ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

Request for Authorization to Disregard an Access Request
Under section 37 of the
Personal Information Protection Act

Alberta Teachers' Association
(OIPC File Reference P1628)

April 1, 2011

INTRODUCTION

[1] On May 21, 2010, the Commissioner received a request from the Alberta Teachers' Association ("ATA") under sections 37 and 49.1 of the *Personal Information Protection Act* ("PIPA" or the "Act"). Among other things, the ATA requested authorization under section 37 of PIPA "to disregard any future access requests made by" two individuals: a married couple (the "Respondents", or separately, the "Father" or the "Mother"). The ATA also asked that the Commissioner, under section 49.1 of PIPA, refuse to accept any future complaints or requests for review from the Respondents that involve the ATA for a period of three years.

JURISDICTION

[2] Section 37 of PIPA gives the Commissioner a discretionary ("may") power to authorize an organization to disregard certain requests under PIPA. Section 49.1 of PIPA gives the Commissioner a discretionary ("may") power to refuse to conduct or continue an investigation or review.

[3] The Commissioner has jurisdiction in this matter because ATA is an organization as defined by subsection 1(1)(i) of the Act.

[4] The Commissioner delegated his powers to me on January 25, 2011, under section 43(1) of PIPA, to make decisions under sections 37, 38(6) and 49.1 of PIPA concerning the ATA's May 21, 2010 request; this request was designated as Case File #P1628. This delegation does not include the power to delegate, nor does it include the power to make decisions about matters for which the Commissioner has already made decisions concerning the ATA's request, specifically, the decisions made by the Commissioner regarding Case Files #P1553 and #P1554.

[5] In considering the ATA's submission under sections 37 and 49.1, I am mindful of PIPA's purpose and legislative principles and the relevant circumstances surrounding their submission. I do not take a decision to grant a section 37 request lightly, nor do I make a decision under section 49.1 lightly. To be successful in this application, ATA must establish that the request meets the requirements of PIPA subsection 37(a) or (b). I will deal first with the section 49.1 request.

SECTION 38(6): PUBLICATION OF DECISION

[6] Section 38(6) of PIPA allows the Commissioner to publish any finding or decision in a complete or an abridged form. The Commissioner has delegated his powers under section 38(6) of PIPA to me, in this matter.

[7] The ATA asked that this decision be released publicly if the Commissioner granted the ATA's request. For the reasons outlined in detail below, I have not granted the ATA's request, but have decided nonetheless that this Decision will be published as this decision will provide future guidance on the interpretation of section 49.1. Further, this Office has an educational mandate and the reasons for this section 37 decision will assist other organizations considering requesting authorization to disregard requests in the future.

SECTION 49.1: COMMISSIONER'S REFUSAL TO CONDUCT OR CONTINUE INVESTIGATION OR REVIEW

[8] Section 49.1(1) states:

> 49.1(1) Without limiting section 36(2), the Commissioner may refuse to conduct an investigation or review or may discontinue an investigation or review if the Commissioner is of the opinion that
> (a) the written request for review or the written complaint is frivolous or vexatious or is not made in good faith, or
> (b) the circumstances warrant refusing to conduct or to continue an investigation or review.

[9] The ATA asked the Commissioner to exercise his discretion, under section 49.1 of PIPA to "refuse to accept any further complaints or requests for review by the Respondents involving the ATA for a period of three years". This request does not refer to any particular matter before this Office, but relates instead to future matters that may come before this Office.

[10] The Commissioner delegated his power to make a decision under section 49.1 in this matter. In interpreting section 49.1 of PIPA, I must bear in mind the principles of legislative interpretation. The Supreme Court of Canada in *R. v. Sharpe*[1] cited with

[1] [2001] 1 S.C.R. 45

approval *Re: Rizzo and Rizzo Shoes Ltd.*[2] wherein that court declared its preference for the "modern principle" of statutory interpretation. This principle is set out in *Sullivan and Driedger on the Construction of Statutes*[3] at page 1 as:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[11] I have interpreted section 49.1 in light of the modern principle of statutory interpretation.

[12] Section 49.1 of PIPA is found in Part 5: Reviews and Orders, whereas section 37 is found in Part 4: Role of Commissioner. Organizations have the right to request an authorization under section 37. However, section 49.1 is a power granted to the Commissioner. Unlike section 37, section 49.1 does not give an organization the right to request an authorization, although an organization may ask the Commissioner to consider section 49.1.

[13] Part 5 of PIPA begins with a provision that sets out the right of an individual to ask for a review by the Commissioner or initiate a complaint to the Commissioner (section 46). That right is followed by details regarding how to ask for a review or initiate a complaint (section 47), which in turn is followed by provisions dealing with the role of the Commissioner when an individual asks for a review or initiates a complaint (sections 48, 49 and 49.1). Section 49.1 appears within the context of what the Commissioner may do when an individual asks for a review or initiates a complaint.

[14] Section 49.1 states, in part, that "the Commissioner may refuse to conduct an investigation or review or may discontinue an investigation or review". Given the context within which section 49.1 appears and the ordinary meaning of the words in section 49.1, I interpret this section to indicate that a matter *must be before the Commissioner* before he can make a decision, or delegate the authority to make a decision as the case may be, under this section. Only after a matter is before the Commissioner, will he be able to determine whether, in his opinion, the elements of subsections (a) or (b) are met.

