



Office of the
Saskatchewan Information
and Privacy Commissioner

DISREGARD DECISION 181-2021, 182-2021

Saskatchewan Government Insurance

August 10, 2021

Summary: Saskatchewan Government Insurance (SGI) applied to the Commissioner for authorization to disregard the Applicant's access to information requests under subsection 45.1(1) of *The Freedom of Information and Protection of Privacy Act*. The Commissioner found that the Applicant's access to information requests were vexatious and not made in good faith. As such, the Commissioner authorized SGI to disregard the access to information requests along with any future access to information requests made by the Applicant that pertained to the motor vehicle collision of 2019. Finally, all current and future requests for review made by the Applicant that pertain to the motor vehicle collision of 2019 would be refused or discontinued pursuant to subsections 50(2)(a) and (a.7) of FOIP.

I BACKGROUND

[1] On July 8, 2021, Saskatchewan Government Insurance (SGI) received the following access to information request from the Applicant:

[Name of other driver] – refer to [file number] and you will see Sept 4, 2019 is the last date there were any records that SGI released to me. According to SGI June 7, 2020 I asked for an update and there wasn't anything so now is there anything new since the last time?

[2] On July 13, 2021, SGI received another access to information request from the Applicant:

All records about court proceedings involving me

[3] SGI did not respond to the Applicant's requests. Instead, on July 20, 2021, it made an application to my office seeking authority under section 45.1 of *The Freedom of*

Information and Protection of Privacy Act (FOIP) to disregard the requests on the grounds that the requests amounted to an abuse of the right of access. Subsection 45.1(3) of FOIP suspends the time for responding to a request where the government institution involved has sought relief under section 45.1 of FOIP.

- [4] On July 20, 2021, my office sought some clarification on some points in the application and received what was needed from SGI. On July 21, 2021, my office confirmed with SGI that it was able to proceed and that the 30-day timelines to respond to the access to information requests were suspended.
- [5] On July 26, 2021, my office provided notification to SGI and the Applicant that I would be considering the application to disregard the two access to information requests.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [6] SGI is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP and section 3 and Part I of the Appendix of *The Freedom of Information and Protection of Privacy Regulations*. Thus, I have jurisdiction to consider this application to disregard.

2. Should SGI’s application pursuant to subsections 45.1(2)(b) and (c) of FOIP be granted?

- [7] Section 45.1 of FOIP provides government institutions the ability to apply to the Commissioner requesting to disregard an access to information request or a correction request. Section 45.1 of FOIP provides as follows:

45.1(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 32.

(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether the application or request:

(a) would unreasonably interfere with the operations of the government institution because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 32(1)(a) is suspended until the commissioner notifies the head of the commissioner's decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 32(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or subsection 32(2) resumes.

[8] An application to disregard is a serious matter as it could have the effect of removing an applicant's express right to seek access to information. However, FOIP recognizes that not all access to information requests are appropriate. Section 45.1 of FOIP exists to preserve the proper intent and functioning of the Act. Former British Columbia Information and Privacy Commissioner (BC IPC), David Loukidelis, said the following about the role of the equivalent provision in British Columbia's Act:

...Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access...

(BC IPC Order 99-01 at p. 7)

[9] In its application to my office, SGI submitted that the access to information requests should be disregarded pursuant to subsections 45.1(2)(b) and (c) of FOIP. SGI also requested that I consider subsection 45.1(2)(c) of FOIP first.

- [10] Therefore, I will begin by considering subsection 45.1(2)(c) of FOIP. In order for subsection 45.1(2)(c) of FOIP to apply, the access to information requests must be found to be frivolous, vexatious, not in good faith or concern a trivial matter. Unlike subsections 45.1(2)(a) and (b) of FOIP, there is no requirement that the requests be found to be repetitious or systematic in order for subsection 45.1(2)(c) of FOIP to be found to apply.
- [11] In its application to my office, SGI asserted that the Applicant's two access to information requests are vexatious and were not submitted in good faith.
- [12] *Vexatious* means without reasonable or probable cause or excuse (Review Report F-2010-002 at paragraphs [57], [60] and [61]). 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 government institution in order to obstruct or grind a government institution to a standstill. It is usually taken to mean with intent to annoy, harass, embarrass, or cause discomfort (Office of the Northwest Territories Information and Privacy Commissioner, Review Report 17-161 at p. 10; see also my Review Report F-2010-002 at paragraph [69]).
- [13] Courts have long recognized that an individual's ability to exercise rights is not unlimited. In the past few years especially, courts across Canada have dealt with a variety of abusive and vexatious litigants (AB IPC Request to Disregard Decision 006221 at [20]). A vexatious proceeding means "...that the litigant's mental state goes beyond simple animus against the other side, and rises to a situation where the litigant actually is attempting to abuse or misuse the legal process" (*Jamieson v Denman*, 2004 ABQB 593, para 127). In *Chutskoff v Bonora*, 2014 ABQB 389, Michalyshyn J, identified features of vexatious litigation:
- collateral attack;
 - hopeless proceedings;
 - escalating proceedings;
 - bringing proceedings for improper purposes;
 - initiating "busybody" lawsuits to enforce alleged rights of third parties;

