DISREGARD DECISION
204-2020, 206-2020, 207-2020, 208-2020, 209-2020, 210-2020, 211-2020, 212-2020

Saskatchewan Health Authority

September 14, 2020

Summary: Saskatchewan Health Authority (SHA) applied to the Commissioner for authorization to disregard the Applicant's eight access to information requests under subsection 43.1(1) of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner found that the Applicant's eight access to information requests were repetitious, systematic and an abuse of the right of access. As such, the Commissioner authorized SHA to disregard the eight access to information requests.

I BACKGROUND

[1] In a letter dated July 31, 2020, the Applicant submitted the first of eight access to information requests to the Saskatchewan Health Authority (SHA). The request was for:

1. Any and all contracts and retainers between the Saskatchewan Health Authority (SHA) or the Regina Qu'Appelle Regional Health Authority (RQRHA) and Miller Thomson LLP or Mr. Reginald Watson for the prosecution of [physician] before the RQRHA Board, the ad hoc Discipline Committee, the Practitioner Staff Appeals Tribunal and the SHA Board. [January 2014 – present]

[2] On August 10, 2020, the SHA received seven more access to information requests from the Applicant:

2. In the SHA's oversight of its outside counsel, please provide all records that Miller Thomson LLP and/or Harte Law disclosed to the Saskatchewan Health Authority (SHA) about their working relationship with respect to [patient/client]. All records

of communications between Miller Thomson LLP and Harte Law that the former disclosed to the SHA. This includes, but is not limited to, emails, letters, memorandums and instructions communicated between any person acting on behalf of Miller Thomson LLP and any person acting on behalf of Harte Law. [January 1, 2014 – present]

3. All records of communications between Mr. Evert Van Olst Q.C, Mr. Scott Livingston, and the Saskatchewan Health Authority Board regarding Mr. Livingstone's appointment of Mr. Van Olst as Chief Legal Counsel for the SHA. This includes all communications in which Mr. Livingstone and/or the SHA Board expressed the intention to hire Mr. Van Olst and all records indicating Mr. Van Olst's interest in the position. This requests includes any informal job offers, Mr. Van Olst's expressions of interests, SHA Board resolutions relating to Mr. Van Olst's hiring, records explaining why the Chief Legal Counsel role was (or was not) to be publicly posted, and conflict of interest disclosures+ conflict checks. [January 1, 2014 – present]

4. Copy of the formal retainer that Mr. Evert Van Olst signed with the Saskatchewan Health Authority for Mr. Van Olst to be the RQRHA/SHA's Discipline Committee's counsel for the Committee's adjudication of the issue of [physician]'s surgical privileges. Copy of offer letter from the RQRHA/SHA requesting Mr. Van Olst's service as Discipline Committee counsel. Also, all records showing Mr. Evert Van Olst's conflict of interest disclosure(s) to the SHA management or the SHA Board regarding any part of his role as Discipline Committee counsel and/or as a pending or actual SHA employee. [January 1, 2018 – present]

5. Records indicating all communications between Mr. Evert Van Olst Q.C., and Mr. Reginald Watson Q.C. regarding [physician], including but not limited to discussions about the composition and appointment of the Discipline Committee in [physician]'s privileges hearing; SHA counsel's conflict of interest disclosures and checks; Mr. Van Olst's transition to becoming on SHA employee and later, SHA Chief Legal counsel; the Discipline Committee's ongoing deliberations in [physician]'s matter; Mr. Watson's decision to privately represent tribunal complainant witness, [patient/client]; and Mr. Van Olst's potential and eventual appointment as SHA Chief Legal Counsel. [January 1, 2016 – present]

6. Copies of any and all bills and invoices from Miller Thomson LLP to the Saskatchewan Health Authority regarding legal proceedings against [physician]. Any resolutions by the SHA Board or management to approve the payment of bills or invoices with the names of those who approved the payments of the bills or invoices. The policy or guidelines of the Saskatchewan Health Authority used to determine whether bills or invoices are approved for payment; e.g. if there is a minimum number of signatures required or designated persons who can approve payment. [January 1, 2015 – present]