[15] My interpretation is also consistent with the purpose provision of PIPA (section 3) which gives an individual the right to have his or her personal information protected. Therefore, section 49.1 may be applied on a case by case basis only when a complaint or a review is before this Office; it cannot be applied to future matters which may come

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[2] [1998] 1 S.C.R. 27

[3] (R Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Vancouver: Butterworths Canada Ltd., 2002) at 1.

before this Office. Other than this current matter, there are no other PIPA Case Files, neither investigations nor reviews, before this Office between the ATA and Respondents. As there are no matters from the Respondents currently before this Office, section 49.1 cannot apply. Should the Commissioner receive a complaint or a request for review from the Respondents about the ATA in the future, the ATA may at that time apply to the Commissioner for consideration under section 49.1 or the Commissioner may choose to consider the matter under section 49.1.

BACKGROUND

[16] The dispute between the parties originated in 1999, when the Respondents' son began attending Grade 1. The Respondents and more particularly, the Mother, had various issues with the son's school and the school's principal. The evidence before me is unclear as to exactly when ATA became involved in the dispute with the Respondents, but by 2002, the ATA, the principal and other involved individuals had filed a civil claim against the Respondents and other defendants for defamation. The court issued a decision in the matter in 2006 (the "Defamation Decision"). The ATA was, for the most part, successful in its lawsuit against the Respondents. The Defamation Decision was unsuccessfully appealed by one of the other defendants in the action.

[17] Following the 2006 court decision, the ATA published a brief summary in its online newsletter which included the Respondents' names and the results of the court's decision. Roughly four years later, in February 2010, the Respondents sent a written request for correction to the ATA regarding the newsletter. The ATA did make a correction to the newsletter; however the Respondents were not satisfied with the correction that the ATA made. In March 2010, the Respondents wrote to this Office requesting a review of the ATA's correction of the newsletter and to complain about the ATA's collection, use and disclosure of the Respondents' personal information in the newsletter. These matters (the correction review and the complaint) were assigned Case Files as #P1553 and #P1554.

[18] In response to the Respondent's correction review (#P1553) and complaint (#P1554), the ATA wrote the Commissioner on May 21, 2010 (supplemented by an addendum on May 26, 2010) and asked him to consider Case File #P1553 and #P1554 under sections 37 and 49.1 of PIPA. In its May 21, 2010 letter, the ATA also asked the Commissioner to provide it with authorization under section 37 to disregard future access requests from the Respondents and/or for the Commissioner to refuse to conduct any future investigations or reviews of matters involving the Respondents and the ATA for a period of three years under section 49(1) of PIPA.

[19] The Commissioner subsequently issued decisions regarding the ATA's requests on Case File #P1553 and #P1554. The Commissioner then delegated his authority to me to decide the ATA's future requests under sections 49.1 and 37 of PIPA. I have already denied the ATA's request under section 49.1. As such, the only matter remaining before

me to decide is whether the ATA should be granted authorization under section 37 to disregard future access and correction requests from the Respondents.

SECTION 37 REQUEST

[20] On May 21, 2010 this office received the ATA's section 37 request wherein it requested "authorization to disregard any future access requests made by the [Respondents]". An addendum to the request was provided on May 26, 2010. I have included a brief excerpt from the ATA's request below:

> On or about March 26, 2010, the Alberta Teachers' Association ("the Association") received information from your Office that the [Respondents], have made a further complaint regarding the Association, attached to an earlier request for correction. As such, this constitutes the tenth request or complaint made against the Association, involving the Association as an Affected Party, or involving the same records or circumstances.
>
> The Association therefore requests, pursuant to sections 37 and 49.1 of the *Personal Information Protection Act* ("PIPA") and following the process laid out for analogous requests under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") in FOIP Practice Note 9, authorization for the Association to disregard the latest two and future requests and complaints brought by the [Respondents] and for your office to refuse to conduct or continue investigations, reviews or inquiries from them.

Previous Case Files Involving the Respondents

[21] Throughout its submission, the ATA referred to ten requests or complaints before this Office. It stated "this constitutes the tenth request or complaint made against the Association, involving the Association as an Affected Party, or involving the same records or circumstances". After reviewing the ATA's submission, it appears that it referred only to eight cases that have been before this Office: four PIPA matters in which the Respondents raised issues with the ATA and four *Freedom of Information and Protection of Privacy Act* ("FOIP") matters involving public bodies. The ATA also referred to what appears to be a 2004 access request by the Respondents to a public body. I have summarized the evidence as presented by the ATA and the Respondents.

[22] The ATA is an "organization" under PIPA, and as such, any complaints or reviews involving the ATA are investigated or reviewed under PIPA. There have been four PIPA Case Files involving the Respondents and the ATA:

- **#P0019** (ATA referred to this as "Complaint/Request #3")
    - In March 2004 the Respondents wrote to the ATA requesting access to their personal information, which included records that had already been provided during the litigation process. Through the investigation process,

it was determined the Respondents did not want copies of records they already had, and the other records they requested did not exist.
    - Case File #P0019 was closed after the investigation stage.

- **#P0465** (ATA referred to this as "Complaint/Request #5")
    - In June 2005, the Respondents complained about the ATA's collection of records that had been used during the civil litigation discovery process.
    - Case File #P0465 was closed after the investigation stage after it was determined the information had been collected with deemed consent pursuant to section 4(4) of PIPA.

- **#P1553** (ATA referred to this as "Complaint/Request #10")
    - In February 2010, the Respondents asked the ATA to correct their personal information that had been disclosed in a 2006 ATA newsletter publication. The Respondents were not satisfied with the ATA's correction and complained to this Office.
    - Case File #P1553 was closed after the Commissioner refused to conduct an inquiry under section 50(1) of PIPA.

