ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

Request for Authorization to Disregard an Access Request
under section 55(1) of the
Freedom of Information and Protection of Privacy Act

Service Alberta
(OIPC File Reference F8116)

August 27, 2014

[1] On May 27, 2014, I received Service Alberta's application under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to disregard the access request received May 1, 2014 from Mr. James Johnson on behalf of the Wildrose Official Opposition.

Commissioner's Authority

[2] Section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests. Section 55(1) reads:

> *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

[3] On April 30, 2014, Mr. Johnson made an access request under the FOIP Act to Service Alberta, for the following:

> A table of summaries for 'living allowances'/521030 and 'other living allowances and benefits'/521080 for each ministry for the last 3 fiscal years.

The timeframe for the access request was April 1, 2011 to March 31, 2014.

[4] On May 27, 2014, Service Alberta (a public body, as defined) applied to me under section 55(1). I then gave Mr. Johnson an opportunity to provide comments on that application. Mr. Johnson provided comments on June 3, 2014.

[5] Mr. Johnson subsequently discovered that he had not received the written argument supporting Service Alberta's application. He then requested and received that written argument

from Service Alberta. On June 6, 2014, he provided further comments to Service Alberta and to my Office. I accepted those further comments.

Service Alberta's submission

[6] I have set out the entirety of Service Alberta's submission below:

> This Applicant has submitted up to five times as many requests as other Applicants. We believe this Applicant is submitting these FOIP requests in order to interfere with government by submitting consecutive and concurrent requests pertaining to costs or expenses, much of which has been made public. The Applicant is also requesting related systems manuals and requiring Service Alberta to run specific reports from those systems with slightly altered wording or with a modification to conduct analysis on the Applicant's behalf. Service Alberta, in the spirit of our duty to assist, is also repeatedly providing additional expense related information by routine disclosure that is not being counted in these FOIP request numbers but does require Service Alberta to run reports, sort data and consult with other public bodies.
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> These actions, in Service Alberta's opinion, amount to an abuse of the system, are a form of harassment and obstruct the administrative functions of government. This pattern of conduct is deliberate and systematic in nature, including follow-up requests to "FOIP the FOIP" file and similar repetitive requests to other government public bodies and the public bodies [sic] actions have been in good faith. Further, these requests are then systematically and repetitiously submitted for review to the OIPC which also expends a lot of time and resources.
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> The legislation is meant to give meaningful access to information and support the principles of a democratic society. While access supports accountability on the part of government, the extent to which the Applicant is utilizing the system, without any accountability on their part, is creating a burden that overtaxes the administration of government. If this request is disregarded, it will allow Service Alberta to apply the time and resources to serve those taxpayers and Applicants who use the legislation and resources appropriately.
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> Service Alberta believes this Applicant is both using the FOIP process in a repetitious and systematic nature that unreasonably interferes with the operations of the public body and also amounts to an abuse of the right to make those requests and one or more of the Applicants [sic] current requests are frivolous and/or vexatious.

[7] Service Alberta also mentions that, for one of the Applicant's access requests, it has had to request a time extension from my Office under section 14(2), which provides for time extensions where multiple concurrent requests have been made by two or more applicants working for the same organization or in association with each other. Service Alberta says: "We feel this further underscores the systematic and repetitious nature of the Applicant's use of FOIP in a manner in which it is not necessarily intended."

Mr. Johnson's submission

[8] Mr. Johnson says that he is surprised by Service Alberta's application to disregard his access request, since he has been regularly requesting information from Service Alberta and has consistently been provided with information, often without fees being assessed.

[9] Mr. Johnson says that he has submitted approximately 26 FOIP requests to Service Alberta over a period of 25 months, which he says is approximately one request per month on a variety of topics. He makes access requests in his role as researcher for the Wildrose Critic for Service Alberta. He says that it is his public duty to research Service Alberta on topics the public is concerned about. As Service Alberta maintains the IMAGIS database that holds all the financial information for the Government of Alberta, his opinion is that it is sensible to request cross-ministry financial information from Service Alberta. Furthermore, this information is not available to the public through the online expense database hosted by Service Alberta, and is only available through the FOIP process.

Application of section 55(1) of the FOIP Act

1. Section 55(1)(a) – repetitious or systematic in nature

[10] In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007, available on my Office's website at www.oipc.ab.ca), the former Commissioner said that "repetitious" is when a request for the same records or information is submitted more than once, and "systematic in nature" includes a pattern of conduct that is regular or deliberate.

[11] There is no evidence before me that Mr. Johnson has made this same access request more than once. Therefore, I find that the access request is not repetitious.

[12] However, I find that Mr. Johnson's 26 access requests over a period of 25 months are systematic in nature, as they are part of a pattern of conduct that is regular or deliberate.