7. All records of communications between the Saskatchewan Health Authority and Dr. Robin Richards related or connected to any and all proceedings between the

Saskatchewan Health Authority and [physician]. This includes, but is not limited to, all emails, letters, draft expert reports, memoranda or instructions communicated between the Saskatchewan Health Authority and Dr. Robin Richards. This also includes amounts that the SHA paid to Dr. Richards and the SHA's retainer agreement with Dr. Richards. [January 1, 2014 – present]

8. All contracts between the Saskatchewan Health Authority and any expert witnesses that have been consulted or involved in any way in any and all of the SHA's legal proceedings involving [physician] (beyond Dr. Robin Richards). All records of payments the SHA made to any and all expert witnesses involved in legal all proceedings involving [physician]. All records of communications between the Saskatchewan Health Authority and any expert witnesses involved in any and all proceedings involving [physician]. [January 1, 2014 – present]

[3] The SHA did not respond to the Applicant's eight requests. Instead, on August 25, 2020, it made an application to my office seeking authority under section 43.1 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to disregard the eight requests on the grounds that the requests amounted to an abuse of the right of access owing to their repetitious and systematic nature. Subsection 43.1(3) of LA FOIP suspends the time for responding to a request where the local authority involved has sought relief under section 43.1 of LA FOIP.

[4] On August 25, 2020, my office advised the SHA that it could not proceed with the application, as it did not include all of what my office required. The same day, my office received additional materials from the SHA and was able to proceed.

[5] On August 26, 2020, my office provided notification to the SHA and the Applicant that I would be considering the application to disregard the eight access to information requests.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] The SHA is a "local authority" pursuant to subsection 2(f)(xiii) of LA FOIP. Thus, I have jurisdiction to consider this application to disregard.

2. Should the SHA's application pursuant to subsection 43.1(2)(a) of LA FOIP be granted?

[7] Section 43.1 of LA FOIP provides local authorities the ability to apply to the Commissioner requesting to disregard an access to information request or a correction request. Section 43.1 of LA FOIP provides as follows:

> **43.1**(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 31.
>
> (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 local authority 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 31(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 31(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 31(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, LA FOIP recognizes that not all access to information requests are appropriate. Section 43.1 of LA 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, the SHA submits that the eight access to information requests should be disregarded pursuant to subsections 43.1(2)(a), (b) and (c) of LA FOIP. I will begin by considering subsection 43.1(2)(a) of LA FOIP.

[10] In order for subsection 43.1(2)(a) of LA FOIP to be found to apply, the local authority must demonstrate that an applicant's access to information requests interfere unreasonably with the operations of the local authority due to their repetitious or systematic nature. Both parts of the following test are considered:

1. Are the requests for access repetitious or systematic?
2. Do the repetitious or systematic requests unreasonably interfere with the operations of the local authority?

[11] I will consider each of these questions.

1. Are the requests for access repetitious or systematic?

[12] *Repetitious* requests are requests that are made two or more times (BC IPC Order F10-01 at paragraph [16]).

[13] *Systematic* requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles (BC IPC Order F13-18 at paragraph [23]). It includes a pattern of conduct that is regular or deliberate (Alberta Information and Privacy Commissioner (AB IPC) Request to Disregard F2019-RTD-01 at p. 9).

[14] Factors that can be considered when determining if requests are repetitious or systematic are as follows:

- Does the applicant ask more than once for the same records or information?
- Are the requests similar in nature or do they stand alone as being different?
- Do previous requests overlap to some extent?
- Are the requests close in their filing time?
- Does the applicant continue to engage in a determined effort to request the same information (an important factor in finding whether requests are systematic, is to determine whether they are repetitious)?
- Is there a pattern of conduct on the part of the applicant in making the repeated requests that is regular or deliberate?
- Does the applicant methodically request records or information in many areas of interest over extended time periods, rather than focusing on accessing specific records or information of identified events or matters?
- Has the applicant requested records or information of various aspects of the same issue?
- Has the applicant made a number of requests related to matters referred to in records already received?
- Does the applicant follow up on responses received by making further requests?
- Does the applicant question the content of records received by making further access requests?
- Does the applicant question whether records or information exist when told they do not?
- Can the requests be seen as a continuum of previous requests rather than in isolation?