- **#P1554** (ATA referred to this as "Complaint/Request #9")
    - In February 2010, the Respondents also complained to the Office about the ATA's disclosure of their personal information in the newsletter.
    - The investigation determined the Act did not apply, pursuant to section 4(3)(k) of PIPA.

[23] As noted above, the ATA is a PIPA organization; it is not a public body under FOIP. In its submission, the ATA referenced four FOIP matters between the Respondents and various public bodies. The FOIP matters referenced by the ATA are outlined below:

- **Investigation Report 2000-IR-007** (ATA referred to this as "Complaint/Request #1)
    - In 2000, The Respondents complained to this Office about Grande Yellowhead Regional School Division's ("Grande Yellowhead") collection, use and disclosure of their son's personal information on a CD of photographs compiled by the school.
    - There is no evidence that the ATA was a party before this Office in this matter.

- **#F3317** (ATA referred to this as "Complaint/Request #2 and Complaint/Request #7)
    - In its submission, the ATA states it was unsure if Complaint/Request #2 and #7 were the same; however, it referred to the same August 31, 2005

letter from Alberta Education to this Office as evidence for both matters. Given that ATA referenced the same letter, which refers to File #F3317, I am satisfied that the ATA's #2 and #7 refer to the same matter.
    - #F3317 was opened in 2004 to investigate allegations by the Respondents that a public body, Alberta Education, had disclosed their personal information to the ATA for use in the defamation action.
    - There is no evidence that the ATA was a party before this Office in this matter.

- **#F3318** (ATA referred to this as "Complaint/Request #6")
    - #F3318 investigated allegations by the Respondents that a public body, the Grande Yellowhead Regional Division, had disclosed their personal information to the ATA for use in the defamation action.
    - The ATA asserted the records at issue in this matter were virtually the same as those used in #P0465.
    - There is no evidence that the ATA was a party before this Office in this matter.

- **#F3728** (ATA referred to this as "Complaint/Request #8")
    - In this case, the Respondents made a further complaint against a public body, Grande Yellowhead, regarding the disclosure of information to the ATA that had been used in the defamation lawsuit.
    - The ATA is a party to the judicial review of this matter.

[24] For clarity, I confirm I have considered these FOIP complaints only in a general manner, as they were presented in the ATA's submission as evidence. These FOIP matters were not considered or reviewed, other than as they were presented by the parties. Case File #F3728 is currently before the courts, at judicial review and will be dealt with in due course. This section 37 Decision is not meant in any way to comment on the merits of that complaint.

[25] The ATA referred to one other matter, its "Complaint/Request #4" in its submission as set out below:

- ATA's Complaint/Request #4
    - With respect to this matter, the ATA stated "Also, on October 6, 2004, the [Respondents] wrote to Grande Yellowhead requesting documents from the Education Services Centre regarding themselves and their son. Grande Yellowhead wrote to the [Respondents] in response on December 6, 2004, providing copies of records[…]. Any further action taken with regard to this request is not known to the Association.
    - As evidence for this matter, the ATA provided a December 6, 2004 letter to one of the Respondents (the Mother) from the Grande Yellowhead Regional Division. It is unclear from the submission but this letter

> appears to be a response to an access request made by the Mother to the public body, Grande Yellowhead.

It is unclear from the evidence before me how "Complaint/Request #4" relates to the ATA's section 37 request. The ATA provided only a letter which appears to be a response by a public body to an access request made by one of the Respondents. No information or explanation was provided regarding what was requested by the Respondents, how "Complaint/Request #4" relates to the ATA, or what the outcome was of this request. Because no information was provided as to how this relates to the ATA's section 37 request, I do not place any weight or value on the ATA's "Complaint/Request #4".

ATA's Submission

[26] The ATA provided arguments in its May 21, 2010 letter as to why the Respondents' conduct warrants a section 37 authorization permitting the ATA to ignore future access requests from the Respondents. The ATA relied heavily on the history of the Respondents' FOIP complaints and the Defamation Decision. I have discussed the ATA's arguments in detail in the analysis below.

[27] The ATA filed an addendum to its submission on May 26, 2010. This addendum included ten online forum postings that had been made by the Mother between December 2007 and September 2009. In general, the forum discusses issues between parents, teachers and school boards. The Mother posted her opinions on various issues and discussed how the Defamation Decision had affected her. I have included an excerpt of her postings below:

> December 2007
>
> My husband and I went through the same thing…found guilty on what we wrote to the government. I filed a FOIPP complaint against our school division for the unauthorized disclosure of our information to the teachers' union that they used against us in court. If it wasn't "but for" the unauthorized disclosure of our private communications to the union, the union and the teacher's [sic] would not have had a case against us. I didn't like the reasons the school division gave the FOIPP investigator and asked that go to an inquiry and it did. The great thing is that when I asked it to go into inquiry, the FOIPP commissioner added the teachers' union as an affected party. They now have to answer why they used the information given by the superintendent and the trustees knowing that it was given in confidence. The teachers' union is not happy and neither are their lawyers. I should be hearing from FOIPP soon. It might be worth looking into. Your FOIPP Act is not much different that [sic] Alberta's. If you win the FOIPP complaint, then you should have the case revisited based on law.

