ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD F2019-RTD-03

July 24, 2019

CALGARY POLICE SERVICE

Case File Number 008200

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

Calgary Police Service
(OIPC File Reference 008200)

July 24, 2019

[1] Calgary Police Service requested authorization under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to disregard three access requests (described in more detail below) from an individual whom I will refer to as the Applicant.

[2] For the reasons stated in this decision, I authorize Calgary Police Service to disregard the Applicant's three access requests. I also authorize Calgary Police Service to disregard future access requests from the Applicant that relate to the issues for which the Applicant has been making access requests to Calgary Police Service since 2011.

Commissioner's authority

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

> *55(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if*
>
> *(a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests, or*
> *(b) one or more of the requests are frivolous or vexatious.*

Background

[4] By letter dated April 2, 2018, Calgary Police Service (CPS or the Public Body) requested authorization to disregard the following:

- An access request made by the Applicant on March 2, 2018. CPS assigned reference number 2018-P-0360 to that access request.
- Two access requests made by the Applicant on April 2, 2018. CPS assigned reference numbers 2018-P-0495 and 2018-P-0506 to those two access requests.

[5] The Applicant's March 2, 2018 access request asked for

> All my personal information located in the CPS FOIP Administration files (both the electronic and paper Administrative files, which includes a request for any digital form of records within the Administration files) related to my CPS FOIP Request for Correction 16-C-1188 and all OIPC proceedings related to CPS Request 16-C-1188, since Aug 3/17 [sic], being the date when the last CPS Response for such FOIP Administration Files regarding my CPS FOIP Request for Correction 16-C-1188 was first issued, namely, when CPS Response 17-P-0969 was issued.

[6] The Applicant's two April 2, 2018 access requests asked for

> All my personal information located in the CPS FOIP Administration files (both the electronic and paper Administrative files, which includes a request for any digital form of records within the Administration files) related to my CPS FOIP Request for 17-P-0969 and all OIPC proceedings related to CPS Request 17-P-0969, since Jan 3/18 [sic], being the date when the last CPS Response for such FOIP Administration Files regarding my CPS Request 17-P-0696 was first issued, namely, when my CPS Request 18-P-0003 was filed. [CPS file reference number 2018-P-0495]

> All my personal information located in the CPS FOIP Administration files (both the electronic and paper Administrative files, which includes a request for any digital form of records within the Administration files) related to my CPS Request for 17-P-1174 and all OIPC proceedings related to CPS Request 17-P-1174, since Nov 13/17 [sic], being the date when the last CPS Request for such CPS FOIP Administration Files regarding my CPS Request 17-P-1174 was made, namely, when my Nov 13/17 [sic] CPS Request 17-P-1616 was filed. [CPS file reference number 2018-P-0506]

[7] I gave the Applicant until May 16, 2018 to provide comments to me and to CPS about CPS's request to disregard the foregoing three access requests. The Applicant requested two extensions of the deadline, which I ultimately granted to June 21, 2018. I received the Applicant's comments on that date.

Written submission of CPS

[8] CPS asked to disregard the foregoing three access requests on the basis that such requests were repetitious and systematic in nature, that they amounted to an abuse of the right to make those requests and that the requests were frivolous and vexatious.

[9] CPS says that, since 2011, the Applicant has submitted 13 access requests, including the three that are now the subject of CPS's request under section 55(1). CPS has summarized and I have recorded in the table below the other 10 access requests to CPS, as follows:

CPS file number	Date of request	Request for	Response to request
2011-P-0970	2011-11-10	"…3 case files in while I was the Complainant…I would like to obtain everything in these files/related [sic] to these cases including the police reports etc, [sic] except that I do not need to receive the flash drives that are in the file for Case #10411004."	One hundred and forty pages of records were provided to the Applicant consisting of the records relating to case file 04068170, 0412301 and 10411004.

