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

Calgary Police Service
(OIPC File Reference 006221)

November 29, 2017

[1] The Calgary Police Service (the "Public Body"), in a letter dated August 9, 2017, requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy* ("FOIP" or the "Act") to disregard three access requests made by an individual (the "Applicant"). The Public Body also requested authorization to disregard any future requests from the Applicant of a similar nature.

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) states:

> *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.*

[3] Access and privacy legislation has been deemed "quasi-constitutional" by the Supreme Court of Canada.[1] It allows individuals to access their own personal information, as well as information about public bodies. The fundamental importance of these rights were explained in *Dagg* as follows:

> The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure, first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.[2]

[4] Accordingly, the power that has been granted to me under FOIP to authorize a public body to disregard an access request is not one I take lightly. However, the rights granted to individuals under

[1] For example, see *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 and *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62.
[2] *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403 at para 61 ("*Dagg*")

FOIP are not limitless and, in recognition of the potential for various abuses, the Alberta Legislature included section 55 in the Act when it came into force.

[5] A decision under section 55 is a discretionary "may" decision. As a starting point, when making a request for authorization to disregard an access or correction request, a public body bears the onus to establish that the conditions of either section 55(1)(a) or (b) have been met. In order for me to authorize a public body to disregard a request, a public body must provide evidence that all of the necessary conditions of section 55 are met. Bare assertions or argument are insufficient. If a public body establishes that the conditions of either section 55(1)(a) or (b) have been met, then I must exercise my discretion to decide whether to grant the public body's request.

Background

[6] On August 4, 2017, the Applicant made two access requests under FOIP to the Public Body, and on August 8, 2017, he made a further access request. The Applicant's access requests follow the same format, but identify different time periods and nine (9) employees of the Public Body. The Applicant's impugned access requests have been included in their entirety as Appendix A, but I have outlined their general format below:

> I would like to request any and all emails, to and from; texts, to and from; bbm messages, to and from; Livelink messages and the like, to and from; audio and video, records of any phone calls, briefings, transcripts, diaries, chat room messages of any kind, messenger service of any kind, written correspondence of any kind, files of any kind, written material of any kind, letters, drawings, photos, faxes, reports of any kind, decisions of any kind, reporting of any kind; consultations and/or interpretations of any kind, reviews, written summaries of any kind, analyses of any kind, assessments of any kind; notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication and material of any kind in any format, of the following individual[s]; [named employee(s) of Public Body], involving myself, [Applicant's name, DOB], between the time period of [date] to the present.

[7] On August 9, 2017, the Public Body submitted a request to me under section 55(1) of FOIP for authorization to disregard the Applicant's three (3) access requests, as well as any future requests of a similar nature made by the Applicant. The Applicant was then provided an opportunity to comment, and provided submissions to me on September 22, 2017.

[8] Prior to providing his submission, the Applicant requested and received confirmation from the Public Body that its section 55 request had come from the head of the Public Body. More particularly, an employee of the Public Body confirmed that the head of the Public Body had delegated his authority under section 85(1) of the Act to that employee to make the request to disregard the Applicant's access requests. My decision under section 55 of the Act is issued to the head of the Public Body.

The Public Body's Submissions

[9] I will not repeat the Public Body's submissions in their entirety, but have summarized them in this section. The Public Body provided background information as follows:

> [The Applicant] has been involved in a protracted domestic dispute with his ex-wife that escalated to the point when the Calgary Police Service attended. [The Applicant] was not satisfied with the CPS' investigation in one instance. He has complained to the Professional Standards Section (PSS) about the conduct of the officers who attended at

> his residence and that complaint as well as others he has launched, is currently being investigated. The allegation in the complaint is that [the Applicant] was assaulted by his wife but that the CPS officers did not believe him and charged him with assault instead.
>
> [The Applicant] has engaged in a systematic course of administrative harassment that ultimately caused the Calgary Police Service to block his ability to email any CPS member. In 2016, [the Applicant] sent 263 emails to various CPS members and in 2017, as of June 29, he sent 945 emails, 109 in the month of June.

[10] Since October, 2015, the Applicant has made 20 access requests, involving 81 employees of the Public Body (it is not entirely clear from the Public Body's submission whether the access requests target 81 separate employees, or if there may be some overlap). The Public Body provided a summary of the Applicant's 20 access requests to the Public Body as well as its responses, which have resulted in the disclosure of approximately a thousand pages to the Applicant.