When I win the FOIPP complaint (positive thinking), you then could use our case because it will then be the first in Canada under the new privacy laws. The best part of filing a FOIPP complaint it that it is free but it is alot [sic] of work researching and copying…I will help you with the research if you like and give you what I have. As soon as I hear what is happening with my FOIPP inquiry, I will let all of you know. With all that the union and the government has done to me and my family, **I am not giving up…they ticked off the wrong MOM!**

March 2008

The lawsuit (defamation) the Alberta Teachers' Association and the teachers launched against me, my husband and 3 other individuals was a directly [sic] because of what we had written/spoken/to our board, the superintendent, Premier, and Education Minister. The superintendent and the board took it upon themselves to hand over our private communications to the ATA including notes they had taken during in-camera meetings, ministerial reviews and appeals. We followed all of their "proper procedures" in trying to advocate for out [sic] children but were getting no where. In fact, the only things my husband and I were found libel on was what we wrote to these government officials. We used the qualified privilege argument which we won, but lost due to malice. If it wasn't for the unauthorized disclosure by our government, the ATA and the teachers would not have had a case against us.

Things are still not settled after 6 years. We don't have the finances to hire another lawyer, but I am going about settling the SLAPP (Strategic Lawsuit Against Public Participation) through other channels. This has to be rectified because it happened to us, it can happen to anyone.

July 2009

I posted this story because the ATA sued me, my husband, a single Mom from Red Deer and our advocate. **I am still fighting it, even though we "lost"**. The school board disclosed our personal information to the ATA and they used it in court. If it wasn't for their disclosure of our personal information , there would not have been a case against us. […]

[Emphasis added.]

Respondents' Submission

[28] The Respondents provided a lengthy submission in this matter. I will deal with the Respondents' arguments in more detail in my analysis of section 37 below; however the excerpt below generally summarizes their position.

There has [sic] been only four requests/corrections involving the Association under the PIPA Act in six years. The latest P1554 and P1553 were four years after P0456 and two years after P0019. As for "involving the Association", the Association as an

> Affected Party under the FOIP Act, had the option of participating in the Inquiry and they chose to do so. This investigation has nothing to do with "the same records or circumstances", this involves asking for the correction of our personal information on their website, withwhich [sic] they did and did not agree with, and the use and disclosure of our personal information on their website.
>
> The Association has no standing to request or to even insinuate relief under the FOIP Act. The Association is not subject to the FOIP Act.
>
> Bankground [sic]
>
> There is no relevance between [the Defamation Decision] and this complaint. To even mention the Defamation Action in this complaint is prejudiced [sic] to this complaint. As stated above, there were only four PIPA complaints/requests in six years. The other cases mentioned by the Association were FOIP issues.

[29] The Respondents reviewed each matter referenced by the ATA in detail, pointing out that the FOIP matters dealt with public bodies, not the ATA. The Respondents further argued that, pursuant to section 39(1) of PIPA, I should not consider some of the Case Files that had previously been before this Office. The Respondents also took issue with the ATA's reference to select excerpts of the Defamation Decision. I note however, that in their submission, the Respondents also referred to excerpts from the Defamation Decision. The Respondents appeared to argue that the ATA itself fell under section 37; that is, the ATA was abusing its right to make such a request and was frivolous or vexatious. The Respondents raised other issues in their submission, some of which appeared to be under FOIP and others over which this Office has no jurisdiction. I have limited my review to those arguments made by both the ATA and the Respondents which are relevant to the application before me; that is, whether the ATA should be granted authorization under section 37 to disregard future access requests from the Respondents.

ANALYSIS UNDER SECTION 37 OF PIPA

Preliminary Matter: Section 39 of PIPA

[30] As a preliminary matter, I will first deal with the Respondents' argument that information about previous Case Files is inadmissible under section 39 of PIPA which states:

> 39(1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except
>
> (a) in a prosecution for perjury in respect of sworn testimony,
>
> (b) in a prosecution for an offence under this Act, or
>
> (c) in an application for judicial review or an appeal from a decision with respect to an application for judicial review.

> (1.1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not give or be compelled to give evidence in a court or in any other proceeding in respect of any information obtained in performing their duties, powers and functions under this Act, except in the circumstances set out in subsection (1)(a) to (c).
>
> (2) Subsections (1) and (1.1) apply also in respect of evidence of the existence of proceedings conducted before the Commissioner.
>
> (3) Subsection (2) is not to be construed so as to restrict an individual's ability to commence an action under section 60.

[31] Section 57 of FOIP is comparable to section 39 of PIPA. Section 57 of FOIP was discussed by an external adjudicator, Justice Veit, in Adjudication Order No. 7 when she stated:

> The public policy reasons which underlie these sections of the legislation are obvious: it is better to encourage full and frank discussions between the Commissioner's office and contesting parties than to allow full disclosure of all communications. Although an adjudicator should presumably not comment on the government's legislative policy, I might add that the policy which underlies these sections is similar to the policy which underlies the privilege recognized in common law as protecting settlement negotiations. […] Indeed, section 3 of PIPA explicitly outlines the competing social values which it must assess in each of the contests over which it must adjudicate:
>
> > The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes **both** the right of an individual to have his or her personal information protected and the need of organizations [to] collect, use or disclose personal information for purposes that are reasonable.[4]
>
> [Emphasis in original.]