2011-P-1050	2011-11-30	"…Complaint 95168061 that relates to an assault on me by [named individual] in the fall of 1995. I am requesting that all material from and relating to that file be provided to me."	Ten pages of records were provided to the Applicant consisting of the records relating to case file 95168061.
2012-P-0986	2012-10-17	"…further to my FOIP requests fr [sic] which responses 2011-P-0970 and 2011-P-1050 were provided in December of 2011. Those responses related to complaints 04124301, 04068170, 10411004 and 95168061. I am requesting any and all notes, recordings and materials related to these matters made by Detective [name] or anyone else subsequent to the last date of the materials already disclosed…I would like to make a separate FOIP request regarding 3 arrest warrant/charges issued by the Cochrane RCMP that was acted upon by the Calgary Police Service on August 14/12 for the arrest of me…"	Fifteen pages of records were provided to the Applicant in relation to the first part of her request and an additional 4 pages of records were provided in response to the second part of her request.
2014-P-1280	2014-11-24	"All information obtained or created by the CPS for the investigation of CPS files 040168170, 040243301, 10411004, 950168061." The request went on to specify that the Applicant was seeking, among other things, records relating to long distance phone records, officer notes for Detective [name], tracking records as well as CPS files 12309809, 1230973 [sic], 12108125, 14157448. The Applicant also requested information related to RCMP files. The request was 7 pages in length.	A response was provided to the Applicant. That response is currently the subject of inquiry 000708.
2015-P-0827	2015-07-13	"…all of the documents, materials and information of any sort what-so-ever, with respect to which you had advised, in your letter to me dated Jan 22/15 [sic] and issued in FOIPP 2014-P-1280, access was denied pursuant to s. 4(1)(k) of the *Freedom of Information and Protection of Privacy Act*…"	A response was provided to the Applicant. That response is currently the subject of inquiry 001826.

2017-G-0841	2017-06-06	The request was for a global list of policies as well as a series of specific policies. The request was six pages in length.	The response to the Applicant consisted of 71 pages of records.
2017-P-0969	2017-06-28	"All my personal information located in the CPS FOIP Administration files (both the electronic and paper Administrative files relating to any and all CPS FOIP requests I have made at any time to the CPS/CPS FOIP since the beginning of 2003."	The Applicant was provided with files 2011-P-1050, 2012-P-0986, 2014-P-1280, 2015-P-0827, 2016-C-1188 and 2017-G-0841. The release included the administrative correspondence on the files as well as the records that had previously been released. That response was the subject of Inquiry 004725. (Note: On November 9, 2017, I refused to conduct an inquiry for Case File 004725.)
2017-P-1174	2017-08-09	This request was for a series of records related to an investigation and to a series of personnel.	Other than the records to which s. 4(1)(k) applied, only 1 page of responsive records was located. That response is the subject of Request for Review 007053.
2017-P-1616	2017-11-13	"All my personal information located in the CPS FOIP Administration files (both the electronic and paper Administrative files) related to my CPS FOIP Request 17-P-1174…"	Twenty-seven pages of records were provided in response to the request.
2018-P-003	2018-01-03	"All my personal information located in the CPS FOIP Administration files (both the electronic and paper Administrative files) related to my CPS FOIP Request 17-P-0969…"	Fifty-five pages of records were provided in response to the request.

[10] CPS says:

> The Applicant is engaging in a systemic abuse of the right to access information. Her requests are repetitive in nature in that she is now seeking access to records relating to her access requests. The Applicant creates records by making Access Requests and then makes more access requests to access those records that only exist because of her prior access request. Such activity amounts to an abuse of process and it is submitted that the requests are frivolous and vexatious. The requests have become cookie-cutter requests relating to earlier access requests made by the Applicant. To the extent the Applicant is unhappy with the responses to prior access requests, her remedy is to seek a review or an inquiry with the OIPC. It is submitted that the re-requesting for information already received is not an appropriate response on the part of the Applicant. It amounts to harassment of the Public Body and serves no proper purpose.

[11] CPS maintains that the sheer volume of communication from the Applicant in relation to her files and the repetitious nature of the requests seeking information from prior requests demonstrates a disregard for the true intent of the FOIP Act and an intent to cause CPS harm through repeated and onerous access requests. CPS also maintains that the repeated requests for access not only do not relate to the purpose of the FOIP Act, but that they are frivolous and vexatious.