[11] I have reviewed the Applicant's 20 access requests to the Public Body. His first two requests in 2015 were for police reports involving himself. In 2016, in addition to police reports, he began requesting additional information relating to himself, his children and his wife. As he received responses from the Public Body, his requests became broader and began naming specific individuals within the Public Body. For example, in his seventh request (the Public Body's file 2016-P-1431), the Applicant named 46 individuals within the Public Body and received 195 pages in response. Several of the Applicant's access requests identified individual CPS members and requested that they "state, summarize and report his relationship with my wife". The Applicant's last dozen or so access requests follow the pattern of the three access requests at issue in this case.

[12] In its submission, the Public Body noted that of the Applicant's 17 access requests made prior to this section 55 request, he has also asked my office to review the Public Body's response in approximately half (8) of them. As the Public Body stated, "To the extent there are any concerns about the responsiveness of the Public Body, those concerns can be dealt with through the review process." It further stated:

> In the present case, we have 17 prior requests, one of which we have agreed to handle as a continuing request so that the Applicant has updates should additional records be created. All of these requests go back to the one attendance by the CPS in response to a domestic complaint and the subsequent fall out from that one incident where the Applicant was unhappy with his treatment. Even if the Applicant's complaints about the CPS members who attended at that incident are justified, the repeated requests for access to information no longer are fulfilling the function of the Act which is to foster open and transparent government. The Public Body submits that the repeated requests for access to information not only do not relate to the purpose of the Act but that they are frivolous and vexatious.

[13] The Public Body also provided a copy of its June 29, 2017 letter to the Applicant which outlined the restrictions it was placing on the Applicant's ability to communicate with it and the reasons for those restrictions.

The Applicant's Submissions

[14] The Applicant takes issue with the Public Body's characterization of the domestic dispute in which he was involved, as well as many of the statements employees of the Public Body have made about or in relation to him in records he has obtained through his access to information requests.

[15] As with the Public Body's submissions above, I will not repeat the Applicant's submissions in their entirety. The Applicant's submissions focus almost entirely on his allegations of wrongs committed by various employees of the Public Body against him. Very generally, the theme of his submissions appear to relate to his belief in a campaign or conspiracy to hide wrongdoing within the Public Body. He makes numerous allegations about employees of the Public Body in that their "deliberate actions […] have intentionally, in bad faith contravened [sections of the Act]". He alleges that certain employees have "intentionally obstructed the performance of the duties, powers, and functions under [FOIP, the legal profession, and the public]". He alleges certain employees have "also willfully participated in the intentional and malicious attempts at restricting me, [the Applicant], from efficiently communicating with the CPS [and creating a full audit trail of such communications]". He alleges that a certain employee "has willfully and repeatedly conducted himself in a highly inappropriate, unethical and illegal manner (over a prolonged period of time) and has created numerous intentional conflicts of interest for himself." The Applicant states:

> A long audit trail developed which revealed that multiple CPS Constables had attempted to "diagnose" me with numerous personality disorders and mental health issues in various reports and "off the cuff" emails (all obtained through access to information requests). Multiple officers had threatened my arrest and had filed false and misleading police reports in an attempt to portray me, [the Applicant] as dangerous with allegedly "escalating behaviours".

[16] He explained that he has used the information he has received from his access requests to file valid complaints as follows:

> [A CPS employee] has purposefully attempted to block the flow of access to my own personal information – which is my right under law, so as to protect various members of the CPS (including himself) that have contravened the FOIP Act or have conducted themselves unethically, against their own Sworn Oaths of Duty and/or illegally – as [a CPS employee] is obviously of the opinion that I, [the Applicant], will file additional valid complaints against Constables of the CPS or other public employees of the CPS using information that is provided to me through my access to personal information requests (please see selected attached enclosures (and required email correspondences) regarding the types of valid complaints (and email correspondence in relation to those valid complaints that I, [the Applicant], have filed to date with the CPS' Professional Standards Section ("PSS")…

[17] Although it is not entirely clear from the Applicant's submission, he appears to argue that because his complaints about CPS members have been investigated by the Professional Standards Section, they are not frivolous or vexatious. He states:

> It is my understanding that each of my complaints to the CPS' PSS are reviewed by an internal committee before such complaints may proceed as a formal investigation. In each instance, my complaints have, indeed, proceeded forward – hence, they have not been deemed frivolous, repetitive or vexatious. Please take note that it is extremely time consuming for me to gather the relevant evidence and write such lengthy and detailed complaints. As a professional [redacted], I am also very cognizant of the taxpayers' costs which are associated with each formal investigation."

