ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD P2021-RTD-01

October 25, 2021

ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF ALBERTA

Case File Number 015340

[1] The Association of Professional Engineers and Geoscientists of Alberta ("APEGA" or the "Organization") requested authorization under section 37 of the *Personal Information Protection Act* ("PIPA" or the "Act") to disregard an access request, as well as any future requests, made by an individual whom I will refer to as the Applicant.

[2] For the reasons outlined in this decision, I have decided to grant the Organization authorization to disregard the access request as well as authorization to disregard future access requests of a similar nature from the Applicant.

Commissioner's Authority

[3] Section 37 of PIPA gives me the power to authorize an organization to disregard certain requests. 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.

Background

[4] There is a lengthy history between the Applicant and Organization broadly relating to disciplinary proceedings against the Applicant.

[5] The Applicant has a history of litigation against the Organization in the courts of Alberta and British Columbia. The Organization states that the Applicant has been declared a vexatious litigant in British Columbia, and has been enjoined from initiating legal proceedings against APEGA and 19 others, without first obtaining leave of the court in Alberta.

[6] In December 2016, the Alberta Court of Queen's Bench granted an Interlocutory Injunction Order preventing the Applicant from commencing or continuing litigation within that court or filing complaints to the Organization without leave of the court. I note the Applicant has been found in contempt of that Order. I further note that a recent 2021 decision from the Alberta Court of Queen's Bench updated the court access restrictions to which the Applicant is subject (2021 ABQB 511). Among other limitations, paragraph 2 of the 2021 update to the court access restrictions specifically prohibits the Applicant, from:

> i) commencing, or attempting to commence, or continuing, any appeal, action, application, or proceedings in the Alberta Court of Queen's Bench, and on his own behalf or on behalf of any other person or estate, or
>
> ii) making complaints to the Association of Professional Engineers and Geoscientists of Alberta about any member of the Association of Professional Engineers and Geoscientists of Alberta
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> without an order of the Alberta Court of Queen's Bench.

[7] The Applicant also has a history of matters before this office involving himself and the Organization (or other parties), including:

- A previous section 37 decision wherein I found the Applicant's access requests were vexatious, and granted the Organization authorization to disregard those access requests. (See Request for Authorization to Disregard an Access Request under section 37 of the *Personal Information Protection Act*, Association of Professional Engineers and Geoscientists of Alberta, OIPC File References 007730, 007731 and 007732, July 4, 2018).

- A January, 2019 dismissal of the Applicant's request for an Inquiry regarding his complaint against the Organization under section 50 of PIPA. In that decision I held, in part, as follows:

> I have already authorized APEGA to disregard two access requests made by the Complainant, on the ground that those access requests are vexatious. In making my decision, I relied on the Interlocutory Order. Now I am dealing with a privacy complaint made by the Complainant against APEGA.
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> I am of the view that the Interlocutory Order applies to the Complainant but does not apply to my office or to me. However, the matter that the Complainant has brought to my office clearly involves APEGA and its disciplinary process, which is the subject of the Interlocutory Order.
>
> I do not intend to allow my office to become a means whereby a person otherwise prohibited by the Court from commencing Court proceedings against a party, decides to find a way around that prohibition by instead commencing

> proceedings in my office. In my view, that is what has happened here. After the Court issued its December 16, 2016 Interlocutory Order, the Complainant brought a complaint about APEGA to my office on May 2, 2017
>
> The Legislature did not intend that the legislation be used in the manner I have set out above.

[8] The Applicant's current access request to the Organization is for the following:

> […] I am requesting ALL of my personal information in APEGA's possession permitted under the **Personal Information Protection Act (PIPA).**
>
> For more information just in case you are not familiar with PIPA and making PIPA requests please see the following link:
>
> https://www.oipc.ab.ca/action-items/how-to-make-an-access-request.aspx
>
> I am also looking to attain any and all communications (most emails) between myself and [10 names redacted] or any other emails (or documents) inside APEGA that contain my personal information.
>
> Under the FOIP Act and PIPA, an access request such as this APEGA PIPA request must be in writing and public bodies (i.e. APEGA) have 30 days to respond to this request to provide any personal information in APEGA's possession permitted under the **Personal Information Protection Act (PIPA).**
>
> It ought to be noted that an individual's right to access information under FIPPA is **coextensive** with his or her right to compel a local government to produce documents in accordance with the applicable court rules just to ensure that APEGA responds this time. To that point, I will be backing this PIPA request up and preparing to attain a Court Order to produce documents if need be as per the Demand for Particulars you were served moments ago.
>
> I look forward to APEGA's response to this PIPA request within the 30 days allowed under PIPA.