[32] Both sections 39 of PIPA and 57 of FOIP are intended to "encourage full and frank discussions between the Commissioner's office and contesting parties"[5]. Section 39 of PIPA specifies that statements made or answers given by persons during an investigation or inquiry are inadmissible as evidence in court or any other proceeding, including as evidence of proceedings conducted before the Commissioner. This section is intended to allow persons appearing before this Office to cooperate with investigations or reviews without worrying about repercussions in other matters, including providing evidence in other proceedings that a matter is before the

[4] Office of the Information and Privacy Commissioner of Alberta, External Adjudication Order No. 7 (2009) at para. 63. This decision is available online at www.oipc.ab.ca.
[5] *Ibid.*

Commissioner. The Respondents argue that the Commissioner, or his delegate, is prevented from reviewing or taking notice of other matters that have been before this Office. To interpret this section as proposed by the Respondents would render section 37 of PIPA almost entirely moot. Section 39 prevents statements made before the Commissioner from being used in other proceedings; it does not prevent the Commissioner from taking note of other proceedings that have been before his Office, nor does it prevent organizations from referring to other matters in which it has been involved before this Office.

Section 37

[33] The ATA has requested authorization under section 37 of PIPA to disregard future access requests from the Respondents. Section 37 states:

> 37 If an organization asks, the Commissioner may authorize the organization to disregard one or more requests made under section 24 or 25 if
> (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests, or
> (b) one or more of the requests are frivolous or vexatious.

[34] Before I begin my analysis of this matter, the difference between a "request" and a "complaint" should be clarified. Under PIPA, individuals may make *requests* under section 24 to organizations to access their personal information or *requests* under section 25 to correct their personal information. If an individual is not satisfied with an organization's response to a request (an access or correction request), they may ask this Office to review the organization's response to the request. Individuals may also make *complaints* to organizations that they have not complied with various other sections of PIPA, and individuals may also complain to this Office that an organization has not complied with PIPA.

[35] A section 37 authorization can grant an organization authorization only to disregard requests under section 24 or 25; that is access or correction requests. Section 37 specifies that an organization may disregard *requests* if the conditions under subsection (a) or (b) are met. Both subsections refer only to requests that have been made, not complaints. To determine whether a section 37 authorization should be given to an organization, the Commissioner will review the history of *requests* between an applicant and the organization making the request under section 37.

[36] The Respondents argue the complaints they have made are irrelevant to this section 37 decision. However, the ATA refers to both the Grant MacEwan Decision[6] and

[6] Office of the Information and Privacy Commissioner of Alberta, *Freedom of Information and Protection of Privacy Act* Section 55(1) Decision (Grant MacEwan). This decision is available online at: www.oipc.ab.ca.

Bonsma v. Alberta (Information and Privacy Commissioner[7] (the "Bonsma Decision") and argues that in those cases, requests directed at public bodies other than the body making the section 55 request had been considered relevant to the section 55 decisions under FOIP. In particular, the ATA pointed out that in Grant MacEwan the Commissioner reviewed multiple access requests an applicant had made to other public bodies, and in Bonsma the Commissioner referred to the applicant's multiple access requests related to ongoing issues with Employment Standards and a former employer. It must be clarified that in the Grant MacEwan Decision, the applicant had made numerous access *requests* to other public bodies for information about Grant MacEwan College. It must also be clarified that in the Bonsma Decision, the applicant had made numerous access *requests* to one public body, Alberta Employment and Immigration. The ATA's evidence before me in this matter relates, for the most part, to *complaints* that the Respondents have made against the ATA and public bodies, not *requests*. Both the Grant MacEwan Decision and the Bonsma Decision can be distinguished from the present case where the Respondents have made four *complaints* under FOIP against public bodies.

[37] In this case, the evidence before me establishes the Respondents have made only two requests to the ATA, and both have been reviewed by this Office: an access request in 2004 (#P0019) and a correction request in 2010 (#P1553). Of the eight cases referenced by the ATA, the remaining six are complaints: two against the ATA under PIPA and four against public bodies under FOIP. The four latter FOIP cases are not relevant to a decision under section 37 because they do not fall under section 24 or 25 of PIPA and in any event, these cases did not and do not involve the ATA (other than the ATA as an Affected Party in one ongoing matter).

[38] Complaints made by an individual or individuals against an organization may be relevant where they assist in demonstrating frivolous or vexatious behaviour. Therefore, although I am unable to place any weight on FOIP complaints made by the Respondents against public bodies, particularly given that the ATA was never involved as a party in any of these matters, other than one, I will consider the two PIPA complaints against ATA where they can provide me with relevant background information for the section 37 review.

[39] The evidence before me clearly demonstrates there is a long-standing, acrimonious relationship between the parties. However, the sole issue before me is whether the ATA should be granted authorization under section 37 of PIPA to disregard any future access or correction requests which may be made by the Respondents. Without knowing what these future access requests might be, I must be satisfied by the past actions of the Respondents that such an extreme section 37 authorization is warranted. To assist me in determining whether this future authorization should be granted, I will consider the Respondents' past requests to the ATA, as well as, in a more

[7] *Bonsma v. Alberta (Information and Privacy Commissioner),* 2010 ABQB 209.

general nature, the other complaints the Respondents have made about the ATA to this Office.

1. Section 37(a) of PIPA

Repetitious or Systematic Nature

[40] Repetition occurs when a request for the same records is submitted more than once, when multiple requests relate to the same subject matter, even if the requests are worded slightly differently.