[18] The Applicant's submissions demonstrate, in my view, a desire to examine in detail the daily workings within the Public Body. He provided copies of many of his communications with the

Public Body. As an example, I have reproduced, in part, a June 29, 2017 letter the Applicant sent to an Access & Privacy Administrator within the Public Body:

> Please note that I had called the FOIP Unit of the Calgary Police Service this morning (at approximately 10:22 am) and spoke with the administrative assistant. The receptionist seems to be very familiar with my name and would not connect me to you as was directed in the letter dated May, [redacted] 2017. The receptionist also stated that I am only to correspond with the CPS' Access & Privacy Unit via letter mail going forward. Please kindly advise as to which individual gave this directive. I had left my phone number [redacted] and requested for [named CPS employee] to contact me via telephone to discuss this matter as I was informed that everyone within the CPS' Access and Privacy unit was away from the office when I had called. Apparently, all employees of this unit were in training. [Named employee], could you please kindly confirm in writing that you were in training at 10:22 am this morning? Could you also confirm that all employees of the Access & Privacy unit (with the exception of the receptionist) were also in training at 10:22 am. Please be advised that it would be extremely easy for me to obtain all of the records relating to this training session. Again, as we both know, this is a public body.
>
> Please note that I wish to be contacted via email regarding the status of my ongoing FOIP Access Request. Also please be informed that I will be bringing this very bizarre action of the CPS' Access & Privacy Unit of arbitrarily restricting my access to emailed FOIP requests to the OIPC of Alberta, the Calgary Police Commission, the Alberta Ombudsman and the Court of Queen's Bench of Alberta.
>
> I ask that you personally, and all individuals of the CPS' Access & Privacy unit follow the law and the relevant Acts.
>
> Govern yourselves appropriately.

Application of section 55(1)(a) of FOIP

[19] The rationale behind section 55 was explained by Commissioner Work when he stated:

> The FOIP Act was intended to foster open and transparent government (Order 96-002 [pg. 16]). Section 2(a) and section 6(1) of the FOIP Act grants individuals a right of access to records in the custody or under the control of a public body. The ability to gain access to information can be a means of subjecting public bodies to public scrutiny.
>
> However, the right to access information is not absolute. The Legislature recognizes there will be circumstances where information may be legitimately withheld by public bodies and therefore incorporated specific exceptions to disclosure to the FOIP Act. Section 2(a) of the FOIP Act states the right of access is "*subject to limited and specific exceptions*" as set out in the FOIP Act. Section 6(2) of the FOIP Act states that the right of *access* "*does not extend to information excepted from disclosure*" under the FOIP Act.
>
> In my view, the Legislature also recognizes that there will be certain individuals who may use the access provisions of the FOIP Act in a way that is contrary to the principles and objects of the FOIP Act. In Order 110-1996, the British Columbia Information and Privacy Commissioner wrote:

> *"…The Act must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act…"*
>
> Section 55 of the FOIP Act provides public bodies with a recourse in these types of situations.[3]

[20] Courts have long recognized that an individual's ability to exercise rights is not unlimited. In the past few years especially, courts across Canada have dealt with a variety of abusive and vexatious litigants, and in my opinion, their findings provide helpful guidance in the interpretation of section 55 of FOIP. The Court's ability to limit rights was addressed by Justice Verville when issuing a vexatious litigant order:

> There is no dispute that a person cannot be denied access to Canadian courts. However, that right of access is not unlimited. Chief Justice McLachlin in *Trial Lawyers Association of British Columbia*, at para 47, explains:
>
> > …There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice.[4] (emphasis in original)

[21] In *Re Boisjoli*[5] Associate Chief Justice J.D. Rooke, identified various means by which a vexatious litigant may be identified:

> The potentially vexatious character of a litigant is tested in a broad context. A court may consider:
>
> 1. conduct both inside and outside the courtroom (*Bishop v. Bishop*, 2011 ONCA 211 at para 9, leave denied [2011] SCCA No 239);
> 2. the litigant's entire court history (*McMeekin v. Alberta (Attorney General)*, 2012 ABQB 456, 543 AR 132 ["Mcmeekin #2"] (Shelley J); *Curle v. Curle*, 2014 ONSC 1077 at para 24), and
> 3. litigation in other jurisdictions (*Fearn v. Canada Customs*, 2014 ABQB 114 at paras 102-103, 586 AR 23 (Tilleman J)).
>
> *Chutskoff v. Bonora*, at para 92, surveys the indicia of vexatious litigation identified in the *Judicature Act*, s 23 and case law, and identifies 11 subtypes:
>
> 1. collateral attacks,
> 2. hopeless proceedings,
> 3. escalating proceedings,
> 4. bringing proceedings for improper purposes,
> 5. initiating "busybody" lawsuits to enforce alleged rights of third parties,
> 6. failure to honour court-ordered obligations,
> 7. persistently taking unsuccessful appeals from judicial decisions,
> 8. persistently engaging in inappropriate courtroom behaviour,
> 9. unsubstantiated allegations of conspiracy, fraud, and misconduct,