[9] The Organization provided a lengthy analysis of prior decisions of my office and explained how those circumstances applied to the present situation. The Organization summarized the history between the parties, in part, as follows:

> APEGA's extensive history with [the Applicant] was detailed in its previous application to disregard [the Applicant's] requests. However, in summary, [the Applicant] is a Geologist by training and was a member of APEGA until June 2, 2016 when his membership was revoked by APEGA for non-payment of membership dues. As a result of disciplinary proceedings against [the Applicant], he is now permanently ineligible for reinstatement, subject to APEGA's council determining it will consider such an application.

Beginning around September 2014, and in the context of business disputes between [the Applicant] and various third parties, [the Applicant] began initiating complaints with APEGA and sending excessive email correspondence to APEGA. The email correspondence was voluminous in terms of both frequency and the size of each email. This background is set out in the Affidavit of [name redacted] which has previously been provided to the OIPC.

In 2015, complaints were made against [the Applicant] to both APEGA and APEGBC (as it was previously called), it is now called Engineers and Geoscientists British Columbia (EGBC), alleging that individuals were being harassed by [the Applicant] and that [the Applicant's] internet and email campaign against the individuals constituted unprofessional behaviour. APEGA investigated this complaint pursuant to its statutory duties set out in the Engineering and Geoscience Professional Act, RSA 2000, c E-11 (the "EGP Act").

[The Applicant] did not cooperate with APEGA's investigation, and instead engaged in a counterattack against the individuals involved in the APEGA investigation.

The substance and volume of [the Applicant's] campaign became (and to some degree has remained) an unreasonable draw on APEGA's resources. Therefore, APEGA banned [the Applicant] from communicating with it directly by email and sought and obtained a court-ordered injunction against [the Applicant].

On December 5, 2016, Justice Verville granted an *ex parte* Interim Order enjoining [the Applicant] from engaging in certain activities (this is included in the materials previously provided). On December 16, 2016, APEGA obtained an Injunction Order from the Court of Queen's Bench in relation to [the Applicant].

This did not stop [the Applicant's] behaviour and he persisted in behaviour that was prohibited in the Injunction Order. This is detailed in the Affidavit of [name redacted] previously filed with the OIPC.

Ultimately, [the Applicant] was found in contempt of the injunction order and two orders were issued by Associate Chief Justice Rooke. Those orders were both previously provided to the OIPC. This was the second time [the Applicant] had been found in contempt (see 2016 BCSC 1630, which was previously provided to the OIPC.) [The Applicant] was also found to be a vexatious litigant in British Columbia further to the June 8, 2017 order of Justice Riley which was also previously provided to the OIPC.

Most recently, [the Applicant] was found in contempt a third time (see the decision of Justice Branch of the British Columbia Supreme Court attached as Tab D to this letter). [The Applicant's] most recent request preceded [the Applicant's] court appearance related to APEGA's application to find [the Applicant] in contempt of the injunction that had been registered in British Columbia.

[10] The Applicant disputes the Organization's characterization of his access request. He provided a submission, stating in part:

