ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

REQUEST TO DISREGARD P2022-RTD-01

April 12, 2022

CARON & PARTNERS LLP

Case File Number 009257

[1] Caron & Partners LLP (the "Organization") requested authorization under section 37 of the *Personal Information Protection Act* ("PIPA" or the "Act") to disregard an access request 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 Applicant's access request.

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
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> (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
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> (b) one or more of the requests are frivolous or vexatious.

Background

[4] The Organization is a law firm that was retained to represent parties in a lawsuit filed by the Applicant; that is, the Organization represents parties adverse in interest to the Applicant. During the course of that litigation, the Applicant submitted an access request under PIPA to the Organization for records containing her personal information.

[5] The Applicant's access request is three pages in length, but can be generally summarized as requesting all documents containing the Applicant's name. The Applicant specifies that her access request includes records associated with a lengthy list of legal matters, legal bills, and employees of the Organization, including lawyers as well as records associated with the Organization's clients.

[6] The parties provided an exceptionally large volume of materials to support their positions.

[7] The Organization provided a detailed summary of the Applicant's litigation history, as well as submissions specifically relating to this matter. The Applicant also provided lengthy and detailed submissions in response. While this matter was before me, the Alberta Court of Queen's Bench declared the Applicant to be a vexatious litigant.[1] In light of that decision, I provided the parties an opportunity to make additional submissions.

[8] The Organization provided an updated timeline regarding the Applicant's litigation, and made additional submissions as to how the court's declaration that she was a vexatious litigant related to this matter. The Applicant argued I should not consider the court's declaration that she was a vexatious litigant because that finding was made after she made her access request. The Applicant also raised concerns as to how I had become aware of the court's finding. The Organization addressed this concern in noting that the court's decision was publicly available. I confirm the court's finding came to my attention due to its public availability.

[9] A court's decision that an applicant is a vexatious litigant is neither binding on me, nor determinative of whether an organization will be authorized to disregard an access request. However, as I have found in prior decisions, a court's finding that an applicant is a vexatious litigant is a factor I may consider.[2] I have also considered the Applicant's position that I should not consider the court's vexatious litigant decision because it was issued after she made her access request. This concern is addressed by the way in which section 37 operates: when an organization brings an application to disregard an access request, the statutory timelines by which an organization must respond to that access request are suspended until I issue my decision. If I exercise my discretion to grant an organization's request to disregard, the matter is concluded; that is, the organization is not required to respond to the access request. If I do not authorize an organization to disregard an access request, the statutory timelines apply again, and the organization must respond to the access request in accordance with PIPA. Accordingly, as the Organization's request was still active before me at the time the court declared the Applicant a vexatious litigant, I find it is a factor I may consider.

Analysis

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

[10] "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.

[1] Court of Queen's Bench of Alberta citation ("Vexatious Litigant Decision"): 2020 ABQB 700; permission to appeal denied 2021 ABCA 202

[2] See, for example: P2021-RTD-01 at paras 5 and 23; F2021-RTD-02

[11] The Organization takes the position that the Applicant's access request is systematic in nature. It states that the Applicant has made at least eight previous access to information requests under the *Freedom of Information and Protection of Privacy Act* ("FOIP") to her former employer. It also relies on a prior unpublished decision from 2017 wherein I authorized her former employer to disregard an access request made by the Applicant under FOIP. In that decision I found the Applicant's access request was systematic in nature.

[12] The Organization provided further evidence that within a period of two days, in addition to making this access request, the Applicant made requests under PIPA for her personal information to four other organizations. One of those access requests is the subject of P2022-RTD-02, a related request for authorization to disregard. The Organization stated that, like itself, the other four organizations were adverse to the Applicant's position in the ongoing litigation.

[13] The Applicant submits that because she has not made an access request to counsel representing the organization, the Organization cannot make submissions under section 37(a). Although it is not clear from her submission, it may be that, as in P2022-RTD-02, the Applicant also intended to argue that she has made only one access request to the Organization. But in any event, I do not accept the Applicant's position. Section 37(a) of PIPA does not restrict the consideration of "systematic in nature" only to the organization making the request, or to counsel representing an organization. As I have stated in prior decisions, I may consider an applicant's other activities or matters, including access requests made to other organizations, public bodies or custodians when reviewing an application for authorization to disregard an access request.[3]

[14] I find that the evidence of the Applicant's other access requests is relevant to the matter before me. I have reviewed the access request at issue as well as the other four access requests submitted by the Applicant to other organizations within the two day time period. Each separate access request is for all records containing her name and is distinctly tailored to the Organization to which the request was directed, but the access requests contain common elements such as naming particular individuals associated with that organization, specifically listing litigation file numbers with that organization, and most of them also request legal bills.

[15] On the basis of the evidence before me, I am satisfied that this access request is systematic in nature. The Applicant submitted five very similar access requests to organizations adverse in interest over two days. This access request is part of a pattern of conduct by the Applicant to make access requests to adverse organizations involved in her ongoing and expanding litigation.

[3] See, for example: F2020-RTD-03 at paras 15 and 16 and P2021-RTD-01 at paras 5 - 7

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] Using the access rights under PIPA for purposes other than to obtain access to personal information may be considered an abuse of the right to make those requests. In a request to disregard an access request under section 37, it is the organization that bears the burden to establish that the criteria of the section are met. An applicant does not have a burden regarding their access request; that is, an applicant does not have to prove an access request is for a legitimate purpose, but merely has to show the request has merit.[4] In cases where an applicant chooses to make submissions, they will be considered along with those of the organization requesting authorization to disregard.

[18] The Organization provided a summary of the Applicant's litigation history, and stated, "[The Applicant's] lack of success at the Court of Queen's Bench and administrative tribunals has lead to a pattern of conflict escalation and expansion. [The Applicant] has made baseless accusations of dishonesty and conspiracy against her present opposing counsel, including [names redacted]." The Organization further stated:

> [The Applicant's] history of PIPA and FOIP requests are part of a long-standing history of behaviour designed to harass, obstruct, or wear opponents in litigation down. Given the [prior unpublished section 55 decision authorizing her former employer to disregard an access request], she has now expanded her systemic requests to PIPA and against opposing counsel. It amounts to an abuse of her right to make information requests.
> […]
> [The Applicant] appears to be searching for information in Caron's litigation file, which she is not entitled to under the *Rules of Court* (for privilege and several other concerns) or section 4(5) of PIPA. It would be unreasonable to sever [the Applicant's] name on nearly every record in Caron's client file (the matter description for Caron's file contains her name as the claimant for organizational purposes). It is unreasonable to require an organization to sever the records to provide the applicant with fragments or snippets of personal information that is already known to the applicant (and was voluntarily

[4] See, for example, my office's 2011-2012 Annual Report which summarized the Alberta Court of Queen's Bench unreported judicial review of a section 55 decision (*Clarence Bonsma v The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office, Court File 1103-05598)*. In that decision, the court said that if requests are not the same, then the fact that there are numerous requests made regularly cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive. That is where the second part of section 55 becomes important. The ulterior motive is what establishes the abuse. The court further expressed its view that a person defending what amounted to a summary dismissal application under section 55 need do no more than show merit. In other words, that person did not have a burden to show the request was for a legitimate purpose.

disclosed and placed by her on the Court file). This reasoning arises in an Alberta OIPC decision involving Gibbs Cage Architects [Order P2016-01]:

> [23] In Decision P2011-D-003, former Commissioner Work commented that in some cases, personal information will amount to meaningless or insignificant "snippets" of information contained in a record. **He noted that it may be reasonable for an organization not to provide information to an applicant if the information is already known to the applicant or is meaningless, or would take a considerable amount of time and effort to locate and then sever from the record.** He said:
>
> I note as well that on the basis of the ability of organizations to take into account what is reasonable in responding to access requests under section 24 of the Act, it is open to an organization to argue, in appropriate circumstances, that it is not reasonable to provide access to an applicant's personal information, or parts of this information. This may apply for information that consists of meaningless or insignificant snippets, particularly if it reveals nothing of substance to an applicant. It may also apply where providing information would require an organization to review a large volume of information only to provide an applicant with minor items of information of which he is already well aware [Emphasis added by Organization]

The volume of the substantially similar PIPA requests made against opposing parties in the Action or their counsel is immediately indicative of both systemic activities and abusive motivation, particularly given the history with the prior FOIP requests. [The Applicant] has offered no explanation for these requests. Requiring every record these organizations have with her name on it, a piece of personal information [the Applicant] disclosed in documents filed on the Court file, becomes at once abusive. Her motivation is obviously disclosure of information that is not her personal information, but rather information of the opposing parties in the Action and their respective counsel, likely entirely for the purposes of litigating the Action and obtaining disclosure the Court has refused her. These are not legitimate PIPA purposes. It is in any event unreasonable, as discussed above, to require Caron to sever all other information from its litigation file just to provide [the Applicant] with redacted records containing only her name, which she provided voluntarily by filing a lawsuit against [the Defendants].

[19] As noted above, the Applicant disputed the ability of the Organization to make submissions under section 37(a). Most of her submissions under this provision focused on details of her litigation involving the Organization. She also stated, "I am asking for these documents to be released for the interest of the public under Section 32, **because I do not believe that the Organization is using the PIPA Act for the intended purpose**." [Emphasis added by Applicant] Section 32 of PIPA, however, deals with fees and is not relevant to this matter.

[20] The Alberta Court of Queen's Bench decision declaring the Applicant to be a vexatious litigant is an additional factor that assists me in determining whether her access request is an abuse of her right to make access requests. In its additional submission, the

Organization directed my attention to specific findings of the court that the Applicant has an "established pattern of persistent, ongoing, and expanding abusive litigation".[5] The court further stated:

> [39] First, the record illustrates very clearly, and I have found as a fact, that [the Applicant] has a pattern of expanding the range of litigation targets whom she sues. When [the Applicant] has exhausted her dispute activities with one target, she adds additional targets, or switches to new targets. She changes the legal basis for her claims. These facts mean limiting the scope of steps that manage [the Applicant's] litigation will simply lead her to engage novel targets, very plausibly via a new mechanism or process.
>
> [40] I believe it is also fair to observe that [the Applicant] has proven creative in how she reframes her original employment dispute in unusual directions, such as the 1801 Action switching from an employment and labour law context to a spurious *Business Corporations Act,* RSA 2000, c B-9, s242 oppression claim that I rejected in [a prior case].

[21] Although the court's decision was in relation to the Applicant's litigation activities, I have observed similar actions by the Applicant in her matters before my office. I am aware that, from the time of her original employment dispute, the Applicant has brought more than 20 complaints or requests for review before my office involving a number of different organizations or public bodies. It is clear that the Applicant's matters, in one way or another, and although broadly expanded, generally arise from her original employment dispute.

[22] For example, the Applicant focused much of her voluminous submissions on her broader litigation activities and her arguments in support of those actions. Both the Organization's submissions, and the Applicant's own submissions do not support an argument that the purpose of the Applicant's access request is to obtain her personal information. Additionally, the Applicant's submissions do not assist her in establishing that her access request has merit.

[23] On the basis of the evidence before me, I find that the Applicant's purpose in making the access request to the Organization was not to obtain access to her personal information, but was a means of further expanding her original employment dispute.

[24] I find the Organization has met its burden to establish that the requirements of section 37(a) are met. The Applicant's access request is systematic and is an abuse of her right to make access requests.

[5] Vexatious Litigant Decision at para 36.

Section 37(b) – frivolous or vexatious

[25] Both the Organization and the Applicant provided extensive submissions on this provision. However, given my finding under section 37(a), it is not necessary for me to consider these arguments.

Decision

[26] On the basis of the evidence before me, I have decided to exercise my discretion under section 37(a) of PIPA. The Organization is authorized to disregard the Applicant's access request.

Jill Clayton
Information and Privacy Commissioner

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