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[3] Application by Alberta Municipal Affairs to disregard an access request made by an applicant under the *Freedom of Information and Protection of Privacy Act*. Available online at: https://www.oipc.ab.ca/media/134022/Section55_MunicipalAffairs_2002.pdf

[4] *Hok v. Alberta*, 2016 ABQB 651 at para 30

[5] *Re Boisjoli*, 2015 ABQB 629

10. scandalous or inflammatory language in pleadings or before the court, and
11. advancing OPCA strategies.

> This is not an exhaustive list. *Any* of these are a basis to declare a litigant is vexatious, end abusive litigation and restrict future access to the courts.[6]

[22] As discussed above, when making a request under section 55 of the Act, the Public Body bears the burden to prove the necessary conditions have been met. The only requirement for an applicant is to demonstrate the request has merit[7]. Based on the Applicant's submissions, I am satisfied that among his reasons for requesting information, he believes it is a legitimate purpose that he wants to obtain more information to file more complaints against members of the Public Body for the wrongs he has perceived against him.

[23] If a Public Body meets its burden, then I must decide whether to exercise my discretion to authorize the public body to disregard the request at issue.

1. Section 55(1)(a) – Repetitious or Systematic in Nature

[24] In a previous decision, Commissioner Work defined "repetitious" and "systematic in nature" as follows:

- "Repetitious" is when a request for the same records or information is submitted more than once;

- "Systematic in nature" includes a pattern of conduct that is regular or deliberate.[8]

[25] The Applicant has made a total of 20 access requests to the Public Body since October, 2015. The Public Body responded to 17 of them (prior to making this request under section 55), and is treating one of his access requests as a continuing request so that the Applicant will receive updates if additional records are created. The Public Body states:

> The Applicant is engaging is [sic] a systemic abuse of the right to access information. The Applicant is a disgruntled citizen, unhappy with the interactions he had with certain CPS members in relation to a call responding to a domestic dispute complaint. The Applicant has commenced a series of complaints and he identifies any CPS member involved in his complaints and makes access requests about them. These requests are not about his right to access the information but rather are being used to wage a campaign of harassment against the CPS and its members. His intent to harass is evidenced by his concurrent barrage of emails which resulted in a ban of email communications from the Applicant.

[26] The Public Body referred to a previous decision, Town of Ponoka[9], where an applicant had made five access requests over a two-and-a-half years. In that decision, the Commissioner found that

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[6] *Ibid.* at paras 13 – 15

[7] See for example, Service Alberta, Request for Authorization to Disregard an Access Request under section 55(1) of the *Freedom of Information and Protection of Privacy Act*, OIPC File No. F8116, August 24, 2014 at paras 16 - 18, available online at: https://www.oipc.ab.ca/media/593322/section_55_service_alberta_2014.pdf

[8] Request for Authorization to Disregard Access Requests, Grant MacEwan College, IPC File Reference: #F3885, March 13, 2007 ("Grant MacEwan") available online at: https://www.oipc.ab.ca/media/592928/Section_55_Grant_MacEwan_2007.pdf

although the specific wording varied from request to request, the subject matter was essentially the same. The Public Body points out that in this case the Applicant's three "requests are almost identical with minor variations in the wording, the targets and the date ranges". I have reviewed the Public Body's summary of the Applicant's access requests and I accept the submissions of the Public Body.

[27] There is evidence before me that the Applicant has made essentially the same request more than once. Therefore, I find that the three access requests are repetitious. I further find that the Applicant's 20 access requests over a period of 22 months are systematic in nature, as they are part of a pattern of conduct that is regular or deliberate.

[28] There is a clear pattern to the Applicant's requests for access. It is apparent upon review of his requests to the Public Body that they are both repetitious and systematic in nature.

2. Section 55(1)(a)– Unreasonably Interfere with the Operations of the Public Body

[29] 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. The Public Body has neither argued, nor provided evidence that the Applicant's access requests will unreasonably interfere with its operations. Therefore, I will not consider this section.

