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

University of Alberta
(OIPC File Reference 000234)

September 23, 2015

The University of Alberta, in a letter dated February 6, 2015, requested authorization under s. 55 of the *Freedom of Information and Protection of Privacy Act* ("FOIP") to disregard an access request made by an individual (the "Applicant").

I have reviewed the submissions of the University and the Applicant and have decided to authorize the University's request. Accordingly, the University is not required to respond to the Applicant's request to access his personal information. My reasons are set out below:

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(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 the requests are frivolous or vexatious.

Background

Since 2013, the Applicant made three requests to the University to access his personal information; some portions of these requests were for new information, but they also overlapped with his previous access requests.

In its submission, the University provided detailed background information about the Applicant's requests for access and I have included excerpts from the University's submission below. In his April 10, 2015 submission the Applicant confirmed he has no issue with the University's

characterization of the factual backgrounds of Request Files 2013-009, 2013-038 and 2015-005. The University stated:

> *Request File 2013-009*
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> In March 2013, the Applicant requested records regarding himself held by the University's Augustana Campus and UAPS for the period of January 1, 2007, to March 15, 2013 (File 2013-009). The University located 76 pages of responsive records and provided to the Applicant copies of records and response correspondence dated May 21, 2013.
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> In this response correspondence, the Applicant was advised of the ability to request a review from the Information and Privacy Commissioner. At the time the Applicant picked up the records at the University's Information and Privacy Office, I also advised him verbally of his right to seek a review of the University's response.
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> In explaining the timing of the release of records, this response correspondence also referred to an April 2013 phone conversation with the Applicant in which he was advised that the University would conduct third party consultations with individuals whose personal information appeared in the responsive records prior to a response to the access request (third party consultations having occurred prior to issuance of the response correspondence). Thus the Applicant was clearly made aware that access requests can lead to consultations with third parties.
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> *Request File 2013-038*
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> In November 2013, the Applicant made a second access request for records related to himself by Augustana Campus, UAPS, and the Provost's Office (File 2013-038).
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> I confirmed in correspondence dated December 2, 2013, that the request in File 2013-038 duplicated in part the request in File 2013-009, as well as seeking additional records from the Provost's Office for the period June 1, 2012 to November 8, 2013, and records from all three areas (Augustana Campus, UAPS, and the Provost's Office) for the time period March 6, 2013, to November 7, 2013.
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> This correspondence confirmed that the Applicant had stated that he no longer had the records released to him in relation to File 2013-009 and that he had requested an additional copy of these records. As a courtesy, and at no charge to the Applicant, the University provided him with an additional electronic copy of the records previously released to him pursuant to File 2013-009. Therefore, the Applicant has previously been provided with a copy of the records in File 2013-009 on two occasions: in May 2013 and in December 2013.
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> As far as the University is aware, the Applicant never requested a review of the University's response in either File 2013-009 or File 2013-038.

Request 2015-005 (and Related Requests)

In the current 2014 request (the "2014 Request"), the Applicant seeks information regarding himself which overlaps substantially with the two earlier requests in the 2013-009 and 2013-038.

The 2014 Request was first made on October 20, 2014, by the Applicant's legal counsel. The University sought to clarify the scope of the request in correspondence dated October 22, 2014. On December 10, 2014, the Applicant's legal counsel stated that the request was for records held by UAPS and the Augustana Campus, for the time period June 20, 2010 to December 10, 2014. The University sought further clarification of the scope of the request and of the signed consent by way of correspondence dated December 12, 2014.

By way of correspondence dated December 15, 2014, the University confirmed a telephone conversation with counsel for the Applicant in which Applicant counsel stated that the 2014 Request included "a copy of the records already released to the applicant in his two previous access requests", thus that the Applicant was again requesting the records in Request 2013-009 and 2013-038, in addition to additional records post-dating these earlier requests (the "Additional Records").

In correspondence dated December 16, 2014, counsel for the Applicant made the following statement regarding the 2014 Request:

> I also confirm that we are aware that it is likely that some, if not most of the records that we are requesting have been disclosed to [the Applicant] on two prior occasions, (see your reference numbers 2013-038 and 2013-009). We are aware that the requested information you disclose to us on this occasion will likely contain the same redactions as the information [the Applicant] received on two prior occasions. For his previous requests, [the Applicant] has passed the limitation date to request a review. **So, our intention in requesting the same information a third time is for the limitation date to renew on the redacted materials, which will allow [the Applicant] to request a review.**
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> [Emphasis added.]