> Dear [OIPC] on February 24, 2020 in a joint contempt application(s) by Acapella & APEGA i [sic] was order [sic] to jail for 15 days (with no remission) in Acapella v. [Applicant] (also seeking jail time) was adjourned to May 2020 however the covid pandemic has changed all that and I am at a loss for when this hearing will take place. I need these materials for my defence of the APEGA v. [Applicant] matter when it returns back to court which is clearly why APEGA is undoubtedly obstructing justice by virtue of its request to the OIPC to disregard my January 24, 2020 request. I know for a fact that there are records that contain my personal information at APEGA that will exonerate me from all this mess and certainly prevent me from going to jail again by APEGA that I am entitled to under PIPPA [sic] and therefore I am asking that the OIPC quashes the APEGA request to disregard. Under the charter I am guaranteed the right to equal benefit of the law and to defend myself as a self-represented litigant and I understand that a PIPA request is has [sic] perhaps more power than an order of the court to produce documents (i.e. co-extensive with the order of the Court) and therefore the OIPC should do the right thing and quash APEGA's request to disregard my PIPA request which is my rights under the laws of AB and Canada to obtain my personal information from APEGA. Furthermore, despite APEGA's claim that is has [sic] confirmed that it provided me with a copy of APEGA's request to disregard I have not received anything from APEGA respecting this matter and was unaware of this matter under the OIPC's email of today's date.
>
> Apega confirmed it provided you with a copy of its application.
>
> I would very much appreciate the OIPC sending me the so-called confirmation of APEGA providing me with a copy of its application?
>
> FYI – this attests to the way APEGA conducts business and has treated me for the last 5 years. The fact APEGA is seeking to see me in jail yet again since the first time that APEGA did same was May 2017 and was seeking 60 days in jail without any documents that APEGA has in its possession with my personal information attached … is paramount to obstructing justice and not preventing my access to defence materials that I am entitled to via PIPA (via Privacy Laws in Alberta). This is similar to going to Court as a self-represented litigant with your arms tied behind your back and to boot I am on disability for PTSD that in part was caused by APEGA; the irony of it all is sad and sick. APEGA made a court argument using a so-called expert (a 70 year old Psychiatrist who is allegedly a "pill-pusher" in Alberta) who based on my medical records (without ever seeing me) from my Psychiatrist and my family doctor over the last 6 years determined that I had a personality disorder with delusions noting that I was diagnosed with PTSD not delusions and or a personality disorder. Again another way that APEGA operates in the courts against me which should tell any reasonable person who I am up against and what they are trying to do to me… discredit me and also prevent me from having defence documents that I am entitled to under PIPA in a clandestine way telling the OIPC that I have been provided same which I have not in a request to disregard my request. If this is not enough facts and evidence to cause the OIPC to quash APEGA's

> request to disregard that I don't know what else to say. Jail time is riding on this APEGA request to disregard my PIPA request and that's pretty serious and I have the right to my personal information at APEGA and to denied [sic] myself against APEGA using this information, it's really that simple.
>
> Last point, any reasonable person can read between the lines to see what APEGA is trying to do… and what they have done to me by not giving me access to my personal information that APEGA has in its possession noting that I was a member of APEGA from 2012 to June 2016.
>
> I reserve the right to show this communication to Justice Branch the Judge in the APEGA v. [Applicant] and Acapella v. [Applicant] matter in the BC Supreme Court who has seized these matters and who will be presiding over the APEGA v. [Applicant] hearing, I presume, when the Covid Pandemic orders are lifted and the Courts in BC are reopened for matters such as these.

[11] The Applicant followed up his initial submission with a forwarded email that appeared to relate to deadline extensions of a matter between the Applicant and the BC equivalent of the Organization (EGBC) from the BC OIPC. The Applicant further stated:

> The point of providing this to the OIPC AB is to stare [sic] the obvious that whether the OIPC of AB decides to investigate this matter or not it is currently being investigated indirectly via the OIPC of BC.
>
> Either way the OIPC of AB decides in the end I will be getting the records that I am entitled to under PIPA from APEGA.
>
> Lastly I kindly encourage the OIPC AB to investigate this matter for reasons that should be obvious after this disclosure given the repercussions after the fact if the OIPC AB does not investigate.

[12] I have reviewed the parties' submissions, as well as the materials (including sworn Affidavits) provided in the Organization's previous section 37 request. I note that the Organization copied the Applicant on its email correspondence with my office regarding its current submission, and the Applicant provided a submission in response; therefore, I am satisfied that the Applicant had notice of the Organization's current request for authorization to disregard his access request. Further, while I note that the Applicant appears to be requesting an investigation by my office, it is unclear what he is requesting to have investigated, and in any event, a response to an Organization's request for authorization to disregard is not an appropriate means by which to request a review by my office. I have considered the Applicant's submission only insofar as it relates to the Organization's request under section 37.

Analysis

Section 37(a) – requests are repetitious or systematic in nature

[13] "Repetitious" is when a request for the same records or information is made more than once. "Systematic in nature" includes a pattern of conduct that is regular or deliberate.