3. Section 55(1)(a)– Amount to an Abuse of the Right to Make Those Requests

[30] Previous decisions from this office have defined "abuse" to mean misuse or improper use[10]. In the Grant MacEwan decision[11], Commissioner Work 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. The Grant MacEwan decision also referred to Justice Peter Martin's comments in Adjudication Order #5, which, in my opinion, have some relevance to the current matter before me:

> The College says the Applicant is "*abusing the system and harassing the College and its officials*". The College referenced Justice Martin's comments in Adjudication Order #5:
>
> > [62] *I am completely satisfied that the College acted in good faith throughout all of its dealings with the applicant and did to the best of its ability answer the many requests for information put to it….I find the College met all of its obligations under the Act and exercised remarkable patience and cooperation throughout this process.*
> >
> > [63] *I am able to be more direct. I believe it was the applicant who abused the system by making these endless requests for information, which were fuelled by her desire to harass College officials…*

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[9] Application by the Town of Ponoka to disregard an access request made by an applicant under the *Freedom of Information and Protection of Privacy Act*, available online at: https://www.oipc.ab.ca/media/650849/section_55_ponoka_2002.pdf

[10] For example, see Grant MacEwan (*supra*, note 8) or Request for Authorization to Disregard an Access Request under section 37 of the *Personal Information Protection Act*, Alberta Motor Association, OIPC File P1241, March 8, 2010, available online at: https://www.oipc.ab.ca/media/592925/Section_37_Alberta_Motor_Association_2010.pdf

[11] *Ibid.*, Grant MacEwan

> [65] *I am concerned that the College was required to expend several hundred hours of staff time – including that of very senior administrative staff – to meet these requests; and, in the process, spend what I estimate must have been tens of thousands of dollars of public funds. Those funds should have been directed to public education, rather than these demands…*[12]

[31] In *Chutskoff v. Bonora*[13], the Court spoke about abuse in the context of vexatious litigation:

> The concept of abuse is a flexible, functional tool used to control misuse of the courts. At para 16 of *Reece v. Edmonton (City)* Slatter JA stressed that this is a general purpose remedy with a functional objective, which is to control misuse of the court apparatus:
>
> > Abuse of process is a compendious principle that the courts use to control misuses of the judicial system. Abuses of process can arise in many different contexts, and there is no universal test or statement of law that encompasses all of the examples.
> […]
> More recently, Associate Chief Justice Rooke in *Onischuk v. Alberta*, 2013 ABQB 89 at para 35, 555 AR 330 concluded litigant conduct was an abuse of process because of a combination of vexatious characteristics, and outrageous and unsupported claims that occurred in an action which had no reasonable prospect for success:
>
> > …Onischuk's pleadings essentially complain about those actions of lawyers and judges involved in his prior action, alleging conspiracies against him, tampering with court transcripts and files, misrepresentations, perjury, and acting against the public interest. I have found the proceedings to contain the hallmarks of vexatious litigation. To allow Onischuk to continuously bombard counsel, the judiciary, and this Court with lengthy pleadings, replete with inflammatory accusations, irrelevant legal argument, jurisprudence and legislation, that advance no reasonable cause of action, is manifestly unfair to all parties involved and other participants vying for scarce judicial resources. Consequentially, to allow this action to proceed would surely bring the administration of justice into disrepute.
> > […]
> > An often encountered characteristic of vexatious litigation is unsubstantiated allegations of conspiracy, prejudice, persecution, fraud, and misconduct by government and legal actors. [14]

[32] As stated above, abuse has been defined to mean misuse or improper use. The issue I have to decide is whether the Public Body has established there is something about the repetitious and systematic nature of the Applicant's access requests that are a misuse or improper use of the FOIP Act. The Public Body states:

> The Public Body has been very patient in terms of responding to 17 requests for access to information but it is clear that access is not the Applicant's motive. When the repeated and systemic nature of the requests is taken into account along with the campaign of harassment by email mounted by the Applicant, it becomes apparent that he has ulterior and malicious motives in that he is trying to use the access to information legislation to

[12] *Ibid*. at para 32
[13] *Chutskoff v. Bonora*, 2014 ABQB 389
[14] *Ibid*. at paras 83 and 85

> further harass and harangue the Public Body in retaliation for wrongs that the Applicant perceives were perpetrated against him. Even if he was wronged, using Access and Privacy legislation as a means to "get even" or register his displeasure is outside of the proper purpose of the Act.

