ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

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

Town of Ponoka
(OIPC File Reference F8490)

August 11, 2015

Background

On September 24, 2014, I received an application from the Town of Ponoka (the Town) under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to disregard eleven of fourteen access requests received in an August 25, 2014 letter signed by four individuals who I will refer to as the Respondents in this application. The Town also sought authorization to disregard "any further requests relating to the issues at hand" from the Respondents.

I gave the Respondents an opportunity to comment on the Town's application. I received comments dated October 20, 2014 from one of the Respondents (the 1st Respondent), and joint comments dated October 21, 2014 from two of the other Respondents (the 2nd and 3rd Respondents). I did not receive comments from one Respondent (the 4th Respondent).

The Town responded to three of the fourteen access requests, identified as numbers six, nine and twelve in the August 25, 2014 letter. Therefore, the sixth, ninth and twelfth access requests are not the subject of the Town's application.

The 1st Respondent said that he wanted to withdraw the third access request, since the rewording of the second access request contained the third access request. Therefore, the third access request is not the subject of the Town's application since it is included in the second access request.

As a result, only the remaining ten of the Respondents' fourteen access requests are the subject of the Town's application.

For the reasons that follow, I am granting the Town's application and authorizing the Town to disregard the remaining ten of the Respondents' fourteen access requests contained in the August 25, 2014 letter. I am also granting the Town's application and authorizing the Town to disregard any further requests relating to the "issues at hand" from the Respondents, which is any issue about the 38th Street Local Improvement.

Commissioner's authority

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 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.*

The Town is a public body, as provided by section 1(i)(i), section 1(j)(iii), and section 1(p)(vii) of the FOIP Act.

The Town's general submissions

Even though only ten of the Respondents' August 25, 2014 access requests are now the subject of the Town's application, I have nevertheless briefly summarized below all fourteen of the access requests and the Town's responses to each of those requests, as set out in its application to me.

No.	Access request for:	Town's response:
1	Documentation showing the existence of this $33,600 waterline including its location and length, or acknowledging in writing that this waterline, they claim was for moving the hydrant, does not exist and provide accurate information of exactly what this $33,600 refund is for.	The August 18, 2011 FOIP Request Nos. IV and VII, and the Town's replies to those requests, cover the information requested here. The Town has already provided the design drawings and the as-built drawings, plus the tender documents and progress payment invoices for the 38th Street Local Improvement. This request is interrogating the records already produced, and it was already found in Order F2014-11 that the Town conducted an adequate search for records related to the 38th St. Local Improvement. The Town has no further records on this topic.
2	Documentation showing the location, length and cost of this claimed $14,700 waterline on 46th Ave. for which they are making this refund or acknowledge in writing that there was no $14,700 waterline installed on 46th Ave. and provide accurate information of exactly what this $14,700 refund was for.	[The 4th Respondent] asked this question in his March 18, 2013 letter to Town Council, Question 10, and his questions were addressed in Council Meetings. The Town has already provided the design drawings and the as-built drawings, plus the tender documents and progress payment invoices for the 38th Street Local Improvement. This request is interrogating the records already produced, and it was already found in Order F2014-11 that the Town conducted an adequate search for records related to the 38th St. Local Improvement. The Town has no further records on this topic.
3	Documentation of how many	See [the 1st Respondent's] requests found at: January 3, 2013