[12] CPS says that the Applicant has been given access to the information she has requested through responses to a series of prior requests for access. CPS further says that its responses are at review or inquiry in four separate requests for review and, to the extent there are any concerns about its responsiveness, those concerns can be dealt with through the review process.

[13] In CPS's view, access is not the Applicant's motive. CPS maintains that the repeated and systemic nature of the requests is indicative of a campaign of harassment mounted by the Applicant. Furthermore, CPS says that the rapid succession of the multiple requests is strongly indicative of a motive other than access to information.

[14] CPS cites a number of decisions of my office that have authorized a body to disregard access requests. CPS concludes:

> There are no legitimate rights of access being pursued by the Applicant any longer. The Applicant is simply trying to create more records with the Public body [sic] so that she can continue to request more records. The Public body [sic] has been more than accommodating to date and now the Applicant is simply using her cookie cutter access request to inundate the Public Body with requests for prior access files. 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 her continuing course of abusive and vexatious conduct.

Written submission of the Applicant

[15] The Applicant provided a 46-page submission and what amounted to two binders of supporting materials. I have read the Applicant's submission and will either quote the Applicant or attempt to summarize briefly what I believe to be the relevant information.

[16] To begin, the Applicant says:

> …As a [sic] overall summary, my CPS Requests have resulted, to date, in the identification of 3 particular types of incorrect statements of my personal informational information [sic] in records in the control of the CPS, each of which is a particular type of statement of my personal information that the CPS has acknowledged is incorrect statement [sic] of my personal information that it would correct, but my CPS Requests have also resulted in me obtaining records that show that the CPS has continued to publish within its records those 3 particular types of incorrect statement [sic] regarding my personal information, resulting in further CPS Requests by me in 2018 in an attempt to determine, if in the intervening time since my last CPS Requests in 2017 whether or not the CPS has, in fact, taken any steps to correct these 3 types of incorrect statements in its records or, rather, has still continued to publish, within its records, and thus in other proceedings/to other bodies, to which those records are provided, the same 3 types of incorrect statements of my personal information. These 2018 CPS Requests by me are on-going steps taken by me, in accordance with the Act and its purposes, to ensure the accuracy of my personal information in the records in the control of the CPS and to ensure that my personal information, which necessarily implies only my correct personal information, is utilized in the manner and for the purposes permitted under the Act.

[17] The Applicant then goes on to explain in detail the purposes for which she has made the various access requests and the correction request to CPS. She says that some of the later access requests turned up records that, in her view, should have been disclosed on earlier access requests, prompting her to make further access requests. She maintains that failure/refusal to disclose records earlier meant that she did not have the opportunity to check the accuracy of her personal information and make a request for correction if warranted. She was also concerned that she had not received all the records and that some of the records had been destroyed.

[18] The Applicant says that "…This failure to correct all records of the CPS that had this incorrect personal information regarding me, as well as the failure to correct other such incorrect personal information for me, led to my CPS Request 2018-P-0003 [sic] and to my CPS Request 2018-P-0495…"

[19] The following quotation largely summarizes the Applicant's concerns:

> …As a result, it is extremely important that I make all efforts and take all steps available to me as provided under the FOIP Act to ensure that a reasonable and though [sic] search for relevant records has been conducted by the CPS for each of my prior CPS FOIP Requests and that every redaction to, and withholding of records, that has been invoked by the CPS in its Response has been properly and validly invoked. Each and every one of the CPS Requests for Access that I have made for access to my personal information in the CPS FOIP Administration Files related to my proper CPS Requests, assists me in obtaining my personal information within the CPS FOIP Administration Files that is relevant to the issue of the nature of and, thus, the adequacy of the search conducted for records responsive to each of my prior CPS Requests and I am entitled, pursuant to the FOIP act [sic] to request access to, and to obtain such of my personal information in order to fully exercise by [sic] rights to access to my personal information in the records of the CPS and, if warranted, to seek incorrect statements of my personal information (of the types that call [sic] within the ambit of the Act) in those records of the CPS, including any incorrect statements of my personal information in the records in the CPS FOIP Administration Files. My Requests for Access to my personal information in one or more the CPS FOIP Administration File(s) maintained for one or more of my prior CPS FOIP Requests, as particularized, are the following CPS Files: CPS Request 2016-P-0969 regarding all my prior CPS Requests which included CPS Request 2011-P-090 [sic], CPS Request 2011-P-1050, CPS Request P-0986 [sic], CPS Request 2014-P-1280, CPS Request 2015-P-0827 and CPS Request 2016-C-1188; CPS Request 2017-P-1616 regarding my prior CPS Request 2017-P-1174; CPS Request 2018-P-0003 regarding my prior CPS Request 2016-P-0969; CPS Request 2018-P-0360 regarding

