

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2024-RTD-05

August 27, 2024

CITY OF MEDICINE HAT

Case File Numbers 034256 and 034485

- [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 access requests 24-2024, 33-2024, 34-2024, 38-2024 and 39-2024 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 and Burden of Proof

- [4] The Applicant is the same as in my previous decision F2024-RTD-03. On May 2, 2024, the Public Body submitted its application for authorization to disregard access requests 24-2024, 33-2024 and 34-2024. On May 10, 2024, the Public Body submitted its application for authorization to disregard access requests 38-2024, and 39-2024.
- [5] Given the similarity of subject matter and reasoning, I am dealing with both of the Public Body's applications in one decision.
- [6] The access requests seek a variety of records including templates for specified agreements, grant information relating to a specified organization, employment contracts for specified individuals, money owing to a specified business as well as the submitted bid and contract awarded to that specified business. The time frames of the access requests, generally, cover the last few years.
- [7] The Public Body provided copies of the access requests at issue and confirmed its submissions had been provided to the Applicant. The Public Body also confirmed it had extended its timeline to respond to 24-2024. Therefore, I find I have jurisdiction to consider all five access requests under section 55(1) of the *FOIP Act*.
- [8] The Public Body's submissions identify the access requests it seeks to disregard and then both submissions consist, in their entirety, of the following information:
- These are additional requests from the applicant for which the city submitted a request to disregard under section 55(1) on February 12, 2024 and May 9, 2024.¹ Please consider these requests under the same criteria cited in the February 12, 2024 letter.
- [9] The Public Body provided no further submissions or evidence other than that provided by it in its February 12, 2024 letter. That previous application resulted in F2024-RTD-03, issued May 16, 2024. In F2024-RTD-03 I found the Public Body had not met its burden to establish that the criteria of section 55(1) were met. For the reasons set out in F2024-RTD-03 and for the reasons set out below, I make the same finding here.
- [10] 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:²

¹ The only difference between the two submissions is the Public Body's May 2, 2024 submission (dated April 30, 2024 refers only to its first submission on February 12, 2024).

² 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

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.

[11] 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.

[12] 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*.³ 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’.⁴ However, in the *Bonsma* decision, the Court further

³ *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

⁴ 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)

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.

[13] The Applicant provided submissions in response to both of the Public Body's applications, but given my findings, there is no need for me to consider them.

[14] The Public Body has provided no submissions or evidence that the criteria of section 55(1) are met for these access requests. It has merely incorporated by reference its previous submission for different access requests it sought to disregard. In F2024-RTD-03 I found those submissions were inadequate to meet the Public Body's burden of proof. Those earlier submissions do not meet the required burden of proof to allow me to authorize the Public Body to disregard these five access requests under section 55(1) of the *FOIP Act*.

Decision

[15] The Public Body is required to respond to access requests 24-2024, 33-2024, 34-2024, 38-2024 and 39-2024 in accordance with the *FOIP Act*.

Diane McLeod
Information and Privacy Commissioner