	meters of waterline were constructed on 46th Ave. for 38th St., it's location and the total length claimed and charged to 38th St. property owners plus the length constructed and the length charged to [name of individual].	Letter to Commissioner, pg 2 Item 3(b); July 16, 2012 Request for Review letter to Commissioner, pg 1; August 18, 2011 Request to Town of Ponoka, item IV See the Town's answers, #7 and #IV dated June 13, 2012. The Town has already provided the design drawings and the as-built drawings, plus the tender documents and progress payment invoices for the 38th Street Local Improvement. This request is interrogating the records already produced, and it was already found in Order F2014-11 that the Town conducted an adequate search for records related to the 38th St. Local Improvement. The Town has no further records on this topic.
4	Documentation showing that these $2,000 gas line and water service crossings were constructed and show their location or acknowledge in writing that they were not required or constructed and do not exist.	[The 1st Respondent] asked questions about gas lines in the March 18, 2013 letter to Council (#14) and the January 3, 2013 letter to the Commissioner (pg 2). The Town has already provided the design drawings and the as-built drawings, plus the tender documents and progress payment invoices for the 38th Street Local Improvement.
5	Documentation showing that the cost of [name of individual's] sewer connections and the insulation of one of the [name] private connections plus the $1,810 was not refunded and is still contained in the local improvement tax. Documentation of exactly what the extra work on [name of individual's] two lots was for, to show that this also is not another bogus charge.	This question was asked in the March 18, 2013 letter to Council (item p) and was discussed in meetings with Town Council. The Town has already provided the design drawings and the as-built drawings, plus the tender documents and progress payment invoices for the 38th Street Local Improvement. This request is interrogating the records already produced, and it was already found in Order F2014-11 that the Town conducted an adequate search for records related to the 38th St. Local Improvement. The Town has no further records on this topic. While worded as a request, this item in substance is an accusation and a request for a re-assessment of the local improvement tax, both of which are outside the scope of the FOIP Act.
6	Documentation showing the Descon Eng. Costs for 2007. The total amount of payments to Descon, including GST, for this entire local improvement. Any documentation showing authorization or an explanation why the cost has exceeded 11%.	The Town produced the 2007 Descon Engineering invoices in Appendix 2 below. The Town has also provided clarification on engineering costs: see answers 1 and V, dated June 13, 2012.
7	Documentation that their share of the tax from the full 150 feet of frontage has been refunded to the rest of the property owners or acknowledge in	This appears to be a request for a review and/or re-assessment of taxes, which is outside the scope of the FOIP Act. The Town did not change the Local Improvement Bylaw, and the tax rate was not changed. See the Town's 38 St. Local Improvement Review letter in

	writing that the rest of the property owners are still paying this shortfall of the Town's share.	Appendix 2, below, with attached calculation. The recalculation of frontage included the Town's property. The recalculation resulted in refunds to some property owners, and additional amounts owing to other owners (which amounts were forgiven). The refund proposed and approved by Town Council was based on administrative recommendations to attempt to reach a satisfactory conclusion for property owners (see June 4, 2014 letter from Deputy Mayor, Appendix 2). The actual Local Improvement Bylaw, corresponding debenture, and local improvement tax have not been changed.
8	Documentation showing some legislation, authorization or some legitimate reason why they can violate Sec. 397 of the Municipal Act and not pay their fair share of the sewer line costs.	This appears to be an accusation and a request for review / re-assessment of tax, not a request for information within the scope of the FOIP Act. There is no sewer line connection to the property in question, as the property is a reservoir with no need for sanitary sewer.
9	Documentation of what the [name] frontage of 177.37 Ft. is based on. Documentation of what the actual frontage of the [name] property is.	This is a new request. The Town has responded to this request in Appendix 2, below.
10	Documentation of how much interest they have already collected for these three removed items ($69,308). Documentation of how much interest they are still going to collect for the next 15 years for these removed items. Documentation of any authorization the Town has to withhold this money from the 38th St. property owners.	This appears to be an accusation and a request for review of the Town's accounting and / or a re-assessment of tax, not an information request within the scope of the FOIP Act. The refund proposed and approved by Town Council was based on administrative recommendations to attempt to reach a satisfactory conclusion for property owners (see June 4, 2014 letter from Deputy Mayor, Appendix 2). The actual Local Improvement Bylaw, corresponding debenture, and local improvement tax have not been changed.
11	Documentation or information of exactly what was contained in the initial cost estimate, to arrive at a cost estimate of $195,070. Who provided this cost estimate for the Town. (Note: This information would be contained in the original Local Improvement Plan.)	This is a repeat request for the Local Improvement Plan, which was already requested in the following: Request to Town, August 18, 2011 Item VI July 16, 2012 letter to Commissioner pg 1, Item b January 3, 2013 Letter to commissioner, pg 3 (item c) The Adjudicator found in Order F2014-11 (paragraphs 15-16) that the Town had already produced the documents comprising the Local Improvement Plan.

12	Documentation of exactly how much they paid for legal expenses for this entire project, including all the appeals and FOIP requests.	This is a new request. Lawyer's bills of account are presumed to be subject to solicitor-client privilege: "FOIP Guidelines and Practices" at pg 198 (accessed at http://www.servicealberta.ca/foip/documents/chapter4.pdf). The Town objects to producing the requested documents on the basis of privilege, but provides the requested information (total cost of legal services) in the Affidavit of [Ms. Q] – Legal Expenses, in Appendix 2, below. (See the Commissioner's FOIP Guidelines and Practices and the Solicitor-Client Privilege protocol, accessed at: http://www.oipc.ab.ca./Content_Files/Files/Publications/Protocol for Adjudication - External – 24 Oct 08.pdf).
13	Documentation or evidence of any kind, that the wrong doing and mismanagement of this project was the result of, "human error".	This is an interrogation or cross-examination of the Town, not an information request within the scope of the FOIP Act.
14	Documentation showing the correct present cost of water and sewer. Documentation showing the correct total frontage for water and sewer. Documentation showing the correct tax rate for water and sewer. Documentation showing the correct bylaw authorizing these tax rates.	The requested information is already public information contained in the Local Improvement Bylaw, and additionally has been produced in previous responses to the Applicants.

The Respondents' submissions

I have set out below some of the points that the 1st Respondent makes in his submission, which give a flavour of his issues:

- We believe this water line was not required or constructed and does not exist, making the Town's claim false and a wrongful charge in the tax.
- So a claimed cost of $33,600 for a water line to move the hydrant should be a real concern to an acting CAO and Council. Why aren't they concerned about this discrepancy? If not concerned, they are negligent in the performance of their duty, if they are trying to cover up some impropriety they are dishonest.
- The Bylaw for this local improvement tax charged 4.549% interest on the cost of this phantom water line…The interest would amount to about $8,000 over five years, bring the toal amount to about $46,000.
- "The Town has already provided the design drawings and as-built drawings,…" This statement is also misleading. Their drawing was issued at or before the time of construction, it is not an As-build drawing.

- Why is the hydrant shown moved in 08/08/2007? Was it intended that the hydrant would be constructed in the wrong place so it could be moved at a very high cost? How would they know before the hydrant was installed that it would need to be moved?
- The Town is claiming this 38th St. mess is the result of human error. Given the mismanagement, overcharges and injustice that permeates this project, to try to conceal the truth by claiming "human error" is simply unacceptable. They should be required to account for their claim of "human error".
- The tax rate in the Bylaw is no longer an accurate tax rate. However, the Town has not revised the Bylaw. Nor have they adjusted the tax payments to reflect the change.
- Rather than revise the bylaw, the Town arbitrarily raised the tax rate.
- By withholding this requested documentation in # 14, the Town is trying to conceal their negligence and the injustice of this unfair tax. The Municipal Act, Sec. 398 requires the Town to set a uniform tax rate. The Town now has three different tax rates, non [sic] of which are actually correct and non [sic] of them authorized in any Bylaw. Without a valid Bylaw the Town has no authority to impose a tax.
- …the Town has no intention to deal with the rest of the overcharges and wrongful charges.
- I believe the Town's own documentation which we have uncovered, through our FOIP requests, reveals a repetitious and systematic attempt to defraud 38th St. property owners.
- The following are a few examples of items we have not yet covered and wish to address in a future FOIP request:…
- They claim our questions are accusatory and inflammatory and they claim they have provide the information, yet they knowingly withhold thousands of dollars of refund money owed to 38th Street property owners.
- As stated above, the requested information in this request is still not complete.

The 1st Respondent succinctly summarizes his position in the last paragraph of his submission:

> What we have uncovered, clearly appears to be a deliberate, calculated attempt to bilk 38th St. Property Owners out of many thousands of dollars. The Town's actions clearly appear to be an attempt to evade and deny. I believe that makes them look guilty and implicates them in this entire mess. The requests that we have made with this request and those that we hope to make in our next request will assist us in obtaining a fair and equitable local improvement tax for 38th St. Property Owners.