> my prior CPS Request 2016-C-1188, but only for any further records subsequent to Aug 3/17 [sic]; CPS Request 2018-P-0496 regarding my prior CPS Request 2017-P-0969, but only for any further records subsequent to Jan 3/18 [sic]; and CPS Request 2018-P-0506 regarding my prior CPS Request 2017-P-1174, but only for any further records since Nov 13/17 [sic]. Each of these CPS Access Requests that are for access to my personal information in records in, specifically, the CPS Administration File(s) in question, is particularly important since it is within the CPS Administration Files that records, reflecting corrections to the various incorrect statements of my personal information, that the CPS has already acknowledged to be incorrect statements that they will correct, once those corrections are actually made [sic]. Thus, it is through access to the CPS Administration Files that I can access those records that allow make [sic] a determination with respect to one of the core purposes of the Act in terms of the personal information of members of the public, namely, to be able to determine if corrections have, in fact, been made and, if not, to take steps to ensure that those corrections that have been determined to me [sic] merited have, in fact, been made. The various CPS Requests that I have made for access to record [sic] from CPS FOIP Administration Files relating to my prior CPS FOIP Requests have, but for the first such CPS FOIP Administration Files Request (CPS Request 2016-P-0969) have been made with respect on only 1 prior CPS FOIP Request so as to facilitate keeping track of each Request and of the particular CPS Requests that had resulted in me obtaining access to records of the CPS that include statements that the CPS has already acknowledged to be incorrect statements and/or has stated it will correct. The CPS Files in which one or more records that contain incorrect statements of my personal information that the CPS has stated it will correct are as follows…

[20] What follows are six pages detailing the Applicant's access requests up to and including 2017, and what information the Applicant believes should be corrected. On the last page, the Applicant says that incorrect statements have "…been proven to be present in 5 pgs of records…"

[21] The Applicant further says:

> …I must, and I am entitled to make applicable CPS Requests for Access on a periodic basis until such time that objective documentary evidence is provided by way of the records provided in any one of such CPS Requests for Access that the incorrect personal information for me has, in fact, been corrected in accordance with my entitlements under the FOIP Act".
> …
> …Such repeated and periodic Requests under the FOIP Act are anticipated were [sic] there is a need to "monitor" the nature of, and the accuracy of, the personal information of oneself being created and/or gathered by a Public Body and a need to take steps to ensure the accuracy of the personal information,…

Application of section 55(1) of the FOIP Act to the access requests

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

[22] In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007), the former Commissioner said that "systematic in nature" includes a pattern of conduct that is regular or deliberate.

[23] The Applicant's submission is ample evidence to support my finding that the Applicant's access requests are part of a pattern of conduct that is regular or deliberate. Therefore, I find that the Applicant's access requests are systematic in nature, as provided by section 55(1)(a) of the FOIP Act.

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

[24] 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 behaviour designed to harass, obstruct or wear the College down, which amounted to an abuse of the right to make those requests.

[25] In *Request for Authorization to Disregard Access Requests – Alberta Justice and Solicitor General* (February 12, 2018), I said that section 55(1)(a) of the FOIP Act clearly contemplates that the systematic nature of access requests, in and of themselves, may amount to an abuse of the right to make those access requests. I also said that section 55(1)(a) says nothing about an improper motive, although an improper motive would clearly establish abuse.

[26] I do not have any clear evidence that the purpose of the Applicant's access requests is to harass CPS or wear it down, although that is the effect of those access requests. Consequently, the issue I have to decide is whether there is something about the systematic nature of the Applicant's access requests in this case that is a misuse or improper use of the FOIP Act.