The University again sought confirmation of the scope of the 2014 Request because the time period referenced by the Applicant's counsel was different than that referred to by counsel for the Applicant in the earlier telephone call. In further correspondence dated January 22, 2015, the University confirmed that the 2014 Request was a request for records previously provided to the Applicant in Request 2013-009 and Request 2013-038, as well as for the Additional Records (which post-dated the earlier requests) and for records relating to the Information and Privacy Office's processing of the earlier requests ("Processing Records"). This letter indicated that the University now had the necessary information to commence processing the 2014 Request.

> Therefore this request for authorization to disregard relates solely to the aspect of the 2014 Request which is repetitive (the request for records previously provided to the Applicant twice in relation to File 2013-009 and once in relation to File 2013-038).

As stated previously, the Applicant took no issue with the University's above characterization of the background facts, but added the following information in his submission:

> Regarding Request Files 2013-009 and 2013-038, the Applicant informs me that he did not request a review for those files as he had expected that his issues would be addressed and resolved by the University Administration without having to resort to requesting a review by the Privacy Commissioner. The Applicant genuinely believed that his issues would be resolved by Administration. Unfortunately, his issues were not resolved and, by the time he realized that was the case, the time to request reviews had passed.

Application of section 55(1) of the FOIP Act

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

In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007, "*Grant MacEwan"*), 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.

The evidence before me demonstrates, and the Applicant acknowledges that his requests are repetitious. The Applicant is again requesting the records he received from the University in 2013-009 and 2013-038. He states, "[t]he purpose of the repeated request is to refresh the limitation period for a request to review".

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**

The University has neither argued nor provided any evidence that the Applicant's request would unreasonably interfere with its operations. Therefore, there is no need for me to consider whether this provision is met.

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

The University bears the burden to prove that the Applicant's request amounts to an abuse (See *Request for Authorization to Disregard an Access Request – Service Alberta* (August 27, 2014), at paras. 16 - 18).

The University's submission that the Applicant's access request is abusive is as follows:

The University submits that the request amounts to an abuse of the right to make access requests. "Abuse has been defined in the context of the FOIPP Act as meaning "misuse" or "improper use": Grant MacEwan decision at para. 31. An abuse of the right to make requests may also be established through admissions or conduct indicating that the applicant intends to be burdensome or harassing.

Despite the fact that University has made every effort to assist the Applicant, and the fact that he is represented by legal counsel in making the request in File 2015-005, the University submits that the history of this matter and the correspondence sent on behalf of the Applicant shows that he is attempting to make improper use of the FOIPP Act.

The Applicant has requested information that he had already obtained from the University through previous access requests. He did not challenge the University's response at the appropriate time despite being apprised of this right twice in writing and once in person. The Applicant and his counsel acknowledge the repetitive nature of the request.

The stated purpose of the access request is not to gain access to records, as this had already been accomplished on more than one previous occasion, but was rather to restart long-expired limitation periods. This does not accord with the access principles in the FOIPP Act and is an abuse of the right to make requests. The Act does not permit an applicant to submit and resubmit the same or similar access requests to a public body simply because the applicant does not like the information obtained: Alberta Municipal Affairs decision at page 3 of 4.

A further unstated (and abusive) purpose for making an access request would be to cause further distress to, or engage in further indirect contact with, the Third Party. The Applicant was specifically advised that access requests lead to consultation with affected third parties. The Applicant's repeated access request for the same records involving the Third Party's personal information appears to be an attempt to repeatedly engage in processes with affect the Third Party and which he may believe necessitates contact with the Third Party. This is evidence that the Applicant is using the FOIPP Act as retaliation, or as a tool for harassment. This too amounts to an abuse of the right to make access requests under the FOIPP Act.

The Applicant has also brought complaints regarding the actions of the Officer, and has brought a tort action against the University and the Officer. Should he prosecute his tort action against these parties, the Applicant would presumably be entitled once again to access relevant records through the litigation discovery process. Although the FOIPP Act access process is separate from any other right to records such as through the litigation discovery process, this additional element makes it clear that the Applicant does not make his access request in order to seek access to records: see e.g. Manulife decision at paras. 35 to 39.

> The [Applicant] apparently feels aggrieved by the actions of the University and its employee, the Officer. He appears to be attempting to make repeated access requests in order to retaliate against, or harass, the University and its employees.
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> In the result, the Applicant's repetitive access request is admittedly for a purpose other than acquiring records under the FOIPP Act because he has already received the very records he now requests (and which would be available to him in other settings such as in relation to litigation). It would also have the potential effect of further harassment of, or retaliation against, the University and its employees, the Officer and the third party. The University submits that the circumstances show the Applicant to be acting in a manner that is an abuse of the right to make access requests under the FOIPP Act and seeks relief pursuant to section 55(1)(b).

