28 (currently under appeal on other grounds)

purposes are improper but it is equally plausible that, as the Applicant states, they legitimately seek information regarding the circumstances of their termination.

[40] Both the Public Body and the Applicant provided submissions regarding the parts of the Access Requests relating to the use of personal cell phones by the Public Body. As it relates to the matter before me, that being whether the Public Body has met its burden under section 55(1), I find this issue to be a 'red herring'. That is, I do not find the Applicant's request for these particular records to be a "clear abuse", as asserted by the Public Body. If personal devices are not used for the public body's operations, then there should be no responsive records subject to the *FOIP Act.* If personal devices have been used to conduct the Public Body's business, then there may be responsive records subject to the *FOIP Act*. This is a matter for the Public Body to determine as the first instance decision maker, and, at this time, I decline to make any findings with respect to this issue.

[41] On the basis of the evidence before me, I am not satisfied the Public Body has met its burden to establish that the Access Requests are an abuse of the right to make those requests under section 55(1)(a) of the *FOIP Act*.

[42] I will consider the Public Body's arguments under section 55(1)(b).

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

[43] The Public Body argues the Access Requests are frivolous and vexatious:

> The Access Requests should be disregarded as vexatious or frivolous. 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 (or organization) in order to obstruct or grind it [F2007-RTD-01]. The class of vexatious requests includes requests made in bad faith, in other words for a malicious or oblique motive [F2005-RTD-01]. Therefore, requests may be considered vexatious if they are made with the intent to annoy, harass, embarrass, or cause discomfort.
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> This request is also frivolous. Matters are frivolous where they are trivial or without merit [F2005-RTD-01]. Again, a "frivolous" request is one that is made without serious basis and primarily for a purpose other than gaining access to information [F2005-RTD-01].
>
> The Applicant's request is vexatious and frivolous. As outlined above, the Applicant has made this request for purposes inconsistent with the purpose of the legislation, but rather for the purposes suggestive of harassment and retaliatory behaviour of Carewest and its employees. The broad and invasive nature of the requests, including in the personal devices of former colleagues, is a clear indication of the vexatiousness and

> frivolousness of those requests. All of this suggests that the Applicant makes their request primarily for a purpose other than gaining access to information and in bad faith for a malicious or oblique motive. In such a circumstance, Carewest submits that the request is not made in good faith and is both frivolous and vexatious pursuant to section 55(1)(b).

[44] While I agree with the Public Body's characterization of the factors that may make an access request frivolous or vexatious, for the same reasons as set out above in my analysis of section 55(1)(a), I am unconvinced that these particular Access Requests are frivolous or vexatious. The Public Body has asserted that they are, but other than that, has put no additional supporting evidence before me. The Applicant asserts that the Access Request have been made for a legitimate purpose.

[45] The Public Body has not met its burden under section 55(1)(b) of the *FOIP Act*.

Decision

[46] After consideration of the relevant circumstances, and for the reasons stated above, the Public Body is required to respond to access requests 2024-F-002, 2024-F-003, and 2024-F-004 in accordance with the *FOIP Act*.

[47] In their submission, the Applicant indicates willingness to consider modifying the scope of the Access Requests. I encourage the parties to communicate with each other to confirm and, where possible, to narrow the scope of responsive records to the Access Requests.

Diane McLeod
Information and Privacy Commissioner