[41] The ATA argued that the Respondents requests had been repetitious in nature. The ATA stated, in part that:

> The Complainant's request for access to information dealt with information at issue in the Action and thus already made available to or by the Complainants pursuant to the discovery and trial process. The Complainant's complaints similarly relate to information lawfully made available to the parties pursuant to the discovery process undertaken in relation to the Action, or relate to the Association's description of the outcome of the Action. […]
>
> […]
>
> In this matter, the Complainants have made repeated requests and complaints in order to pursue an agenda that has nothing to do with the purpose of PIPA. It has become a weapon that the disgruntled Complainants appear to be wielding in order to harm or disrupt the operation of the Association.

[42] In response, the Respondents argued their personal information in the newsletter was unrelated to the other PIPA matters. The Respondents clarified that their sole access request to the ATA had not been to obtain additional copies of personal information that had been provided during the discovery process, but to obtain other information such as "records documenting the ATA's decision to commence action against us, such as minutes of meetings, as well as records related to any investigation that may have taken place".

[43] The ATA also argued the Respondents' requests had been systematic in that:

> [T]he Complainants have made the same or substantially the same requests or complaints about the Association and Grande Yellowhead, amounting to a systematic attempt to harass the Association and Grande Yellowhead in all matters related to the Action.
> […]
> [T]he Complainants have repeatedly, as part of a pattern of deliberate conduct, made access requests or complaints, all relating to the Action and thus the Complainants' disputes with both the Association and Grande Yellowhead.

> […]
> It is submitted that the Complainants have acted in a systematic manner in bringing these requests for review and complaints before the OIPC, all in an effort to advance their unfounded disputes against the Association and Grande Yellowhead.

[44] Throughout its submissions, the ATA referred both to itself and Grande Yellowhead. Grande Yellowhead is a public body under FOIP and is not involved in this section 37 request. Other than providing background information with respect to circumstances between the Respondents and the ATA, issues with Grande Yellowhead are not relevant to the ATA's section 37 request.

[45] Recently, in B.C. Decision P10-01[8], an Adjudicator from the Office of the Information and Privacy Commissioner for British Columbia reviewed a similar situation where an organization requested authority under section 37 of the British Columbia PIPA to disregard an access request. In this case, the applicant had made two access requests to the organization and the organization had requested authorization under section 37 after each access request had been made. The Adjudicator concluded that the requests were not similar, and were not repetitious, stating:

> [16] OHSAH has failed to demonstrate that the respondent's second request is repetitious. As OHSAH notes, Commissioner Loukidelis has defined "repetitious" as "to repeat an act … one or more times". The respondent has made only two requests. It is relevant to note that OHSAH's initial reaction to the first request was to request relief under s. 37, before it had even given the applicant any records, on the grounds that the first request alone was systematic or repetitious. In the end, as the respondent submits, OHSAH did not respond completely to the original request.
>
> […]
>
> [20] Except in extraordinary circumstances, it would not in my view be appropriate to characterize an individual making only one or two requests as "repetitious". I do not see that the current case presents such extraordinary circumstances because part of the second request is a subset of the topic of the first, but with a different date range. Moreover, the remainder of the request concerns different topics.
>
> [21] I find that the two requests at issue here do not meet the standard of "repetitious".[9]

[46] B.C. Decision P10-01 also distinguished the organization's circumstances from previous section 37 applications where other requests had been systematic. In previous

[8] Decision P10-01 Occupational Health and Safety Agency for Healthcare in BC, 2010 BCIPC 21.
[9] *Ibid.* at paras. 16, 20 and 21.

decisions, requests were systematic where an applicant had used "records from each request as a basis for making new requests, systematically expanding the scope of the records.[10]"

[47] The ATA drew numerous parallels between itself and the circumstances faced by the AMA in the AMA Decision[11]. The ATA's situation is not analogous to the AMA's situation. In the AMA Decision, the respondents had made numerous access requests to the AMA for the same information. Even after receiving personal information, or being told why certain information was not subject to PIPA, and after having numerous complaints or reviews before this Office, the Respondents in AMA continued to request the same information. The AMA estimated it had received approximately 15 requests from the respondents over a two year period. The Commissioner stated:

> [25] AMA responded to the Respondents' first access request in July 2007 and my Office reviewed AMA's response and found it complied with PIPA, including a review of the records withheld under s. 24. Despite this, the Respondents continued to submit numerous requests for the same information. Between December 2008 and January 2009 alone, AMA received five separate requests from the Respondents. I note the Respondents often refer to information they have previously received from the AMA, other organizations in their requests for additional information and they have even referred to earlier findings from this Office to "support" their additional requests. For example, rather inexplicably, the Husband refers to Investigation Report P2008-IR-001 in one of his requests to AMA, seemingly to support his position that AMA should not disclose his personal information because he has withdrawn consent, and to request information about the investigation which has been withheld under the Act. He stated:
>
> > You have never had my consent to disclose my private info to anybody
> >
> > Why did you continue to investigate and disclose information after I withdrawed [sic] consent?
> >
> > *collecting information without consent
> >
> > Need reasonable for purpose [sic] of an investigation example you can do this if you have reasonable grounds to suspect fraudulent activity. Note other personal information requires consent and a standard insurance claim is not a investigation under PIPA P2008-IR-001
> >
> > *What fraudulent activity did you suspect and when did investigation start &stop

[10] *Ibid.* at para. 22.

[11] Office of the Information and Privacy Commissioner of Alberta, *Personal Information Protection* Act, section 37 Decision (2010) (Alberta Motor Association) (AMA Decision). This decision is available online at: www.oipc.ab.ca.

> The Portfolio Officer found in P2008-IR-001 that AMA was not involved in a "standard insurance claim" and was conducting an investigation as defined by the Act into the Respondents' fire and flood insurance claims, and therefore consent was not required for the disclosure of the Husband's personal information. In a later file, the Portfolio Officer concluded that AMA had properly withheld personal information relating to the investigation of the Respondents' insurance claims. Given the previous findings of my Office which addressed the Husband's issues, the Husband's correspondence is a clear example of both the repetitious and the systematic nature of the requests received by AMA.[12]

[48] Unlike the AMA's situation, over a period of six years, from 2004 to 2010, the Respondents made two requests to the ATA. In 2004 they requested access to their personal information, and it was provided by the ATA. In 2010, they requested a correction to their personal information which had been published in an online newsletter. Although the Respondents disagreed with the content of the correction, the ATA did correct their personal information as requested.

[49] I find that the Respondents' requests to the ATA are neither repetitious nor systematic.

[50] Because I have not found that the Respondents' requests are repetitious or systematic, there is no need for me to determine whether they have unreasonably interfered with the operations of the organization or amount to an abuse of the right to make those requests.

37(b) of PIPA Vexatious or Frivolous

Vexatious

[51] The Commissioner has previously defined vexatious to mean "without reasonable or probable cause or excuse; harassing; annoying" as well as "such as to cause vexation" and "not having sufficient grounds for action and seeking only to annoy the defendant".[13] The Commissioner has also previously reported that a request is vexatious when the primary purpose of the request is made for the purpose of harassing or obstructing an organization. The definitions of vexatious rely primarily on an individual's motivation for making a request. Given the evidence before me, such as the mother's online postings, it is clear there is a poor relationship between the parties; however, absent other evidence, a poor relationship between parties is not sufficient to establish that a request made by one party to the other is vexatious.

[12] AMA Decision at para. 25.
[13] Office of the Information and Privacy Commissioner of Alberta, *Personal Information Protection Act,* Section 37 Decision at para. 29 (Manulife). This decision is available online at: www.oipc.ab.ca.

[52] The ATA submitted that commencing in 2001, the Respondents, or at least the Mother had made a series of complaints about Grande Yellowhead to the following individuals or organizations: Premier Klein, 'To whom it may concern', Minister of Learning Oberg, the College of Alberta Superintendents, and the Alberta School Boards Association. The Respondents argued that ATA's description of who the Mother had contacted was irrelevant. I agree. The complaints about Grande Yellowhead in 2001 related primarily to the school photograph issue and did not in any way involve the ATA.

[53] The ATA referred in detail to the Respondents' 2000 FOIP complaint against Grande Yellowhead and the discussion in the Defamation Decision that the Mother was not satisfied with the resolution of that FOIP complaint before this Office. For the reasons I have previously outlined, the Respondents' 2000 FOIP complaint against a public body is not relevant to the ATA's section 37 request. The ATA further submitted that the Respondents continue to bring complaints and requests against the ATA and Grande Yellowhead for motives that amount to bad faith. The ATA quoted the Defamation Decision where the trial judge found the Mother's actions had been actuated by malice. The trial judge in the Defamation Decision used particularly strong language when he spoke of the Mother's malicious defamation and her motivations for denigrating the principal. The trial judge stated in part:

> [The principal] was generally and continuously slagged by a vociferous vindictive parent who refused to listen to reason. [The Mother] continued her personal attacks on [the principal] even though she knew much of what she said and wrote was untrue and she did so without compunction or twinge of conscience.[14]

[54] The Respondents argued that the Defamation Decision should not be considered in this matter. I disagree. Similar to PIPA complaints filed by the Respondents against the ATA, the Defamation Decision is relevant insofar as it provides background information to the relationship between the parties. However, the fact that the trial judge found the Mother to be actuated by malice towards the principal of her son's school in the 2006 Defamation Decision does not necessarily mean that the mother has been vexatious under PIPA in her dealings with the ATA.

[55] In the Manulife Decision[15], the Commissioner clarified that simply because litigation has taken place between the parties does not render an access request frivolous or vexatious. The Commissioner stated[16]:

> [38] This decision should not be interpreted as suggesting that, because litigation has taken place, an access request under PIPA would on that basis alone be found to be frivolous or vexatious. In Decision P05-01, the British Columbia Information and Privacy Commissioner said:

[14] Defamation Decision.
[15] *Supra* note 13.
[16] *Ibid.* at para 38, quoting the B.C. Commissioner in Decision P05-01 at para. 24.

> "This decision should not be interpreted as suggesting that an access request will be found vexatious merely because litigation has taken place, is under way, or is possible, and disclosure of the same information or documents has occurred or may occur.

[56] The ATA also referred to the Manulife Decision to support its position that the Respondents' requests were vexatious. Similar to this case, in the Manulife Decision, the applicant had made only one request under PIPA for access to her personal information. However, unlike this case, the evidence before the Commissioner demonstrated that over the course of 15 years she had obtained all of the personal information that Manulife had about her. There was no need for her to make an access request under PIPA, because the applicant already had accessed all of her personal information. In the Manulife Decision, the Commissioner found that the applicant was vexatious in making her request. The Commissioner stated:

> [34] This dispute between the Applicant and Manulife has been alive in some fashion for almost 15 years. During that time, the Applicant has repeatedly sought and obtained various pieces of information through many different applications and processes. She suggests that Manulife is being dishonest in respect of the personal information it has been able to locate. It is clear to me that this distrust stems from a long, hard-fought legal battle between the parties. Without commenting on the merits of the underlying dispute one way or the other, the experience has left the Applicant angry and sceptical. I am not persuaded that her motives are simply to gain closure for her life.
>
> [35] Through PIPA, the Applicant has the right to know what information Manulife has about her. I find that, at this late stage in her dealings with Manulife, she is aware of what information Manulife has or had, having regard to the seven years of litigation between these parties and the extensive discovery that accompanied the litigation.