[27] The Applicant has been submitting access requests to CPS since 2011. More recently, the Applicant has begun submitting access requests for her access requests and also a correction request. Her main objectives appear to be "…to ensure the accuracy of [her] personal information in the records in the control of the CPS…"and "…to determine if corrections [to her personal information] have, in fact, been made…"

[28] I agree with the Applicant that, in the usual circumstances, it may be appropriate to make an access request to check whether a requested correction had been made or, where a correction had been denied, the request for correction had been annotated or linked.

[29] It is also understandable that the Applicant may want to make an access request for records about how one of the Applicant's access requests was processed. That may be a way to hold CPS to account, ensure transparency, and ensure that CPS has accurate records. That right of access could be partly to ensure accuracy.

[30] However, the circumstances are not usual here, for two reasons.

[31] First, the Applicant continues to make access requests, the processing of which generates processing records, to which the Applicant then requests access. The effect is a never-ending loop of access requests, responses, and access requests for the processing records in responding to the access requests. It is the Applicant herself who is generating more records.

[32] In my view, the Legislature did not intend the FOIP Act to be used in such a way. The Applicant may not use the FOIP Act to continually monitor or check up on CPS. What the Applicant is doing is a misuse or improper use of the FOIP Act and therefore an abuse of the right to make those access requests.

[33] Second, I have already dealt with the issue of the accuracy of personal information and the Applicant's correction request in Case File 004725. In a decision on Case File 004725 dated November 9, 2017, I said:

> …
> Section 35 of the FOIP Act requires personal information in the custody or control of a public body to be accurate and complete. However, section 35 of the FOIP Act applies only in the situation where the information in question will be used to make a decision directly affecting an individual. This cannot be said necessarily for "all the records in the public body's custody or control". Other than in the situation where personal information will be used to make a decision directly affecting the applicant's rights within the terms of section 35, a public body is under no duty to ensure that its records contain corrected personal information, and there is, accordingly, no power to require a public body to search its records for information capable of correction.
>
> The Applicant cited four records in her correction request. The Public Body made the decision to correct the Applicant's personal information in these four records. There is nothing to suggest that the Public Body will use, or has used, information…in its records to make a decision directly affecting the Applicant. As I cannot order the Public Body to search for records containing similar information to the information in the four records it has corrected given that section 35 is not engaged in this case, there would be no benefit to conducting an inquiry as to whether the Public Body has searched for records containing similar information to the information it decided to correct.
> …
> The FOIP Act does not impose any obligation on a public body to use particular language in a response to an applicant. Section 36 requires a public body to consider correcting personal information, and if it cannot, to annotate or link the information to the relevant portion of the correction request. In this case, the Public Body made a decision regarding the correction request; as a consequence, its response meets any obligations it has to the Applicant under section 36(1). As there is no obligation on a public body to use particular language when it responds to a correction request (other than to provide notice under section 36(7), which the Public Body did), there is no benefit to conducting an inquiry in relation to the terms the Public Body used in its response to the Applicant.
> …
> As the FOIP Act prohibits a public body from correcting an opinion, it follows that I have no power to order it to do so. As I have no power to order the Public Body to correct opinions, there is no benefit to conducting an inquiry in relation to this issue.
> …
> As former Commissioner Clark noted in Order 2000-007, section 36(1) does not authorize an applicant to require that a public body edit the records in exactly the way the applicant wishes. A public body making a correction must also consider its own administrative needs and resources. The Public Body has corrected the errors in her personal information that the Applicant drew to its attention. However, it need not correct this information in the way the Applicant would.
> …
> …As the Public Body is not under a duty to inform public bodies or third parties of corrections or annotations to personal information it has disclosed more than a year prior to the receipt of a correction request, I have no power to order it to do so. As a result, there is no benefit in conducting an inquiry in relation to this issue.
>
> In conclusion, there are no issues raised by the Applicant in her request for inquiry that I have power to address under section 72 of the FOIP Act. I have therefore decided to refuse to conduct an inquiry under section 70 and have closed case file 004725.