[14] The Organization quoted the Applicant's previous access requests and explained how they overlap with the current access request. The Organization states:

> APEGA was permitted to disregard these requests by the OIPC. [The Applicant's] most recent request is duplicative of these previous requests, including his previous request for any and all email/letter communications from the same named individuals. APEGA acknowledges the OIPC's previous decision that a request is repetitious when it is made for the same records or information more than once (*Grant MacEwan College*). It is APEGA's submission that this most recent request (Tab A) satisfied the definition of "repetitious" as this request has now been made three times by [the Applicant].

[15] I agree with the Organization that the Applicant's most recent access request is repetitive.

Section 37(a) – the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests

[16] In addition to establishing that a request is either repetitious or systematic, under section 37(a), an organization must also provide evidence that the requests would unreasonably interfere with the operations of the organization *or* that they amount to an abuse of the right to make those requests.

[17] The Organization submits that responding to the access request would unreasonably interfere with its operations:

> [The Applicant's] unreasonable correspondence and complaints in association with APEGA justified multiple court orders in an effort to prevent his harassing and overwhelming activities and the impact that those activities have had on APEGA's ability to carry out its mandate (see filed Originating Application, previously provided to OIPC).
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> The Commissioner has noted that the amount of time and resources required to respond to a request must be considered to determine what it reasonable. (*University of Alberta, Re*)
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> APEGA notes that [the Applicant's] most recent request is primarily for information he already has. Expending additional resources to collect, organize and provide [the Applicant] with information and documentation he already has takes away from APEGA's ability to direct resources to its other role, protecting the public. Further, given [the Applicant's] prolific correspondence with APEGA, compiling and organizing all documents and information involving [the Applicant] would take a considerable amount

> of time and resources. However, APEGA concedes that with this most recent request, the principle basis upon which APEGA seeks to disregard this request is due to the fact that it is a continuation of [the Applicant's] vexatious behaviour towards APEGA, and individuals associated with APEGA.

[18] The Organization further submits that the Applicant's access request is an abuse of his right to make requests:

> APEGA submits that [the Applicant's] most recent request is a continuation of his attempts to mine information for ways he can harass and pursue individuals who are associated with APEGA and who he feels have wronged him. Indeed, the basis for the most recent contempt finding by Justice Branch is [the Applicant's] continued contact with and internet posting about many of the individuals named in [the Applicant's] information request.
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> APEGA submits that [the Applicant's] repeated requests, combined with his relentless campaign against APEGA and individuals associated with APEGA make it apparent that his requests are being made with ulterior motives. APEGA further submits that the requests constitute an abuse of the right to make requests pursuant to s. 37(a) of PIPA.

[19] As I have noted in numerous prior decisions authorizing organizations (under section 37 of PIPA), public bodies (under section 55(1) of the *Freedom of Information and Protection of Privacy Act*) or custodians (under section 87(1) of the *Health Information Act*), the fact that a request is repetitive can be abusive in and of itself. It is not necessary for me to determine whether responding to this access request would unreasonably interfere with the Organization's operations, because based on the evidence provided by the Organization, I am satisfied that, in these circumstances, the repetitiousness of the Applicant's request does constitute an abuse of his right to make an access request.

[20] I find the Organization has met its burden to establish that the conditions under section 37(a) of PIPA are met. The Applicant's access request is repetitious and is an abuse of the Applicant's right to make an access request.

Section 37(b) – frivolous or vexatious

[21] The Organization submits that the Applicant's request is both frivolous and vexatious. A frivolous request is typically associated with matters that are trivial or without merit. Information that may be trivial from one person's perspective, however, may be of importance from another's. The Organization submits as follows:

> It is APEGA's view that [the Applicant's] requests are frivolous in that most of the information requested would be in [the Applicant's] possession. Most of the documents that would be generated by such a request are connected to [the Applicant's] own investigation, the fruits of which have already been provided to him. APEGA also notes that most of these documents could, in any event, likely be refused by APEGA to produce pursuant to s. 24(2)(c) of PIPA which provides that an organization may refuse

to provide access to personal information if the information was collected for an investigation or legal proceedings. The balance of the request relates to information, such as correspondence from individuals with himself, that [the Applicant] already has access to.

It is APEGA's view that [the Applicant's] requests are an attempt to access information that either falls outside the scope of PIPA, or that he already has.