[33] I accept the submissions of the Public Body. The Applicant's access requests are, in my opinion, a collateral attack on the Public Body. On the evidence before me, I am satisfied that because of their repetitious and systematic nature, the Applicant's access requests amount to an abuse of the right to make those requests. Therefore, the conditions of section 55(1)(a) have been met.

4. Section 55(1)(b)– Frivolous or Vexatious

[34] Because the Public Body has proven the conditions of section 55(1)(a), there is no need for me to decide under section 55(1)(b) whether it has also proven that the Applicant's requests are frivolous or vexatious; however, given the circumstances of this case, I have decided to review the access requests under this section as well. The Public Body's submissions focused on its argument that the Applicant is vexatious. Accordingly, there is no need for me to consider whether they are frivolous.

[35] Previous decisions from this office have stated 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.[15]

[36] Courts in recent years have also provided guidance on the types of behaviours which may be considered vexatious. For example, in *Re Stanny*[16], the Court provided a lengthy summary of the case law regarding criteria to determine whether an individual is a vexatious litigant. Although a determination by a Court that an individual is to be deemed a vexatious litigant is different than a determination under FOIP that an access request is vexatious, I find the Court's comments provide some helpful guidance in explaining what is meant by "vexatious".

> In *Jamieson v. Denman* 2004 ABQB 593 (CanLII), [2004] A.J. No. 904 ("*Jamieson*") Watson J. (as he then was) described vexatious in the following terms (paras. 126-127):
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> > "I consider the word 'vexatious' to carry with it a normative concept as well as a legal one. It seems to me that a party can be said to have acted in a vexatious manner, not merely that they acted in a manner which might be characterized as mean-spirited or nasty, but also that in fact the nastiness conveyed itself through to the legal process itself. In other words, that the legal process was being misused.
> >
> > My view of the word 'vexatious' is that it connotes not simply that the party was acting without the highest of motives, or was acting in a manner which was hostile towards the other side. 'Vexatious', as a word, means to me that the litigant's mental state goes beyond simple animus against the other side, and rises to a situation where the litigant actually is attempting to abuse or misuse the legal process."

[15] Request for Authorization to Disregard Access Requests Under section 55 of the *Freedom of Information and Protection of Privacy Act*, Edmonton Police Service (IPC File References #3448 and #3449), November 4, 2005, available online at: https://www.oipc.ab.ca/media/144959/Section55_EdmontonPoliceService_2005.pdf
[16] *Re Stanny*, 2008 ABPC 305 at paras 22 - 25

In *Del Bianco v. 935074 Alberta Ltd.*, 2007 ABQB 150 (CanLII), 2007 ABQB 150 (Alta.Q.B.), Romaine J. noted in respect of a vexatious litigant proceedings:

> "This [vexatious litigant order] is clearly an extraordinary remedy. It should only be exercised where 'necessary in order to maintain respect for the judicial process and to protect others from frivolous and pointless litigation.' *Mishra v. Ottawa (City)* [1997] O.J. No. 4352 (Gen.Div.) at para. 52." (para. 33)
>
> It is characteristic of vexatious litigation that the pleadings are replete with extreme and unsubstantiated allegations, and often refer to far-flung conspiracies involving large numbers of individuals and institutions: . . . the allegations may be unfounded in fact or merely speculative, but the language is vitriolic, offensive and defamatory. As noted by the Applicants, Mr. Del Bianco has instituted either on his own behalf or on behalf of Kaleeda, at least eight actions arising out of the same set of circumstances, adding defendants as he fails to achieve any meaningful success in previous actions to the point where he has now drawn into a proliferation of litigation just about anyone who had anything to do with a company that he ceased to have any meaningful involvement with in 1997. (para. 35)
>
> Vexatious proceedings include proceedings brought for an improper purpose, and with respect to these Applicants, I am satisfied that Mr. Del Bianco's conduct and the tenor of his pleadings establish such improper purpose, being 'the denigration of all who do not accept [his] view of the facts and the law.' *National Bank* at para. 34. (para. 40)

In *O'Neill v. Deacons*, 2007 ABQB 754 (CanLII), [2007] A.J. No. 1397 (*O'Neill*), Associate Chief Justice Wittmann quoted with approval the criteria from *Lang Michener* and quoted with approval the following from the *2006 Report on Vexatious Litigants* (Law Reform Commission of Nova Scotia: Vexatious Litigants (2006) (at para. 24)):

> "Their claims are often manifestly without merit. They may ignore procedural setbacks, including awards of costs that are made against them. They may resort to multiple, unnecessary proceedings, often against the same person. They may sue anyone they perceive as an obstacle to their goals. Vexatious litigants also do not seem to care about the resources - on the part of themselves, other litigants or the public purse - depleted through their actions."