[34] Despite my decision about accuracy and finding that there was no duty on CPS to ensure that its records contain corrected personal information, the Applicant has continued to systematically make access requests, the end result of which is, by the Applicant's own admission, to determine accuracy and

to determine if corrections have been made. In the face of my decision, making access requests for those purposes is clearly an abuse of the right to make those access requests.

[35] I have found that the Applicant's access requests are systematic in nature. I find that, because of their systematic nature, the Applicant's access requests amount to an abuse of the right to make those access requests, as provided by section 55(1)(a) of the FOIP Act.

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

[36] Having found that section 55(1)(a) of the FOIP Act applies to the Applicant's access requests, it is not necessary that I also consider whether section 55(1)(b) of the FOIP Act also applies. However, in this case, I have decided to consider whether one or more of the Applicant's access requests are also vexatious.

[37] In *Request for Authorization to Disregard Access Requests – Edmonton Police Service* (November 4, 2005), the former Commissioner reviewed the meaning of "vexatious", which *Black's Law Dictionary* (7th Edition) defined as without reasonable or probable cause or excuse; harassing; annoying.

[38] In *Request for Authorization to Disregard Access Requests – Calgary Police Service* (November 29, 2017), I considered the types of behaviors that the Court considers to be vexatious, such as hostility towards the other side, extreme and unsubstantiated allegations, and conspiracies involving large numbers of individuals and institutions. I also considered 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.

[39] In *Request for Authorization to Disregard Access Request – Association of Professional Engineers and Geoscientists of Alberta* (July 4, 2018) (APEGA), the Organization provided cases about the Court's interpretation of vexatious. It stated:

> Previous decisions of the Commissioner have stated that 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 (Calgary Police Service at para 35).
>
> 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."
>
> The foregoing statements are consistent with judicial jurisprudence on vexatious litigants. In *Jamieson v. Denman,* 2004 ABQB 593, Watson J. (as he then was) described vexatious in the following terms at para 126:
>
> > 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.
>
> In *O'Neill v. Deacons*, 2007 ABQB 754, Associate Chief Justice Wittman (as he then was) stated at 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.

In *Kavanagh v. Kavanagh*, 2016 ABQB 107, Shelly J. stated at para 64:

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

Shelley J. referred to *Chutskoff* where Michalyshyn J. reviewed the following principles and factors are relevant to test whether a person is a vexatious litigant (at para 66):

1. the entire history of a dispute, including activities both inside and outside court;
2. other litigation and court history is relevant;
3. a person is presumed to intend the natural consequences of their acts; and
4. features and traits of vexatious litigation, which include:
    a. collateral attacks on previous judicial decision-making, including attempts to circumvent the effects of court orders;
    b. hopeless proceedings that cannot be expected to provide the form or scale of relief sought, involve disproportionate remedies and/or cost claims, or that are incomprehensible;
    c. escalating proceedings, where grounds and issues re-appear in subsequent litigation, and/or new parties, subjects and issues are added;
    d. proceedings with improper purposes, such as to frustrate litigation, for an ulterior motive or to obtain a collateral advantage, or which are intended to extort a benefit, as revenge, harassment, or to cause harm;
    e. "busybody" lawsuits that relate to third parties;
    f. failure to abide by court orders;
    g. spurious appeals;
    h. inappropriate courtroom behaviour;
    i. unsubstantiated allegations of conspiracy, fraud, and misconduct, including allegations of bias, harassment and offensive and defamatory allegations;
    j. scandalous or inflammatory language in pleadings or before the court;
    k. OPCA arguments; and
    l. attempts to use court processes to further criminal activity.

[40] In the APEGA request to disregard cited above, I considered the Court's criteria in deciding whether the access request in that case met the definition of vexatious. I intend to do so in this case as well. Following my usual practice, I also intend to consider all of the Applicant's activities, both before my office and outside of it. This is also consistent with the Court's practice.

[41] The Applicant has had seven matters before my office involving CPS; five of those matters are still active.

[42] The Applicant's history with CPS stems from what I understand is an altercation occurring sometime around 1992 that led to her involvement with CPS. Much litigation ensued between the Applicant and others after that time. That litigation is a matter of public record. I have reviewed some of that litigation, in keeping with my practice of considering all of an applicant's activities, both before my office and outside of it.