(New Brunswick Information Privacy Commissioner (NB IPC) Interpretation Bulletin, *Section 15 – Permission to disregard access request*)

[15] In its application to my office, the SHA asserted that the eight access to information requests were the same as previous requests. In addition, it asserted that all of the requests submitted by the Applicant since April 2019 support the SHA's position that the Applicant is abusing the right of access.

[16] Evidence of previous requests is relevant to the determination of whether the current requests are repetitious or systematic (AB IPC Disregard F2019-RTD-01 at p. 9). Therefore, I will take into consideration all of the Applicant's previous requests when making this decision.

[17] The SHA indicated that from April 3, 2019 to August 10, 2020, it received 35 access to information requests from the Applicant. It provided my office with a historical breakdown of all of the requests and the SHA's responses to the Applicant. The following is a summary of some of the SHA's assertions:

- The Applicant is one of the physician's legal counsel. The physician has commenced lawsuits against the SHA, members of the SHA's physician leadership, and their legal representatives in a number of proceedings.
- The Applicant requests records repeatedly in the same three areas:
    1. Fees, bills, invoices, retainers, contracts, etc. between the SHA and Miller Thomson LLP;
    2. SHA Counsel Representation of a patient/client and communications with Harte Law LLP; and
    3. Evert Van Olst, Q.C.
- Even when the Applicant was told that records did not exist related to Mr. Reginald Watson, Q.C. and representation of a patient/client, the Applicant continued to make requests on this subject matter.
- Document disclosure and production in the course of the administrative proceedings was provided to the physician. Unsatisfied with the claims for privilege made by the SHA in that proceeding, the physician, through his counsel, attempts to do an end-around of the privilege claims by making continued and persistent access to information requests under LA FOIP.

- Four of the 35 requests are for records obviously exempted under the litigation and solicitor-client privilege exemption in LA FOIP (subsection 21(a)). Further, making repetitive requests for records that are obviously exempt is an indication of frivolousness and an intention to harass and inconvenience the SHA.

- Many of the 35 requests were submitted on the same day:

  - April 3, 2019 – eight requests submitted;
  - June 7, 2019 – one request submitted;
  - October 10, 2019 – five requests submitted;
  - November 5, 2019 – 12 requests submitted;
  - April 15, 2020 – one requests submitted (abandoned);
  - July 31, 2020 – April 15, 2020 request re-submitted; and
  - August 10, 2020 – seven requests submitted.

- The physician's intention, via his counsel, is to inconvenience and harass the SHA through the repetitious nature of the requests and the non-appeal of any of the answers previously provided. The 35 requests coincide with a wave of litigation and professional regulatory complaints commenced by the physician against the SHA.

- There is overlap and repetition amongst the 35 requests, essentially looking for the same records previously covered off under multiple other requests. In some cases, the requests are almost verbatim copies of earlier requests, to which the SHA provided a response.

- The SHA submits that the Applicant, in making these repetitious and sustained requests, has weaponized LA FOIP.

[18] The Applicant received a copy of the SHA's application to disregard. In response to the SHA's assertions, the Applicant made a number of arguments to my office some of which can be summarized as follows:

- The Access and Privacy Officer for the SHA was not the "head" of the SHA as defined by LA FOIP so had no legal authority to apply to disregard the access to information requests.

- The Applicant asserted the SHA Chairperson had a conflict of interest. The SHA Chairperson held an *ex parte* meeting in 2015 without the physician and later presided over the oversight board that heard and affirmed the decision by the former Regina Qu'Appelle Health Authority to uphold the suspension of the physician's privileges in 2016. The Chairperson failed to recuse himself from the decision. Further, the Chairperson has a personal stake in the outcome of this disregard decision.

- Much of the information sought was part of a broader picture of how the SHA handled public funds, particularly its retainer and the substantial legal fees it paid to the firm of Miller Thomson LLP (+$2 million).

- The work Miller Thomson LLP is doing on behalf of the SHA is benefitting the Chairperson in his individual capacity, and not solely in his capacity as the SHA Chairperson.

- Disregarding the eight access requests would have the effect of prohibiting further scrutiny of the actions of the Chairperson.

- Public spending and misspending are matters of public importance that override the SHA's desire to keep the information secret.

- The SHA did not disclose records that it claimed to have disclosed. The records disclosed did not reflect the breadth of records requested.

- Some of the requests are not identical. The requests are supposed to be comprehensive, covering records that may not be completely reflected in the wording of others. To the extent that the language may be duplicative, this does not bar the SHA from making comprehensive disclosures by identifying and disregarding any true overlap and simply providing the outstanding records that fall under each category.

- The SHA has claimed records related to Miller Thomson's legal fees, bills, invoices, retainers, etc. do not exist. The SHA is legally required to generate and maintain all such records. The OIPC should require the SHA to confirm whether the records exist or that the SHA simply failed to disclose them.

- The OIPC has laid out a highly involved process for determining whether privilege should preclude disclosure under LA FOIP. The SHA's application circumvents this process when it asserts privilege over records in its application to disregard.

- The public accountability principle underlying the LA FOIP system is best served when the public has knowledge of whether a lawyer (Mr. Watson) retained by a public body (the SHA), leveraged his public retainer with that public body to engage in private financial transactions with a witness in a public proceeding, and may have billed the public purse for the overlapping work.

- The requests are not excessive. They average 2 per month over 17 months.

- The SHA's Access and Privacy Coordinator appears to be on a first name basis with the Information and Privacy Commissioner and his Executive Assistant based on the email sent to the Commissioner with the SHA's application attached. The Applicant queries this level of familiarity in an application for a statutory disregard under LA FOIP.

[19] Repetition is the act of repeating an act or thing. To ‘repeat’ an act or thing, in turn, is to do the act or thing over again one or more times. Requests that repeat a previous request, to which the SHA has already responded, are obviously repetitious. However, requests that are considered sufficiently connected can also be found to be repetitious (BC IPC Decision F05-01 at [17]).

[20] I have considered all of the materials before me. It appears the Applicant continues to engage in a determined effort to request information related to the following areas of dispute:

- The costs associated with the proceedings involving the physician including bills, invoices, retainers, contracts, salaries of different parties etc.; and
- Alleged conflicts of interest among parties involved in the proceedings against the physician.

[21] There is repetition and overlap across many of the 35 requests. For example, several state, “all records relating to monies paid by the Saskatchewan Health Authority to Miller Thomson LLP…” or “all records reflecting retainers and monies paid by the Saskatchewan Health Authority…” Based on the Applicant’s submission to my office, it appears the Applicant acknowledges that some of the requests are repetitious but takes the position that the SHA should ignore the repetitious parts and process the requests anyways. The SHA appears to have been doing this as it processed 27 of the 35 requests.

[22] LA FOIP provides applicants the ability to request a review by my office when unsatisfied with a response from a local authority.

[23] The Applicant raised that the Access and Privacy Officer for the SHA was not the “head” of the SHA as defined by LA FOIP, so had no legal authority to make the application to disregard the access to information requests.

[24] Section 50 of LA FOIP provides that a "head" may delegate a power granted or duty vested in the head to one or more officers or employees of the local authority. As such, with proper delegation in place, the Access and Privacy Officer for the SHA could have authority to make the application to disregard the access to information requests. My office requested and received a copy of the delegation from the SHA and is satisfied that the appropriate delegation for this application is in place.

[25] In conclusion, I find that the eight access to information requests meet the standard of "repetitious" as required by subsection 43.1(2)(a) of LA FOIP. This is based on the following factors:

- The Applicant has asked more than once for the same records and information;
- The requests are similar in nature and overlap with previous requests;
- The Applicant requests records and information of various aspects of the same issue; and
- The requests can be seen as a continuum of previous requests rather than in isolation.

2. Do the repetitious or systematic requests unreasonably interfere with the operations of the local authority?

[26] In order to interfere with operations, the requests must obstruct or hinder the range of effectiveness of the local authority's activities. The circumstances of the particular local authority is considered. For example, it would take less to interfere with the operations of a small municipality compared to a large ministry.

[27] *Unreasonably interfere* means going beyond the limits of what is reasonable or equitable in time and resources and the impact, which this use of resources would have on the local authority's day-to-day activities (British Columbia Government Services, *FOIPPA Policy Definitions*, available at https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions).

[28] Factors that can be considered when determining if requests unreasonably interfere with the operations of the local authority are as follows:

- Are the requests large and complex, rather than confusing, vague, broadly worded, or wide-ranging (e.g. "all records" on a topic), without parameters such as date ranges?
- Did the local authority seek clarification and was it obtained?
- Did the clarification of the applicant's requests, if obtained, provide useful details to enable the effective processing of the requests?
- Do the applicant's requests impair the local authority's ability to respond to other requests in a timely fashion?
- What is the amount of time to be committed for the processing of the request, such as:
    - number of employees to be involved in processing the request;
    - number of employees and hours expended to identify, retrieve, review, redact if necessary, and copy records;
    - number of total employees in the same office; and
    - whether there is an employee assigned solely to process access requests.

(NB IPC Interpretation Bulletin, *Section 15 – Permission to disregard access request*)

[29] The local authority must meet a high threshold of showing "unreasonable interference", as opposed to mere disruption. It will usually be the case that a request for information will pose some disruption or inconvenience to a local authority. This is not cause to keep information from a citizen exercising their democratic and quasi-constitutional rights (AB IPC Request to Disregard F2019-RTD-01 at p. 12).

[30] In its application to my office, the SHA asserted that the requests unreasonably interfere with the operations of the SHA because of the repetitious and systematic nature of the requests, which therefore constituted an abuse of the right of access. The remainder of the SHA's application focused on what I would categorize as arguments in support of subsection 43.1(b) of LA FOIP. The application did not speak to any of the factors noted

above. As such, it is impossible for me to assess how the requests unreasonably interfere with the SHA's operations.

[31] In conclusion, I find that the eight access to information requests do not meet the standard of unreasonably interfering with the operations of the SHA as required by subsection 43.1(2)(a) of LA FOIP.

3. Should the SHA's application pursuant to subsection 43.1(2)(b) of LA FOIP be granted?

[32] In its application to my office, the SHA also asserted that the eight access to information requests should be disregarded because the repetitious and systematic nature of the requests amounts to an abuse of the right of access.

[33] Subsection 43.1(2)(b) of LA FOIP provides:

> **43.1**(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether 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;

[34] In order for subsection 43.1(2)(b) of LA FOIP to apply, both parts of the following test are considered:

1. Are the requests for access repetitious or systematic?
2. Do the repetitious or systematic requests amount to an abuse of the right of access?

[35] I will consider each of these questions.

1. Are the requests for access repetitious or systematic?

[36] I have already found that the eight access to information requests meet the standard of "repetitious" as required by subsection 43.1(2)(a) of LA FOIP. The same criteria are applied for subsection 43.1(2)(b) of LA FOIP. Therefore, the first part of the test is met.

2. *Do the repetitious or systematic requests amount to an abuse of the right of access?*

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

[38] Once it is determined that the requests are repetitious or systematic, one must consider whether there is a pattern or type of conduct that amounts to an abuse of the right of access or are made for a purpose other than to obtain access to information.

[39] A *pattern of conduct* requires recurring incidents of related or similar requests on the part of an applicant. The time over which the behavior occurs is also a relevant consideration (Ontario Information and Privacy Commissioner (ON IPC) Order M-850 at p. 4).

[40] 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])

[41] Depending on the nature of the case, one factor alone or the cumulative effect of multiple factors can lead to a finding that an applicant's requests are an abuse of the right of access.

[42] In this case, the number of requests is excessive by reasonable standards. *Reasonable* means fair, proper or moderate under the circumstances, sensible (Garner, Bryan A., 2009. *Black's Law Dictionary, Deluxe 10th Edition*. St. Paul, Minn.: West Group at p. 1456). Submitting up to 12 requests in one day is excessive. On other dates, it was up to eight requests. The 35 requests were submitted in clusters over 16 months (April 3, 2019 to August 10, 2020).

[43] The nature and scope of requests can be relevant where the requests are excessively broad, are similar or indicate an applicant wishes to revisit an issue that has already been addressed. I have already found that the requests were repetitious and systematic. Some requests are duplications, several overlap because of the broad scope of earlier requests and others are sufficiently connected to be repetitious. It also appears the Applicant continues to revisit the same two areas of dispute as noted earlier. For example, where records have been indicated to not exist, the Applicant asks again for the records.

[44] The purpose of the requests can be difficult to ascertain. In most cases, it requires the drawing of inferences from an applicant's behavior. Applicants seldom admit to a purpose other than access.

[45] The SHA asserted that document disclosure and production in the course of the administrative proceedings had been provided to the physician. Unsatisfied with the claims of privilege made by the SHA, the physician, through his counsel, is attempting to do an end-around of the privilege claims made by the SHA with the continued and persistent requests.

[46] From a review of the materials, it appears the purpose of the Applicant's requests are to expose issues the Applicant believes exist as a result of the proceedings against the

Applicant's client (a physician). For example, the costs of the proceedings for tax payers and alleged conflicts of interest of parties to the proceedings. When told by the SHA that certain records did not exist, the Applicant continued to ask for the same records. This suggests that the purpose of repeating some of the requests was not to access the records but to make the lack of records an issue. The Applicant stated in the submission to my office that, "we seek the records that the SHA failed to disclose…" and "the OIPC should require [the SHA] to confirm whether [it] is stating that the Miller Thomson LLP records discussed herein do not exist…, or whether [it] simply failed to disclose them." I acknowledge that the Applicant was not satisfied with some of the responses from the SHA and believes records should have been provided but were not. However, the Applicant has the option of requesting a review by my office where the Applicant is unsatisfied with a response from the SHA.

[47] The timing of the requests appear connected to the proceedings involving the physician. The SHA asserted that the 35 requests made since 2019 coincide with the wave of litigation and professional regulatory complaints commenced by the physician. In some cases, increased requests and appeals following the initiation of court proceedings by a local authority can justify a conclusion that an applicant is abusing the right of access.

[48] Subsection 43.1(2) of LA FOIP serves to ensure the proper functioning of the Act. I will not give this authorization lightly but nor will the subsection be so narrowly interpreted as to make it meaningless. In *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC), Coultas J. explained the purpose of a similar section in British Columbia's *Freedom of Information and Protection of Privacy Act*. The court explained that the section providing the power to authorize a public body to disregard access requests was an important remedial tool to curb abuse of the right of access. The section and the rest of the Act should be construed by examining it in its entire context bearing in mind the purpose of the legislation. The section is an important part of a comprehensive scheme of access and privacy rights and should not be interpreted into insignificance. The legislative purpose of public accountability and openness are not a warrant to restrict the meaning of the section. The section must be given the remedial and

fair, large and liberal construction and interpretation as best ensures the attainment of its objects. I adopt the same approach to interpreting subsection 43.1(2) of LA FOIP.

[49] In this case, there are recurring incidents of related or similar requests on the part of the Applicant. In conclusion, I am satisfied that the cumulative effect of the Applicant's conduct amounts to an abuse of the right of access.

[50] As both parts of the test have been met, I am satisfied that the requirements for subsection 43.1(2)(b) of LA FOIP have been met. Given this finding, it is unnecessary for me to consider subsection 43.1(2)(c) of LA FOIP.

III DECISION

[51] I grant the SHA's application to disregard the Applicant's eight access to information requests made between July 31, 2020 and August 10, 2020.

Dated at Regina, in the Province of Saskatchewan, this 14th day of September, 2020.

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