In their joint submission, the 2nd and 3rd Respondents say, in part:

- The request for information from the Town of Ponoka began in 2009, to try and understand the local improvement tax that was being charged by The Town.
- Over the last five years request [sic] for any information were made under FOIP Act, not once, but up to three times, the information from The Town was incomplete or excuses were made that "it was a trade secret", there were human errors made, not in the public interest, third party information.
- In time and with study of volumes of documents with [the 1st Respondent's] help, we discovered several errors in the tax calculation, as The Town failed to comply with the Municipal Government Act. Is this what The Town considers frivolous or vexatious.
- As an example, there is one item for $33,600, listed in tender document [sic], to install a 250 mm TEE, c/w material required to install this TEE into a [sic] existing 250 mm water main. This "TEE" has now apparently become a $33,600 water line that was used to re-install a fire hydrant, that required moving as it was in the wrong location.

- It is our hope that the [sic] you are considerate of our struggle to seek information that is in the public interest.

Application of section 55(1) to the access requests

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

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.

In *Request for Authorization to Disregard an Access Request – Alberta Motor Association* (March 8, 2010, available on my Office's website at www.oipc.ab.ca), the former Commissioner decided that where a person applying to disregard an access request relies on previous complaints and requests for review made by a respondent as part of the evidence to be considered by the Commissioner, the Commissioner would consider that evidence because it was relevant to his analysis of whether the application should be granted. In that case, the Commissioner included a brief summary of the issues the respondents had brought before his Office, as against the person applying to disregard the access request.

I will also consider such evidence, since matters that an individual has brought to my Office as against a public body may be relevant where those matters demonstrate a pattern or type of conduct under consideration for the purposes of section 55(1) of the FOIP Act.

In this case, in Appendix 1 of the Town's application to me, the Town relies on Order F2014-11 as having dealt with most of the access requests that are now the subject of the August 25, 2014 access requests. The Town also relies on the December 13, 2013 affidavit of Ms. Q. that the Town had provided in the review and inquiry that resulted in Order F2014-11 (Case File F6324) and which it provided with its application.

Therefore, I will consider the December 13, 2013 affidavit of Ms. Q. I will also consider the September 23, 2014 affidavit (legal expenses) of Ms. Q., and the September 24, 2014 supplemental affidavit of Ms. Q. that the Town provided with its application.

In the Town's September 24, 2014 application to me, the Town makes the following submissions about the repetitious and systematic nature of the Respondents' access requests.

The Town says that this is the third information request under the FOIP Act that it has received related to the 38th Street Local Improvement. It points to all four Respondents' acknowledging their common cause in the August 25, 2014 Request and each having been involved in at least one of the previous requests since 2009. It says that the 1st Respondent has been at the center of all requests as either a person who has requested information or as an agent for the other persons who have made requests.

The Town further says that the requests since 2009 are related in subject matter to a series of requests by the 1st Respondent in the late 1990s and early 2000s. In 2002, the former

Commissioner had found that a fifth access request by the 1st Respondent to the Town was repetitious and amounted to an abuse of the right to make access requests. Furthermore, later in 2002, the former Commissioner found that the 1st Respondent had been the directing mind behind another such access request to the Town, which was no less an abuse of the right to make the access request than if the 1st Respondent had made the request himself.

The Town submits that the August 25, 2014 request is repetitive of previous requests, as the Respondents confirm that they are attempting to obtain answers to the same question, phrased slightly differently:

> Our initial request of the Town, March 9, 2009 was for, "a detailed cost breakdown of the 38th St. local improvement." After an intense five year struggle, despite the fact that we have uncovered a great deal of wrong doing, this is still basically what we are trying to obtain. **What was actually contained and approved in this local improvement, what are 38th St. property owners paying for and why?** [emphasis in original]

The Town says that the August 25, 2014 request is also repetitive of previous specific requests for which my Office has already conducted an inquiry and issued Order F2014-11. In Order F2014-11, the Adjudicator held that the Town had conducted an adequate search for records and had responded openly, accurately and completely to the 1st Respondent.

The Town also says that the current request is systematic (regular and deliberate) in that the Respondents have made requests in multiple fora and consider the August 25, 2014 requests as a continuation of a "five year struggle" to expose what they say is "serious wrong doing", "dishonesty", "deception", and "mismanagement" on the part of Town officials. The Respondents say:

> There is still more documentation we require but given the length of this request, we will make an additional request once we receive the Town's response to the above. We believe there is an alternative to the above requests and that is for Town Council to meet with us, come clean and tell the whole truth about this project. To date they refuse to do this. There is an obvious need for a full investigation!