[43] When the last of that litigation concluded unsuccessfully for the Applicant in a 2010 Court decision, the Applicant began submitting access requests to CPS.

[44] In the 2010 Court decision to which I referred, the Court noted that the Applicant was concerned about her reputation and what people had said about her (para. 1154). This is consistent with what I understand is the Applicant's reason for wanting to correct CPS's records. She also continues to make access requests to determine whether records have been corrected. The Applicant persists in her view that all the records need to be corrected, and keeps making access requests to ensure that the records have been corrected. Demanding that documents be worded in her way seems to be a common theme in the 2010 Court decision and in her access requests to CPS. The correction concerns some of the same wording that the Applicant was insisting be in a document when the Applicant was before the Court.

[45] What the Applicant is now doing by continuing to make access requests is attempting to bypass what I have already determined in my November 9, 2017 decision for Case File 004725 (discussed above). The access requests are a collateral attack on that decision and an attempt to relitigate what I have already decided. The access requests are also hopeless proceedings since, given my decision, the law does not support what the Applicant is seeking.

[46] Finally, the Applicant's access requests have escalated from yearly (more or less) since 2011 to four access requests in 2017 and four access requests in 2018.

[47] Based on the Court's criteria for vexatious litigants (collateral attack, hopeless proceedings and escalating proceedings), I find that the Applicant's access requests are vexatious, as provided by section 55(1)(b) of the FOIP Act.

My decision

[48] CPS has met its burden to prove that that the Applicant's access requests are systematic in nature and amount to an abuse of the right to make those access requests. Furthermore, considering the Court's criteria for vexatious litigants, the Applicant's access requests are also vexatious. Therefore, I authorize CPS to disregard the Applicant's March 2, 2018 access request and the Applicant's two April 2, 2018 access requests.

Future access requests

[49] CPS did not specifically ask me to authorize it to disregard future access requests from the Applicant. However, in this case, the circumstances are such that I am going to decide that issue because the Applicant's endless loop of access requests cannot continue.

[50] I intend here to rely on a more recent decision of the Court on vexatious litigants: *Unrau v. National Dental Examining Board*, 2019 ABQB 283 (the *Unrau* decision). The *Unrau* decision is 188 pages in length and could readily be described as a compendium on the law related to vexatious litigants and vexatious litigation, to date.

[51] In the *Unrau* decision, Associate Chief Justice Rooke discussed in detail the specific indicia of abusive litigation, including collateral attacks (paragraphs 612-618), hopeless proceedings (paragraphs 619-632), and escalating and expanding proceedings (paragraphs 633-645). I have already found that those indicia exist in this case.

[52] Despite my having issued a decision to refuse to conduct an inquiry on the correction of her personal information, the Applicant is back again on the same issue about the same information. Despite the fact that the law that I administer does not support her case, the Applicant is undeterred in her quest to find all records that CPS may have and that she believes need to be corrected, even though she said that she has found only five records to date that she thinks need to be corrected (four records of which it appears that she previously provided to CPS). Moreover, the Applicant's access requests are escalating.

[53] The "seed conflict" or "trigger event" occurred in 1992. The Applicant has persisted since then. It is now 2019 and the Applicant is still pursuing the issue of the wording in records. Even after 27 years, I expect that the Applicant will continue to persist. It is now up to me to stop the Applicant's endless loop of access requests and bring to an end what the Court described in the 2010 Court decision as the Applicant's having "laid siege to" the body in question (paragraph 1234), in this case, CPS.

[54] I accept that future access requests for this same information or these same records will meet the requirements of section 55(1) of the FOIP Act equally in the future as now because the Applicant has demonstrated the indicia of abusive litigation as described by the Court in *Unrau*, and as I have described above.

[55] I foresee that the Applicant will not change her course in the future. Therefore, I authorize CPS to disregard any and all future access requests from the Applicant in relation to the issues for which the Applicant has been making access requests to CPS since 2011.

Jill Clayton
Information and Privacy Commissioner