[22] A vexatious request is one in which the Applicant's true motive is other than to gain access to information, which can include the motive of harassing the organization to whom the request is made. A vexatious request may also involve misuse or abuse of a legal process. The Organization submits as follows:

> Previous decisions of the Commissioner have established that a request is vexatious when the primary purpose of the request is to continually or repeatedly obstruct or grind a public body to a standstill (*Calgary Police Service*). The Commissioner has referenced judicial interpretations of "vexatious" in analysis of potentially vexatious requests.
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> With respect to *Chutskoff*, the following factors are particularly relevant in classifying [the Applicant's] behaviour as vexatious:
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> - *"The history of a dispute, including activities both inside and outside court"*
> - *"Other litigation and court history is relevant"*
> - *"Failure to abide by court orders"*
> - *"Collateral attacks on previous judicial decision-making, including attempts to circumvent the effects of the court order"*
> - *"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"*
> - *"Unsubstantiated allegations of conspiracy, fraud and misconduct, including allegations of bias, harassment and offensive and defamatory allegations"*
>
> As acknowledged by the OIPC in its previous decision regarding [the Applicant's] requests, [the Applicant's] repeated requests exemplifies vexatious behaviour. This is further reinforced by the recent contempt finding by Justice Branch (Tab D). It is telling that [the Applicant's] request came in after APEGA had sought findings from the British Columbia Supreme Court that [the Applicant] had breached the injunction that restrains him from contacting individuals associated with APEGA. APEGA submits there is a retaliatory nature to [the Applicant's] requests.
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> APEGA submits that [the Applicant's] request is a continuation of his efforts to seek information that he can use in his campaign to harass those connected to APEGA that [the Applicant] feels have wronged him. These actions make it more difficult for APEGA to do its job and recruit volunteers to sit on committees and panels. In APEGA's view, [the Applicant's] repeated requests are made for the purposes of continuing his harassment of APEGA in order to obstruct and intimidate those who work with and for

> APEGA. Past decisions of the Commissioner have established 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. It is APEGA's submission that its history with [the Applicant] and the evidence included and referenced in this request establishes that [the Applicant's] requests were made for the primary purpose of further obstructing with APEGA's operations and continuing to harass APEGA's personnel and volunteers.

[23] In my prior section 37 decision, regarding the Applicant's access requests to the Organization, I held that those access requests were vexatious. Having reviewed the evidence before me, it appears that little has changed from that time. As noted above, the Alberta Court of Queen's Bench has confirmed that the Interlocutory Injunction Order restraining the Applicant from various interactions with the Organization remains in effect, and the court access restrictions to which the Applicant is subject have been broadened. The Applicant remains a vexatious litigant in British Columbia and has been found in contempt of court for a third time.

[24] As I have previously found in decisions involving these parties, although the Alberta Injunction Order does not address access requests, and is not binding upon me, it is a factor I may consider in reviewing the matter before me. Further, while an Applicant's motive in making an access request is usually irrelevant in matters before my office, it can be a consideration when determining whether an access request is abusive or vexatious in the context of a request to disregard. I find it both relevant and persuasive that the Alberta Injunction Order remains in effect, and that the BC Court has made further findings of contempt against the Applicant in relation to the Organization.

[25] I find the Organization has met its burden to establish that the conditions of section 37(b) of PIPA are met.

[26] I am of the opinion that the Applicant's access requests are a means of circumventing the Court Orders preventing him from various actions against the Organization. I find the Applicant is misusing and abusing his access rights under PIPA, and his request is therefore vexatious under section 37(b). As such, there is no need for me to decide whether his access request is also frivolous.

Request for Authorization to Disregard Future Access Requests

[27] The Organization also requested authorization to disregard any future access requests made by the Applicant. On the basis of the evidence before me, which includes the Applicant's history before my office, I find that he is abusing his access to information rights as a means of circumventing court orders to further his campaign against the Organization and its employees.

[28] The Organization is authorized to disregard future access requests of a similar nature from the Applicant.

Decision

[29] On the basis of the evidence before me, I have decided to exercise my discretion under section 37 of PIPA. The Organization is authorized to disregard the Applicant's current access request as well as future access requests of a similar nature from the Applicant.

Jill Clayton
Information and Privacy Commissioner

/ak