Wittmann ACJ concluded his review of what defined a vexatious litigant in the following terms in *O'Neill* (para. 25):

> "What the various common law and statutory criteria suggest is that vexatious litigants are those who persistently exploit and abuse the processes of the court in order to achieve some improper purpose or obtain some advantage. Vexatious litigants tend to be self-represented, and quite often the motivation appears to be to punish or wear the other side down through the expense of responding to persistent, fruitless applications. This is why the failure to pay costs for such applications is a significant element in determining whether a litigant is vexatious."

[37] More recently, in *Kavanagh v. Kavanagh*[17], the Court stated:

> All misuse of legal procedure in a manner that has no legal purpose, and, as a consequence, causes harm to involved litigants and the waste of court resources. While non-dictionary definitions of "vexatious" focus on an act being wrongful, harassing, malicious, or intended to annoy, the legal meaning of this word is broader. A vexatious proceeding is one that in effect abuses or misuses legal processes.

[38] The Public Body, in its submission stated:

> In Request for Authorization to disregard Access Requests under section 55 of the *Freedom of Information and Protection of Privacy Act* made by the Edmonton Police Service (OIPC File References 3448 and 3449) four factors were identified that may support a finding that a request is vexatious. Those factors are:
>
> - A request that is submitted over and over again by one individual or a group of individuals working in concert with each other;
> - A history or an ongoing pattern of access requests designed to harass or annoy a public body;
> - Excessive volume of access requests; and
> - The timing of access requests.
>
> Each of these factors is present in this case and the rapid succession of the multiple requests is strongly indicative of a motive other than access to information.
>
> The decision in Request for Authorization to Disregard an Access Request under Section 37 of the *Personal Information Protection Act* made by the Alberta Motor Association (OIPC File Reference P1241) is instructive in this case. In that case, the applicants made multiple access requests (estimated by the AMA as approximately 15 requests) over a two-year period. In his decision to permit the AMA to disregard all future access requests from the applicants until the litigation between the parties was complete, the then Commissioner stated:
>
> The Respondents have repeatedly exercised their rights under PIPA in making access requests as well as other requests for information and complaints to AMA regarding their insurance claims. The Respondents have also repeatedly exercised their legal rights before this Office by complaining about AMA and requesting that this office review AMA's responses to them. AMA has provided the Respondents with access to their personal information and has continued to respond to the requests made by the Respondents after they received access to their personal information. It was only after receiving five requests within two months from the Respondents that AMA asked to exercise its right to receive authorization to disregard requests from the Respondents.
>
> I find that the Respondents' use of PIPA is not the purpose for which the Act is intended. I find the Respondents are using PIPA as a weapon to harass AMA (as evidenced by the Husband's statement in his January 27, 2009 letter, "however be sure I intend to get revenge") and to attempt to avoid following the rules for document discovery as required by the civil litigation process (as evidenced by the Husband's statement that he is "not

[17] *Kavanagh v. Kavanagh*, 2016 ABQB 107 at para 64

> interested in spending all [his] time in court doing legal litigation"). I find that the Respondent's requests to AMA are part of a long standing history and pattern of behaviour designed to harass, obstruct and wear AMA down, which amounts to an abuse of the right to make those requests.
>
> There are no legitimate rights of access being pursued by the Applicant any longer. The Public Body has been more than accommodating to date and now the Applicant is simply using his cookie cutter access request to inundate the Public Body with requests. The motivation is the underlying complaint he has with members of the CPS, which complaint is being properly investigated and dealt with by the Professional Standards Section. Just as the applicants in the AMA case were not permitted to use Access Legislation to harass the AMA, the Applicant in this case needs to be prevented from his continuing course of abusive and vexatious conduct.
> […]
> The CPS will continue to provide updated records to the Applicant in relation to the ongoing request which should more than satisfy any legitimate access to information rights.

[39] The volume, repetitious nature, and almost identical variations of requests made by the Applicant in a short period of time, as well as his communications with the Public Body that are before me, demonstrate the vexatious nature of his requests. As Commissioner Work stated in one of the earliest decisions under section 55 of the Act, "I do not believe the FOIP Act was intended for an applicant to submit and resubmit the same or similar access requests to a public body simply because the applicant does not like the way he has been treated by the public body.[18]" In this case, the Applicant is unhappy with his interactions with certain CPS members and he has commenced a series of complaints against and access requests about them.