[13] Under section 55(1)(a), the requests must also unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests.

2. Section 55(1)(a) – unreasonably interfere with the operations of the public body

[14] This provision requires that Service Alberta provide me with evidence about how the particular access request it is seeking to disregard will unreasonably interfere with its operations. Service Alberta has not provided any evidence. In the absence of any evidence, I cannot find that Service Alberta has met this requirement.

3. Section 55(1)(a) – amount to an abuse of the right to make those requests

[15] In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007), the former Commissioner defined "abuse" to mean misuse or improper use. In that case, the Commissioner found that the applicant was not using the FOIP Act for the purpose for which it was intended, but as a weapon to harass and grind the College. He found that the applicant's requests were part of a long-standing history and pattern of behavior designed to harass, obstruct or wear the College down, which amounted to an abuse of the right to make those requests.

[16] My Office's 2011-2012 Annual Report summarized the Court's judicial review of a section 55 decision of the former Commissioner in *Clarence J. Bonsma v. The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office* (*Bonsma*, an oral decision of Clackson J. in Action Number 1103-05598), as follows:

> Alberta Employment and Immigration (the Public Body) applied to the Commissioner under section 55 of the FOIP Act to disregard the Applicant's access request. The Commissioner decided to authorize the Public Body to disregard the request.
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> On judicial review of the Commissioner's decision, the Court of Queen's Bench quashed the decision. The Court said that if requests are not the same, then the fact that there are numerous requests made regularly cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive. That is where the second part of section 55 becomes important. The ulterior motive is what establishes the abuse.
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> Since the request here was not repetitious, summary dismissal was dependent upon regular and deliberate requests and motivation. On the record, there was no basis to conclude that the Applicant was improperly motivated. Therefore, the Commissioner's conclusion that the Applicant's request was abusive was not reasonable.

[17] Furthermore, the Court expressed its view that a person defending what amounted to a summary dismissal application under section 55 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.

[18] Based on the Court's decision in *Bonsma*, I find that Service Alberta has the burden to prove that Mr. Johnson's request amounts to an abuse.

[19] There is nothing on the record in Service Alberta's application to establish that Mr. Johnson had an ulterior improper motive for making the access request. Mr. Johnson does not have to prove that his request was for a legitimate purpose. However, if he did have that burden, I would find that he has adequately explained that he makes access requests in his role as researcher for the Wildrose Critic for Service Alberta.

[20] I find that Service Alberta has not met its burden of proving that Mr. Johnson's access request amounts to an abuse. Therefore, section 55(1)(a) is not met.

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

[21] In *Request for Authorization to Disregard Access Requests – Edmonton Police Service* (November 4, 2005, available on my Office's website at www.oipc.ab.ca), the former Commissioner reviewed the meaning of "frivolous", which the *Concise Oxford Dictionary* (9th Edition) defined as paltry, trifling, trumpery; lacking seriousness, given to trifling, silly.

[22] The Commissioner considered Ontario Order M-618 [1995], in which the Ontario Information and Privacy Commissioner stated:

> "…Frivolous" 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…

[23] The Commissioner also reviewed the meaning of "vexatious", which *Black's Law Dictionary* (7th Edition) defined as without reasonable or probable cause or excuse; harassing; annoying.

[24] The Commissioner was further mindful of the following comments from Ontario's Information and Privacy Commissioner in Ontario Order M-618:

> …Government officials may often find individual requests for information bothersome or vexing in some fashion or another. This is not surprising given that freedom of information legislation is often used as a vehicle for subjecting institutions to public scrutiny. To deny a request because there is an element of vexation attendant upon it would mean that freedom of Information could be frustrated by an institution's subjective view of the annoyance quotient of a particular request. This, I believe, was clearly not the Legislature's intent.

[25] The Commissioner then stated in the *Edmonton Police Service* decision:

> [25] A request is not "vexatious" simply because a public body is annoyed or irked because the request is for information the release of which may be uncomfortable for the public body.
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> [26] 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 in order to obstruct or grind a public body to a standstill.

[26] There is nothing on the record in Service Alberta's application to establish that Mr. Johnson's access request is either frivolous or vexatious. Based on the Court's decision in *Bonsma*, there is no evidence of an ulterior improper motive for making the access request.

[27] I find that Service Alberta has not met its burden of proving that Mr. Johnson's access request is frivolous or vexatious. Therefore, section 55(1)(b) is not met.

My decision

[28] For the reasons stated above, Service Alberta's application to disregard Mr. Johnson's access request is denied. Service Alberta must now respond to that access request, within the time set out in the FOIP Act.

Jill Clayton
Information and Privacy Commissioner