

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD P2025-RTD-01

May 26, 2025

King's University

Case File Number 037045

- [1] King's University (the "Organization") is an "organization" as defined under section 1(1)(i) of the *Personal Information Protection Act* ("PIPA"). The Organization requested authorization under section 37 of PIPA to disregard 5 access requests and all future 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 Organization's application is dismissed. The Organization is required to respond to the Applicant in accordance with PIPA.

Commissioner's Authority

- [3] Section 37 of PIPA gives me the power to authorize an organization to disregard certain requests. Section 37(a) and (b) state:

37 If an organization asks, the Commissioner may authorize the organization to disregard one or more requests made under section 24 or 25 if

(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

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

- [4] An individual's right of access to their personal information and to request correction of their personal information under PIPA is not absolute. Where an organization establishes

that the conditions of section 37(a) or (b) are met, I may authorize the organization to disregard that request.

Background and Burden of Proof

[5] The Organization’s submission consists of a two-page letter and copies of the Applicant’s access requests. In an email on February 19, 2025, the Organization confirmed it was seeking authorization to disregard the Applicant’s access requests under section 37(b) of PIPA, that is, the requests are frivolous or vexatious.

[6] The Organization states it has received 7 requests from the Applicant, and it responded to the first two (#1 and #2). It states it has determined that the additional 5 requests it seeks to disregard (#3 - #7) are “vexatious in nature and do not meet the legitimate purposes outlined under PIPA.” The Organization submits as follows:

Key Considerations

1. **Misuse of the Privacy Request Process:** A substantial portion of the requests submitted by the applicant focus on expressing dissatisfaction with what [they] perceives as unfair treatment by the university. While we acknowledge and respect [their] right to raise such concerns through appropriate channels, the university believes the privacy request process under PIPA is not intended for these purposes.
2. **Lack of Genuine Privacy Concerns:** Most of the submitted requests do not pertain to personal information or privacy matters as defined under PIPA. Instead they seek information or make demands that fall outside the scope of the Act and are intended for other purposes.
3. **Vexatious Nature of Requests:** The pattern of requests and the number of requests demonstrates a belief that the privacy rights framework is a tool for addressing the applicant’s grievances rather than being legitimate privacy concerns. This undermines the purpose of PIPA and creates an unnecessary administrative burden on the university’s privacy compliance process.

[7] PIPA is silent on the burden of proof associated with an application to disregard a request under section 37. 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, 2019); 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.

[8] While these findings were made under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”), they are equally applicable to the equivalent provision, section 37 of PIPA. Therefore, it is up to the Organization to establish, on a balance of probabilities, that the thresholds in section 37 (a) or (b) are met in this case and on doing so I must exercise my discretion about whether to authorize the Organization to disregard the access requests.

[9] In this case, the Organization has provided only assertions that it has determined the criteria of section 37(b) of PIPA are met. The Organization submits that the requests express dissatisfaction with the Organization and that most of the requests do not seek the Applicant’s personal information. With respect to the vexatious nature of the requests, the Organization points to the pattern and number of requests demonstrating a belief that the privacy rights framework is a tool to address grievances. However, that is the extent of the Organization’s submissions. It has not provided any specific information to support these broad assertions. The only evidence provided by the Organization is copies of the access requests it has received from the Applicant. The Organization has left it to me to comb through the Applicant’s access requests without any additional information to link the access requests to the criteria of section 37(b). Essentially, I am left to make the Organization’s arguments for it.

[10] 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 As previously noted, because section 55(1) of the FOIP Act is equivalent to section 37 of PIPA these findings are equally applicable to an organization under PIPA. 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 an organization in a section 37 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.

[11] The Applicant provided a submission in response to the Organization's application, but given my findings, there is no need to consider it.

[12] As noted above, 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. I have reviewed the Applicant's access requests. There is disagreement on various matters between the parties, but the Organization has failed to explain how the criteria of section 37(b) of PIPA are met. I note that the Organization asserted that some requests fall outside PIPA, and I agree. It is clear that some parts of the Applicant's access requests are not for their own personal information, but that alone is insufficient to make a finding that the requests are frivolous or vexatious under section 37(b). It is the Organization that must determine which portions of the Applicant's access requests #3 - #7 are and are not for the Applicant's personal information. That is not a determination for me to make in the first instance in the absence of submissions on that point.

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, rev'g on other grounds, 2025 ABCA 163

[13] As my office and the Court have noted:⁴

It is not sufficient to provide the Commissioner with records and leave it up to the Commissioner to try to draw from the records the facts on which the decisions will be based. The Commissioner requires that persons representing the public body, custodian or organization provide evidence speaking to the contents of the records, for example by explaining how each part of a record for which an exception to disclosure is claimed falls within the exception. If the explanation depends on certain facts being true, the public body, custodian or organization must provide evidence of these facts.

[14] These comments are equally applicable where a public body, custodian or organization seeks to fully deprive an individual of their quasi-constitutional rights by disregarding an access request. They cannot expect to meet their burden of proof by making broad, brief assertions that the criteria to disregard a request are met and providing copies of the requests at issue, expecting the Commissioner to try to draw from the records the facts on which the decision will be based. The entity seeking to disregard a request must do more to meet its burden: there must be a link between the requests at issue and the statutory criteria.

[15] There is insufficient information before me to determine whether access requests #3 - #7 meet the requirements of section 37(b) of PIPA. The Organization has not met its burden of proof. For the same reason, I decline to consider whether the Organization should be authorized to disregard any future access requests for personal information the Applicant may make.

Decision

[16] The Organization is required to respond to access requests #3 - #7 in accordance with PIPA.

Diane McLeod
Information and Privacy Commissioner

⁴ *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024 ABKB 198 at para 22, rev'g on other grounds, 2025 ABCA 163, quoting "Inquiry: Preparing Submissions" published September 2020 by the Office of the Information and Privacy Commissioner of Alberta.