[40] His requests are not about his right to access information but have been used as a campaign to harass CPS and its members as evidenced by his barrage of emails which resulted in the Public Body banning the Applicant from email communication.

[41] This is further evidenced by the communications the Applicant provided in his submission. I have reproduced the example of his June 29, 2017 letter to the Public Body wherein he demanded information about the activities of employees at 10:22 am, but there are many similar types of correspondence before me. The Applicant's behaviour and submissions meet many of the indicia of vexatious litigation as identified in *Chutskoff v. Bonora*.[19] For example, I note the Applicant's pattern of escalating proceedings as he described in his own June 29, 2017 letter where he stated he would be bringing his concerns about his FOIP request to my office, the Calgary Police Commission, the Alberta Ombudsman and the Court of Queen's Bench of Alberta. The increase in frequency of access requests to the Public Body (two (2) in 2015, six (6) in 2016, and twelve (12) in 2017) also demonstrates his escalating behaviour. Further, his submissions are, in my opinion, replete with allegations of conspiracy, fraud and misconduct on the part of employees of the Public Body. As the Courts have stated, any one of these indicia may be sufficient to establish vexatious conduct.

[42] I am satisfied the Public Body has met its burden to prove the Applicant's access requests are vexatious. This is also apparent from the Applicant's own submissions. It is clear the Applicant holds a grudge against the Public Body dating from the domestic dispute incident which was attended by members of the Public Body in 2015. Since that time, the Applicant has exercised his access

[18] *Supra*, note 3
[19] *Supra* note 13

rights under the Act. He has exercised them over and over again. Accordingly, a decision to authorize the Public Body to disregard his requests does not deprive the Applicant of his access rights. He has already exercised them. Further, the Public Body will continue to provide him access to records in response to his ongoing request.

Commissioner's Decision

[43] As I stated previously, a decision under section 55 of the Act is discretionary. I am satisfied the Public Body has proven that the necessary elements of section 55 are met. The repetitive and systematic nature of the Applicant's requests amounts to an abuse of the right to make those requests, and further, I find his requests are vexatious. As such, I have decided to exercise my discretion to authorize the Public Body to disregard the Applicant's three access requests: 2017-P-1157, 2017-P-1158 and the request dated August 8, 2017 which had not yet been numbered at the time the Public Body made its request to me under section 55.

[44] Although I have referred only to the submissions relating to the Public Body in this matter, in exercising my discretion to authorize the Public Body to disregard the Applicant's requests, I have also considered recent statements from the Alberta Courts as follows:

> When considering whether to order court access restrictions a court should reference the putative abusive litigant's entire dispute-related activities, inside and outside court, in administrative tribunals and other bodies, in other jurisdictions, and where public records are a basis to take judicial notice: reviewed in *Ewanchuk v. Canada (Attorney General)*, 2017 ABQB 237 at para 101, 54 Alta LR (6th) 135; *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 548 at para 13.[20]

And:

> It is beyond doubt that the grandfather has engaged in a deliberate course of conduct that is bizarre and at times nonsensical and inflammatory. It has been suggested that to attract the designation of being a "vexatious" litigant the Court should review the character and nature of the litigant's actions, including the entire history of the dispute, inside and outside the courtroom. Repeated applications by the same litigant involving the same children, regarding the same issues where the court has made a clear ruling, which has been conveyed to the litigant, may give rise to such a finding of being a vexatious litigant.[21]

[45] Accordingly, it seems to me that an individual's actions before other administrative tribunals are also a relevant consideration in making decisions of this nature.

Application of section 55(1) to future requests

[46] The Public Body also requested permission to disregard "any future requests of a similar nature", but did not provide further submissions regarding that aspect of its request. Given the lack of submissions, and the fact that some information has been withheld from the Applicant on the basis of s. 4(1)(k) of the Act (see my August 22, 2017 letter to the Applicant and the Public Body), at this time I decline to make a decision regarding the Applicant's future access requests to the Public Body. The

[20] *Onischuk v. Edmonton (City)*, 2017 ABQB 647 at para 14
[21] *D.M. v. Alberta (Child, Youth and Family Enhancement Act, Director)*. 2017 ABPC 12 at para 24

Public Body may choose to make another request to me under section 55 if the Applicant makes another access request in the future and I will consider the matter then.

Jill Clayton
Information and Privacy Commissioner

Appendix: Applicant's three (3) access requests