[57] The Respondents made only one access request under PIPA, and through that request obtained from the ATA personal information that had not been disclosed to them during the civil litigation discovery process. Unlike the Manulife case, there is no evidence to indicate that after receiving their personal information from their one access request, that the Respondents requested access to their personal information again. As such, the Manulife Decision can also be distinguished from the present case.

[58] The ATA also provided evidence in the form of online postings by the Mother, of which some excerpts were included in this Decision at paragraph 27. These online postings indicate the Mother believes she has been wronged by the actions of the ATA and a public body; however here is nothing to indicate that she has requested reviews of the ATA or complaints against the ATA or public bodies for a vexatious purpose; rather, they indicate the mother is of the belief that she has been wronged under

privacy legislation and may obtain some relief when her FOIP matter is ultimately heard. Again, I wish to clarify that this section 37 Decision has no bearing whatsoever on the ultimate conclusion of the ongoing FOIP matter.

[59] I will also look at the content of the requests and complaints the Respondents have made to this Office. The evidence before me establishes they made one access request in 2004, and a correction request in 2010 to the ATA. The Respondents also complained about the ATA's collection of their personal information in 2005 for use in the defamation litigation and they complained about the disclosure of their personal information in the online newsletter in 2010. While these matters all relate to the defamation litigation, they are all separate matters with little or no overlap. The Respondents also made several complaints against public bodies for alleged disclosures of personal information to the ATA. I am not persuaded that any of these matters were brought before this Office for the primary purpose of vexing the ATA. I am of the opinion the Respondents believe they have legitimate complaints or reviews and believe they will obtain relief under privacy legislation.

[60] Although the ATA draws numerous similarities between its situation and those reviewed in other section 37 decisions under PIPA or section 55(1) decisions under FOIP, the common feature between the decisions referred to by the ATA is the applicants in those matters had made numerous access requests. In Manulife, only one access request had been made, but the evidence demonstrated that over 15 years, the applicant had requested and received access to her information from Manulife through the civil litigation process. There is no evidence before me that the Respondents have made more than two requests to the ATA over a period of six years.

[61] Based upon my review of the evidence before me, I am not satisfied that the Respondents' requests are vexatious.

Frivolous

[62] The Commissioner has previously defined frivolous as "lacking a legal basis or legal merit; not serious; not reasonably purposeful" and also as "paltry, trifling, trumpery or lacking seriousness; silly"[17]. It has also been defined in B.C. Decision P05-01 as:

> A "frivolous" request is one that is made primarily for a purpose other than gaining access to information. It will usually not be enough that a request appears on the surface to be for an ulterior purpose – other facts will usually have to exist before one can conclude that the request is made for some purpose other than gaining access to information.

[17] *Ibid.* at para 29.

[63] As I have discussed above, based upon the subject matter of the Respondents' requests, and the Mother's online postings, it is apparent that they were made for a genuine purpose: obtaining access to personal information and correcting personal information. The complaints made by the Respondents also indicate that they were made in the hope of obtaining relief under the applicable legislation.

[64] I do not find there is sufficient evidence to establish that the two requests made to the ATA were frivolous.

DECISION

[65] The ATA requested authorization under section 37 of PIPA to disregard future access requests that are made by the Respondents. Access rights are not rights that can be taken away lightly and a decision to grant authorization to ignore future requests should be made only in extreme circumstances.

[66] The Commissioner has granted organizations authorization under section 37 of PIPA to disregard future requests in a limited number of extreme cases. Generally a limited authorization to disregard certain future requests may be granted where an individual has made requests, received access, and despite this continues to make similar additional requests. There is no evidence in this case that the Respondents have made multiple similar requests. Future authorizations to disregard requests have also been granted in cases where, although the requests are not identical, the Commissioner has determined that the requests have been made for the purpose of harassing an organization. The ATA has not established such circumstances in this case.

[67] It is abundantly clear that the relationship between the Respondents and the ATA is contentious; however, despite the preponderance of evidence before me establishing the poor relationship between the parties, I am not satisfied the ATA has met the necessary burden to receive authorization to disregard any future access requests made by the Respondents. The ATA received two distinct requests from the Respondents over six years: an access request in 2004 and a correction request in 2010.

[68] Some matters between the parties are ongoing, and it is possible the Respondents may make legitimate requests of the ATA in the future. At this time, I am not convinced the circumstances warrant depriving the Respondents of their right to make access or correction requests in the future to the ATA. That being said, I acknowledge the relationship between the parties is fraught with tension and it is unknown what the Respondents may request from the ATA in the future. Depending upon future circumstances between the Respondents and the ATA, the ATA may consider requesting authorization to disregard future requests. The Commissioner would, at that time, consider whether those circumstances warrant a section 37 authorization.

[69] At this time, the ATA has not satisfied the requirements of section 37(a) or (b), so as to warrant authorizing it to disregard any access requests it may review in the future. Therefore, the ATA's request for authorization under section 37 of PIPA to disregard future access requests from the Respondents is denied.

Jillian Vincent B.Sc., LL.B.
Office of the Information and Privacy Commissioner