- failure to honour court-ordered obligations;
- persistently taking unsuccessful appeals from judicial decisions;
- persistently engaging in inappropriate courtroom behavior;
- unsubstantiated allegations of conspiracy, fraud, and misconduct;
- scandalous or inflammatory language in pleadings or before the court; and
- advancing “Organized Pseudolegal Commercial Argument”.

[14] Any of these indicia are a basis to classify a legal action as vexatious. A request is not vexatious simply because a government institution is annoyed or irked because the request is for information the release of which may be uncomfortable for the government institution. There is also no burden on an applicant to show that an access to information request is for a legitimate purpose. Further, a request is not vexatious simply because an applicant may also be involved in litigation with the government institution (AB IPC Request to Disregard F2019-RTD-01 at p. 13 and F2020-RTD-06 at [9]).

[15] *Not in good faith* means the opposite of “good faith”, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or other contractual obligation, not prompted by an honest mistake as to one’s rights, but by some interested or sinister motive (Review Report F-2010-002 at [89]).

[16] When an applicant refuses to cooperate with a government institution in the process of accessing information or if they misrepresent events to the government institution or my office, this could suggest an applicant is not acting in good faith. The intention to use information obtained from an access request in a manner that is disadvantageous to the government institution does not qualify as bad faith. To the contrary, it is appropriate for requesters to seek information “to publicize what they consider to be inappropriate or problematic decisions or processes undertaken” by government institutions. Applicants do not need to justify a request and FOIP does not place limits on what an applicant can do with the information once access has been granted (Review Report F-2010-002 at [103] and [105]; ON IPC Order MO-1924 at p. 10).

[17] When considering whether a request was made on grounds that are vexatious or not in good faith, I must consider whether there is a pattern or type of conduct on the part of the Applicant that amounts to an abuse of the right of access.

[18] *An abuse of the right of access* is where an applicant is using the access provisions of FOIP in a way that is contrary to its principles and objects.

[19] The factors that can be considered when determining if requests are an abuse of the right of access are as follows:

- *Number of requests:* is the number excessive by reasonable standards?
- *Nature and scope of the requests:* are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?
- *Purpose of the requests:* are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the applicant’s aim to harass the government institution or to break or burden the system?
- *Timing of the requests:* is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding?
- *Wording of the request:* are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations?

(ON IPC Order MO-3108 at [24], AB IPC Order F2015-16 at [39] and [54])

[20] Depending on the nature of the case, one factor alone or multiple factors in concert with each other can lead to a finding that an applicant’s requests are an abuse of the right of access.

[21] In its application to my office, SGI asserted that the Applicant’s conduct includes the following indicia relied on by the courts when determining a vexatious litigant:

- Grounds and issues being “rolled forward” into subsequent requests, repeated and supplemented;
- Unsubstantiated allegations of conspiracy, fraud and misconduct; and

- Scandalous and inflammatory language in pleadings or before the court.

[22] SGI supported this assertion by providing a background on previous requests submitted by the Applicant where records were requested and access was denied yet the Applicant continually “rolled forward” the same issues and requests into the various 38 access to information requests submitted by the Applicant since 2019. SGI also included various email correspondence SGI received from the Applicant which it asserted also show how the Applicant “rolled forward” issues.

[23] SGI also stated in its application to my office that throughout the requests, the Applicant has accused SGI of withholding information, finding loopholes, sexist valuations of vehicles, backdating information, singling the Applicant out for negative treatment, lying, acting fraudulently, inflicting terror, and abusing the Applicant physically and psychologically. Further, SGI noted that with regards to specific SGI employees, they have been called lazy, malicious, negligent, neglectful, useless, and thieves. They have also been accused of being rude, disrespectful, fraudulent, harassers, inflicting physical abuse and of terrorizing the Applicant. SGI asserted that these allegations are unsubstantiated and the Applicant has systematically harassed and referred to SGI employees in a derogatory manner despite their attempts to do their jobs.