In *Grant MacEwan*, the former Commissioner found that the Applicant was not using FOIP for the purpose for which it was intended, but rather, as a weapon to harass and grind the College. On the evidence before me, I am not satisfied that the Applicant is attempting to harass the University, but the evidence from both parties is clear that the Applicant's purpose in making this request is not to gain access to his personal information. Access requests made for a purpose other than obtaining access are abusive.

In this case, the Applicant states that his purpose in repeating his request is to "refresh" the limitation so that he can request a review of the University's redactions. The University argues that his purpose does not accord with the principles of FOIP; however, the Applicant points out that one of the stated purposes of the Act, in s. 2(e) is "to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act".

I agree with the Applicant regarding the purpose of FOIP set out in s. 2(e); however, FOIP also establishes a strict time limit within which an applicant must request a review. Section 66(2) of FOIP states:

> 66(2) A request for a review of the decision of the head of a public body must be delivered to the Commissioner
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> (a) if the request is pursuant to section 65(1), (3), or (4), within
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> (i) 60 days after the person asking for the review is notified of the decision, or
> (ii) any longer period allowed by the Commissioner.[1]

The Applicant has already been provided access to his personal information by the University. He failed to request a review within the statutory time limit. Although the Applicant's stated

[1] In his submission, the Applicant requested authorization to extend the time limit under s. 66(2)(b); however, this is a new and separate issue from the University's request under s. 55. In a letter dated July 24, 2015 from my office, the parties were informed that this new issue would be considered after I issued my decision on the request for authorization under s. 55. Both parties will have an opportunity to provide submissions on this new issue in due course.

purpose of repeating his access request so that the University's redactions can be reviewed by my office is in accordance with one of the purposes of FOIP, he did not make a request for review within the statutory time limit. The purpose of the Applicant's request is not to gain access to his personal information, and therefore, I consider it to be an abusive request.

The University has further asserted that the Applicant has an unstated and abusive purpose in making his request, which is to cause distress and to engage in indirect contact with a Third Party. The only evidence provided by the University however, is the Applicant's various requests, and correspondence between the parties.

The Applicant's response to this allegation about an unstated motive is as follows:

> [The University's] submission that the Applicant is making the request to "cause further distress to, or engage in criminal conduct with, the Third Party," and to retaliate against and harass the University and its employees, is pure speculation. Other than speculation, [the University] has provided no evidence that the purpose of the Applicant's request is for retaliation or to harass.
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> Additionally it follows that [the University] is implying that counsel is enabling the Applicant to engage in criminal conduct, which is, harassing [the Third Party] and harassing and retaliating against the University, and its employees. We deny any implications of that nature.

There is nothing in the University's evidence on which I can conclude that the Applicant has an additional unstated and abusive motivation in making his access request. I agree with the Applicant that the University's claim regarding his additional motive in making the request is speculative.

The University further argues that the Applicant may gain access to the requested information through litigation; however the ongoing court proceedings are not a consideration for me in this case. I have held on numerous occasions, as have former Commissioners, that the fact that there are other parallel proceedings occurring does not affect a FOIP access request.

On the basis of the evidence before me, it is clear that the Applicant's purpose in requesting access to his personal information is not to gain access to his personal information, and is therefore an abusive purpose. The University has met its onus to prove the conditions of section 55(1)(a) are met.

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

Because I have found that the University has established that the conditions under s. 55(1)(a) are met, it is not necessary for me to consider s. 55(1)(b).

Decision

For the reasons stated above, the University of Alberta's application to disregard the Applicant's access request is granted. The University of Alberta is not required to respond to the Applicant's request for access.

Request for Authorization to Disregard Future Requests

The University also requested authorization to disregard any future access requests from the Applicant regarding the same records at issue in files 2013-009, 2013-038 and 2015-005 for a further period of five years.

The former Commissioner stated, "An individual's right of access to his or her personal information is fundamentally related to one's dignity and sense of self, and a decision to take that right away from an individual is not one I make lightly" (*Alberta Motor Association: Request for Authorization to Disregard an Access Request under s. 37 of the Personal Information Protection Act*, March 8, 2010). Although I find that this particular request is abusive because it is not for the purpose of obtaining access to his personal information, I am reluctant to grant authorization to the University to disregard future requests at this time. The Applicant is now represented by legal counsel, and should therefore be unlikely to make future access requests for personal information to which he has already received access. If the Applicant makes any requests for access to the same information in the future, I will consider granting authorization, should the University make a request.

Other Considerations

My office will be in contact with the parties shortly with respect to the Applicant's request to extend the time period to request a review under s. 66(2)(a)(ii) of FOIP.

Jill Clayton
Information and Privacy Commissioner