The Town's evidence is that the Respondents' access requests are for the most part repetitious. From my review of all the material before me, I have summarized below the evidence showing that, of those requests that can be said to be access requests, most are repetitious as those access requests seek the same records and answers to the same questions as did previous access requests:

August 25, 2015 FOIP Access Request Number	**Included in:**
1	August 18, 2011 FOIP Request, Items IV and VII Order F2014-11
2	August 18, 2011 FOIP Request, Item IV January 18, 2012 FOIP Request, Item 5 Order F2014-11
3 (included in 2 above)	August 18, 2011 FOIP Request, Item IV

	July 16, 2012 Request for Review Letter to Commissioner, p. 1 January 3, 2013 Letter to Commissioner, p. 2, Item 3(b) Order F2014-11
4	July 16, 2012 Request for Review Letter to Commissioner, Item 2(b) (gas line crossings only) January 3, 2013 Letter to Commissioner, p. 2, Item 2(e)(i) March 18, 2013 Letter to Council, No. 14
5	March 18, 2013 Letter to Council (information relating to Dr. D. is attached to that letter (1st of 2 unnumbered pages, and p. 3) and is contained in Exhibit K to the December 13, 2013 affidavit of Ms. Q.) March 18, 2013 Letter to Council (information relating to insulation (Mr. H.) is attached to that letter (p. 3) and is contained in Exhibit K to the December 13, 2013 affidavit of Ms. Q.) Order F2014-11
6	New access request (part only) August 18, 2011 FOIP Request, Item VII June 13, 2012 Letter from the Town, answers 1 and V (Descon invoices from 2008) June 4, 2014 Letter from Deputy Mayor, Appendix 2 (Descon invoices from 2007 on)
7	Request for review/reassessment of taxes Not an access request June 4, 2014 Letter from Deputy Mayor, Appendix 2 (explanation provided)
8	Accusation, request for review/reassessment of tax Not an access request
9	New access request. June 4, 2014 Letter from Deputy Mayor, Appendix 2
10	Accusation, request for review/reassessment of tax Not an access request June 4, 2014 Letter from Deputy Mayor, Appendix 2
11	August 18, 2011 FOIP Request, Item VI July 16, 2012 Request for Review Letter to Commissioner, p. 1, Item b January 3, 2013 Letter to Commissioner, p. 3, Item c Order F2014-11
12	New access request. Total cost of legal services is contained in the September 23, 2014 affidavit of Ms. Q (Appendix 2, #5 to the Town's application)
13	Interrogation or cross-examination Not an access request
14	August 18, 2011 FOIP Request, Item VI January 18, 2012 FOIP Request, Items 1, 2, 5 June 13, 2012 Letter from the Town, answers 1, 2, 5, VI June 4, 2014 Letter from Deputy Mayor, Appendix 2 Order F2014-11

In any event, there is no doubt that the Respondents' access requests are systematic in nature. The access requests are part of a pattern of conduct in which the Respondents allege wrongdoing on the part of the Town in relation to the 38th Street Local Improvement, and seek answers to their questions and records to support their allegations of wrongdoing.

I find that the Respondents' access requests as set out above are repetitious, and in any event are systematic in nature, as they are part of a pattern of conduct that is regular or deliberate.

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

This provision requires that the Town provide me with evidence about how the particular access requests it is seeking to disregard will unreasonably interfere with its operations.

The September 24, 2015 affidavit of Ms. Q. deposes in part:

> 5. It is my sincere belief that no further records exist that are relevant to the August 2014 Request and have not already been produced to the Applicants. If the Town is required to respond to the balance of the Request, it would unreasonably interfere with the Town's operations.
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> 6. Based on my experience searching the Town's records to respond to previous related requests, many of which are identical or similar, I estimate that to respond to the August 2014 Request would require 3 – 5 days to perform a new search and to interview 3rd parties.
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> 7. The time required to respond to the August 2014 Request would unreasonably interfere with the Town's operations, for the following reasons:
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> a. There are currently several vacancies in the Town office, with remaining staff – including myself – covering the duties of more than one administrative position.
> b. Currently I am serving as Acting Chief Administrative Officer, and my already heavy workload does not have room to do a 3-5 day project.
> c. I am the only remaining management staff member that was involved in any way with the local improvement and has the experience to know how to respond to the Requests.
> d. If I were to delegate the task to another staff member, the estimated time to complete the response would increase, and my supervision would still be necessary. In addition, that staff member's duties would also suffer.
> e. The Town office has commenced work on next year's budget, which must take priority over most other tasks.

I am sympathetic to issues about staffing and the burden that places on public bodies to respond to access requests under the FOIP Act. However, if I were to accept staffing issues as a reason to allow public bodies to disregard access requests, many public bodies would apply to me to disregard. That is why staffing issues cannot be the reason for allowing an application under section 55. Instead, a public body may ask me for more time to respond, as provided by section 14 of the FOIP Act.

I find that the Town has not met its burden of proving that the Respondents' August 25, 2014 access requests would unreasonably interfere with its operations, particularly since the Town could simply ask me for more time to respond. Therefore, section 55(1)(a) is not met for those access requests.

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

I turn now to the issue of whether, because of their repetitious or systematic nature, the August 25, 2014 access requests would amount to an abuse of the right to make those requests.

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.

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.

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.

Based on the Court's decision in *Bonsma*, I find that the Town has the burden to prove that the Respondent's access requests amount to an abuse.

However, that finding does not end of the issue of whether there is abuse. Section 55(1)(a) clearly contemplates that the systematic nature of access requests, in and of itself, may amount to an abuse of the right to make those access requests. Section 55(1)(a) says nothing about motive, although an improper motive would clearly establish abuse.

As stated above, the former Commissioner defined abuse to mean misuse or improper use. The issue I have to decide is whether there is something about the systematic nature of the Respondents' access requests that are a misuse or improper use of the FOIP Act.

The Town submits that it has provided extensive evidence that the August 25, 2014 access requests are repetitious and part of a 30+ year pattern of systematic, deliberate attempts to prove allegations of fraud and wrongdoing. In the Town's submission, that purpose is both outside the scope of the FOIP Act and is motivated by an ulterior improper motive. The Town relies on the following decision of the former Commissioner.

In *Request for Authorization to Disregard Access Requests – Town of Ponoka* (April 10, 2002, available on my Office's website at www.oipc.ab.ca), which dealt with access requests by the same 1st Respondent as in this application, the former Commissioner said:

> I agree with the Town's submission that the Applicant's stated purpose of a declaration of truth or guilt or innocence cannot be accomplished through the FOIP Act. The Applicant's stated purpose reinforces my view that the Applicant is using the FOIP Act for a reason that has nothing to do with the FOIP Act, which is an improper use of the FOIP Act and amounts to an abuse of the right to make access requests.
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> In Order 2001-007, I said that the Town "tried to provide any documentation which touched on the issues raised by the Applicant". I found that the town fulfilled its section 10 [previously section 9] duty by making every reasonable effort to search for the records requested and by providing any information it thought might assist the Applicant.
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> However, the Applicant's fifth access request says that, even if the Town has previously provided the information to him, he wants that information again. In my view, that is also evidence that the Applicant's fifth access request amounts to an abuse of the right to make access requests under the FOIP Act. I do not believe that the FOIP Act intended that an applicant could submit and resubmit the same or similar access requests to a public body simply because an applicant does not like the information he obtained or is on a mission to establish the truth of some matter.
>
> Therefore, I find that, because of the repetitious or systematic nature of the Applicant's access requests, those access requests amount to an abuse of the right to make those access requests.

In summary, the Town submits that the August 25, 2014 access requests are abusive because:

- [Repetitious] They ask for the same records as previous requests, or for information contained in records already provided.
- [Outside the scope of the FOIP Act] They attempt to cross-examine the Town on previous statements, or on records previously produced.
- [Improper ulterior motive] They are motivated by a desire to force the Town to "come clean and tell the whole truth about this project" (see closing paragraph of August 2014 Request). The Town is invited to respond to accusations of dishonesty or wrongdoing. These accusations are not supported by evidence, and are attempting to invite the Town to prove that it is *not* corrupt – imposing an inappropriate onus of proof that is logically impossible to meet, and one that is not required by the Act.

The 1st Respondent's submission, parts of which I have set out above, establishes that, as was the case in 2002, the 1st Respondent is clearly on a mission to establish the truth of whether there is wrongdoing on the part of the Town concerning the 38th Street Local Improvement. As found by the former Commissioner and as I also find here, that is an improper use of the FOIP Act.

Furthermore, as was also the case in 2002, although most of the August 25, 2014 access requests have already been dealt with in Order F2014-11, the 1st Respondent and the other Respondents continue to make the same or similar access requests about the 38th Street Local Improvement. They do so even though my Office held in Order F2014-11 that the Town conducted an adequate search to locate responsive records. Continuing to make access requests for the same records dealt with in Order F2014-11 clearly amounts to an abuse of the FOIP Act.

I find that the Town has met its burden of proving that the Respondents' August 25, 2014 access requests amount to an abuse of the right to make those requests. Therefore, section 55(1)(a) has been met.

During the time in which I was considering the Town's application, the 1st and 4th Respondents sent further letters to the Town about the 38th Street Local Improvement. Although the Town provided those letters to me, I did not find it necessary to consider those letters in the Town's application.

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

Since I have found that section 55(1)(a) is met for the Respondents' access requests, I do not find it necessary to decide whether section 55(1)(b) has also been met. However, if I am found to be wrong under section 55(1)(a), I reserve the power to decide whether section 55(1)(b) has been met.

Application of section 55(1) to future requests

As to the Town's request for authorization to disregard future requests from the Respondents, I have reviewed what the former Commissioner said about disregarding future access requests in *Request for Authorization to Disregard an Access Request – Alberta Motor Association* (March 8, 2010, available on my Office's website at www.oipc.ab.ca).

In that case, the former Commissioner considered *Mazhero v. The Information and Privacy Commissioner of British Columbia*, 1998 CanLII 6010 (B.C. S.C.), in which the British Columbia Supreme Court said, at paragraphs 28 and 29:

> However, in my view, there will be situations where it would be appropriate for the Commissioner to authorize a public body to disregard all future requests for general information where the applicant has so abused his or her right of access to records that the Commissioner is able to conclude with reasonable certainty from the nature of the previous requests that any future request by the applicant would unreasonably interfere with the operations of the public body. Coultas J. gave potential examples of such situations in *Crocker* [footnote omitted] when he referred to applicants making

> repeated requests in bad faith or making frivolous and vexatious requests. But only in very exceptional circumstances would it be appropriate, in my view, for the Commissioner to authorize a public body to disregard all future requests for personal information (or a type of personal information).
>
> As a general rule, even though the Commissioner has determined that the repetitive or systematic nature of past and pending requests represents an unreasonable interference with the operations of a public body, he should not generally authorize a public body to disregard all future requests for records (or a type of records) without regard to whether any such requests will unreasonably interfere with the operations of the public body. As stated by Coultas in *Crocker*, the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body. This is especially so when the requests related to personal information for two reasons. First, personal information is more restricted by its nature and it is less likely that a request for personal information will unreasonably interfere with the operations of the public body. Second, the applicant has a stronger claim to have access to records of a personal nature than to general records.

However, in this case, the Respondents' access requests are not for their own personal information, and so the *Mazhero* decision has little application to this case.

The Town must establish that future requests from the Respondents will meet the requirements of section 55(1). I am satisfied with the evidence the Town has already provided to me that any future access requests about the 38th Street Local Improvement would amount to an abuse of the right to make those requests, for the same reasons set out above.

Therefore, I am authorizing the Town to disregard any future access requests the Respondents, or anyone acting on their behalf, may make about the 38th Street Local Improvement.

My decision

For the reasons stated above, I grant the Town's application and authorize the Town to disregard the remaining ten of the Respondents' fourteen access requests contained in the August 25, 2014 letter. I also grant the Town's application and authorize the Town to disregard any future access requests from the Respondents, or anyone acting on their behalf, about the 38th Street Local Improvement.

Jill Clayton
Information and Privacy Commissioner