[24] In terms of the factors that I consider when determining if requests are an abuse of the right of access, SGI addressed each of the factors which can be summarized as follows:

- There have been 38 access to information requests submitted by the Applicant all related to the 2019 motor vehicle collision;
- The Applicant continues to revisit the same 2019 motor vehicle collision and information about the other driver;
- Of those 38 requests, the July 8, 2021 request is the 11th request relating to the other driver in the motor vehicle collision;

- The Applicant has been advised on multiple occasions that the other driver's file has been closed but the Applicant continues to make requests for information on the other driver;
- Even when denied access to information, the Applicant makes repeated requests for the same information;
- In an insurance claim, there is a natural life cycle with a file, it is opened, the insured receives either repairs or insurance proceeds, and it is closed. There is no logical justification to explain why the Applicant is continuing to submit requests after the file has been closed and the collision occurred two years ago. As such, the 38 requests should be deemed excessive. It also suggests, it is vexatious and designed to harass SGI instead of being a legitimate attempt to access personal information;
- The Applicant received the previous Disregard Decision 161-2021 at 3:42pm on July 8, 2021 which granted SGI authorization to disregard a May 30, 2021 access to information request. Twenty-eight minutes later, the Applicant sent the first of two access to information requests, again asking for records pertaining to the other driver. The request is, in substance, identical to the May 30, 2021 request. This suggests the request is retaliatory as opposed to being a genuine attempt to access records;
- In support of the assertion that the Applicant's behavior appears retaliatory, SGI pointed to paragraph [19] of my most recent Disregard Decision 161-2021. At paragraph [19], I noted that following Disregard Decision 189-2020, the Applicant submitted a new Request for Review to my office. In that Request for Review, the Applicant asked for a review of SGI's late response to one of the 38 access to information requests. I have noted what appeared to be retaliatory conduct on the part of the Applicant when making Requests for Review to my office; and
- SGI has responded to a large volume of requests, provided in excess of 500 pages of records, sought clarification on many occasions, as well as endured derogatory language and abuse from the Applicant.

[25] On August 9, 2021, the Applicant provided a submission to my office in response to SGI's application. The Applicant made several assertions. Some of these are as follows:

- "Your friends at SGI have known since April 2021 that this liability matter has in fact proceeded to provincial court in the province of Saskatchewan..."
- On June 11, 2021, disclosure occurred between the parties.
- "Obviously, something has occurred between June 2020 and present day since never before has SGI responded to any of my years old [access requests] with any record of SGI sending [other driver] the information released through court. Why

are you letting SGI recycle years old claims and refuse to provide updated information?”

- “My July 13, 2021 [access request] was for “all records about court proceedings involving me”. That is all it said. Instead of even addressing this SGI went to your office claiming oh this has to be about [other driver] and [Applicant] has this “fixation” like a crazy person. SGI obviously has records relating to my court proceedings against [other driver].”
- “Why is SGI so fixated on making everything about [other driver]?”
- “SGI’s [sic] should think of the environment before they hit reprint on all this paper from years ago and focus on the last year.”
- “Why are they repeatedly doing disregards to your office if there really are no records when having no records means a 1 page template reply to me there are no records? What is being covered up here?”
- “It doesn’t even make sense if there are no records at all – then nothing has anything to do with [other driver].”

[26] SGI has submitted an application containing 17 pages of supporting arguments plus an additional 261 pages of evidence. This is not the first application I have received from SGI involving this Applicant. I have previously issued three Disregard Decisions involving SGI and this Applicant. These Disregard Decisions are 165-2020, 189-2020 and 161-2021. I have found in all of these previous Disregard Decisions that the Applicant’s conduct amounted to an abuse of the right of access. I have also issued a Review Report involving SGI and the Applicant which again pertained to the motor vehicle accident in 2019 (Review Report 273-2019). All of these Disregard Decisions and the Review Report have involved a tremendous amount of costly resources for both SGI and my office. These resources could be better spent on processing access to information requests for applicants who genuinely seek access to information or a timely request for review from my office.

[27] Therefore, I find that SGI has established reasonable grounds for finding that the Applicant’s requests are vexatious and not in good faith within the meaning of subsection 45.1(2)(c) of FOIP.

- [28] As a result of this finding, I do not need to consider whether subsection 45.1(2)(b) of FOIP applies. However, I note that I have previously found in the past three Disregard Decisions that subsection 45.1(2)(b) of FOIP applied as a result of the Applicant's conduct. The circumstances in the present case would likely result in a similar finding.
- [29] I am concerned about the cost and inefficiency of the multiple applications to disregard being submitted by SGI involving this Applicant. It is not in the public's interest to unnecessarily add to SGI's costs of complying with FOIP. In addition, other members of the public also have an equal right to a share of the public resources allocated to respond to access requests. When an individual overburdens the system in the way this Applicant has been doing, it has a negative impact on others who want to legitimately exercise their access to information rights.
- [30] Therefore, I have considered how other Commissioners in Canada are handling disregard decisions and whether other remedies have been imposed beyond granting a disregard of the request(s) at issue. The offices with the most precedent in this area appear to be the offices of the British Columbia, Alberta and Ontario Information and Privacy Commissioners.
- [31] Ontario's subsection 10(1)(b) of the [*Freedom of Information and Protection of Privacy Act*](#) has a similarly worded provision as Saskatchewan's subsection 45.1(2)(c) of FOIP:
- 10** (1) Subject to subsections (1.1) and 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
- ...
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. 1996, c. 1, Sched. K, s. 1; 2010, c. 25, s. 24 (6); 2019, c. 7, Sched. 31, s. 1 (1).
- [32] I note that the Office of the Ontario Information and Privacy Commissioner (ON IPC) has interpreted its provision to allow it to impose other conditions such as limiting the number of active requests and appeals the applicant may have in relation to a particular government institution where a disregard is granted (ON IPC Orders PO-4158-I, MO-1782, MO-3763, MO-3659, PO-3691, MO-3292, and PO-3539). In some instances, upon judicial review,

the Orders have been upheld by the Superior Court of Justice in Ontario. In Order PO-3691, in addition to putting a one year five request limit on an applicant, the ON IPC imposed a hold on all reviews with its office and any outstanding requests for review stayed.

- [33] British Columbia's subsection 43(b) of the [Freedom of Information and Protection of Privacy Act](#) also has a similarly worded provision:

43 If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that

...

(b) are frivolous or vexatious.

- [34] I note that the Office of the British Columbia Information and Privacy Commissioner (BC IPC) has interpreted its provision to include the power to make prospective orders and authorize the disregard of future access requests (BC IPC Orders F21-04, F20-39, F20-15, F18-37, F17-18, and F16-24). Similar to the ON IPC, the BC IPC has made prospective orders for government institutions to disregard future access requests for periods of one to two years. In other Orders, it has limited the number of future requests allowed to one open request at a time and has limited the amount of time a government institution should spend responding to that one request (e.g. no more than 10 hours spent responding).

- [35] Alberta's subsection 55(1)(b) of the [Freedom of Information and Protection of Privacy Act](#) also has a similarly worded provision:

55(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if

...

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

- [36] I note that the AB IPC has interpreted its provision to enable it to impose other conditions such as limiting the number of active requests in a given time period. In addition, public bodies can make such requests in its applications to the AB IPC. For example, a government institution may request further authorizations in its application to disregard such as the ability to disregard future requests for a certain time period and limiting the

number of requests per year (AB IPC Request to Disregard F2020-RTD-01, F2020-RTD-02, F2020-RTD-03, F2020-RTD-04, and F2020-RTD-05). In imposing its other conditions, the AB IPC has relied on similar actions of the courts when dealing with vexatious litigants. For example, any limitations on an applicant's future access requests should be focused on the applicant, be proportional to the problematic conduct, and should be incremental and adapted to the specific problem (AB IPC Request to Disregard F2020-RTD-04 and *Jonsson v Lymer*, 2020 ABCA 167 at para 85(f) and (g)).

- [37] Given my concerns over the cost and inefficiency of the multiple applications to disregard being submitted by SGI involving this Applicant and the retaliatory conduct of the Applicant following Disregard Decisions, I will adopt a similar approach as the British Columbia, Alberta and Ontario IPC offices. Where appropriate, I will impose other conditions I deem necessary when issuing my Disregard Decisions in order to protect the public interest and the right of access of other individuals. This is the first Disregard Decision where I will do so.

III DECISION

- [38] I grant SGI's application to disregard the Applicant's two access to information requests made by the Applicant on July 8, 2021 and July 13, 2021.
- [39] I authorize SGI to disregard all future access to information requests made by or on behalf of the Applicant that pertain to the motor vehicle accident in 2019.
- [40] Pending the issuance of this Disregard Decision, I will immediately discontinue all reviews involving SGI and the Applicant that are currently open with my office that pertain to the motor vehicle accident in 2019 pursuant to subsections 50(2)(a) and (a.7) of FOIP. It appears this involves three files (213-2020, 172-2021 and 173-2021).
- [41] Pending the issuance of this Disregard Decision, if the Applicant submits any further Requests for Review to my office involving SGI and the motor vehicle accident in 2019, no new reviews shall be conducted pursuant to subsection 50(2)(a) and (a.7) of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 10th day of August, 2021.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner