DISREGARD DECISION
285-2020, 286-2020, 287-2020, 288-2020, 289-2020

Ministry of Parks, Culture and Sport

January 18, 2021

Summary: The Ministry of Parks, Culture and Sport (PCS) applied to the Commissioner for authorization to disregard five access to information requests under section 45.1 of *The Freedom of Information and Protection of Privacy Act*. The Commissioner found that the access to information requests were not repetitious, systematic, and vexatious, not in good faith or an abuse of the right of access. As such, the Commissioner refused PCS' application to disregard the access to information requests.

I BACKGROUND

[1] Between December 3, 2020 and December 16, 2020, the Ministry of Parks, Culture and Sport (PCS) received the following five access to information requests from two individuals:

> **(PCS 05-20G)/(OIPC 285-2020)**
> I am requesting internal Ministry communications/correspondence records regarding mediation between Ministries, Suffern Lake Regional Park Authority and Cabin Owners that were generated between March 1, 2018 and June 30, 2018; and all internal communication materials generated between May 17, 2019 and July 30, 2019, related to responding to FOIP request 11-19G including the May 23, 2019 meeting between [Park Planner] and the Access Coordinator as referenced in the OIPC Review Report 247-2019.
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> **(PCS 06-20G)/(OIPC 286-2020)**
> I am requesting all correspondence between PCS, including but not limited to, [Park Planner] and the Suffern Lake Regional Park Authority regarding OIPC Reviews #091-2019 and 121-2019 122-2019

> I am requesting all correspondence between PCS, including but not limited to [Park Planner] and Saskatchewan Regional Park Association regarding OIPC Reviews #091-2019 and #121-2019 122-2019 (April 2020 to present)
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> **(PCS 07-20G)/(OIPC 287-2020)**
> I am requesting all correspondence between/among PCS, including but not limited to, [Park Planner], the Executive Director of the Saskatchewan Regional Parks Association (SRPA) and the Suffern Lake Regional Park Authority regarding charitable donations and tax receipts (2016-2017)
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> I am requesting all correspondence between PCS, including but not limited to, [Park Planner] and Saskatchewan Regional Park Association regarding taxation at Suffern Lake Regional Park (2017 – present)
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> **(PCS 08-20G)/(OIPC 288-2020)**
> I am requesting records that show:
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> communications between PCS and Saskatchewan Assessment Management Agency (SAMA) (2017 and 2018)
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> **(PCS 09-20G)/(OIPC 289-2020)**
> Previous FOI responses (PCS 09-19G) indicate [Park Planner] began a line of questions/inquiry with Suffern Lake Regional Park Authority and the RM of Senlac in September 2017. It is reasonable to assume he was directed to do so with a further requirement to report his findings.
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> I am requesting any interim and/or final reports/briefing notes/outcomes (internal or inter-Ministerial) generated by [Park Planner] or other Ministry staff as a result of research/investigation into Suffern Lake taxation increases. (September 2017 to April 2018)

[2] PCS did not respond to the five requests. Instead, on December 23, 2020, 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 would unreasonably interfere with the operations of the PCS owing to their repetitious and systematic nature. Further, it asserted, that the requests amounted to an abuse of the right of access, were vexatious and made not in good faith. 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. All of the materials required to accompany the application were received on December 30, 2020. On that date, the time for responding to the requests was suspended.

[3] On December 31, 2020, my office provided notification to PCS and the two individuals that I would be considering the application to disregard the five access to information requests.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[4] PCS is a "government institution" pursuant to subsection 2(1)(d)(i) of FOIP. Thus, I have jurisdiction to consider this application to disregard.

2. Who is the "Applicant"?

[5] It is important to first clarify who the "Applicant" is for these five access to information requests. Two separate individuals submitted the five requests. Two from one individual and three from another.

[6] The PCS submit that the two individuals represent the Suffern Lake Cabin Owners Association (SLCOA) which has five members. PCS indicated that the Application to Disregard refers to the SLCOA because that is how the applicants have referred to themselves in previous letters made to the Premier, Minister and PCS. PCS submitted supporting documentation to my office which included past correspondence between the PCS and a group of individuals identified as the SLCOA dating back to 2016.

[7] The two individuals asserted that they were not submitting the requests on behalf of the SLCOA. In a submission from one of the individuals, the following is asserted:

> The Deputy Minister references the Suffern Lake Cabin Owners Association (SLOCA) (sic) and makes the claim that only three cabins/five individuals are actual participants. SLOCA (sic) has never been an official entity; since inception in 2015 it has been a working group with no paid membership and all efforts to have concerns acknowledged and addressed have been volunteer based. The group has never been a formalized entity. However, beginning in 2015 groups of as many as 25 people attended functions and/or meetings to define common goals…

> The Deputy Minister names individuals and an organization as vexatious and to be disregarded. She refers to the Suffern Lake Cabin Owners Association "SLOCA" (sic) and a favourable court decision awarded to it. She also refers to "a" court date. **There has never been a court action filed against SLOCA (sic) or a related court award/decision.** Nor were the court actions for eviction; **SLRPA sought summary decisions for Writ of Possession on three cabins, two of which were not recreation properties but the full-time, retirement homes of their owners. That has now diminished to one…**
>
> Individuals subjected to SLRPA court actions are incorrectly identified by the Deputy Minister as [name #1] (it is [correct spelling], a name that appears as author of a number of the 50 pieces of correspondence she decries), [name #2], [name #3] (it is [correct spelling], who has been dealing with SLRPA concerns via the Ministry for over a decade), [name #4] and [name #5]. [Name #3] no longer resides at Suffern Lake and has not been in contact with any of the other Respondents for many months. If he has accessed the FOIP process in that time frame, he has done so on his own. We suspect the Deputy Minister has wrongly included him in her rant simply because she has not taken the time to check current facts. Also, for clarity, [name #3's] various court actions were not based in tax issues.
>
> [Emphasis in original]

[8] The second individual stated the following in a submission to my office:

> [Deputy Minister] goes to great lengths to describe me and four others in her application as "SLCOA" the Suffern Lake Cabin Owners Association. This association no longer exists and never officially did even though we had meetings/gatherings of more than 20 people. There were more than just five people wanting fair representation and equity. Furthermore, [name #3] is no longer connected to our working group or our research.
>
> We, with the exception of [name #3], do work together and share information; [name #5], [name #1], [name #2], and I have good reason to since we have been sued by SLRPA. [SLRPA] is familiar with using the court system and has indeed initiated 6 lawsuits at the time of this writing…The actions have certainly encouraged us to work even more cooperatively…

[9] A review of the materials provided by PCS shows that the two individuals that submitted the five access to information requests are included in the list of names on some of the correspondence identifying members of the SLCOA. All of the correspondence is dated between 2016 and 2019. It also appears on some of the email correspondence, the SLCOA had its own email address at one point. In one email from July 2019, one of the individuals involved in this disregard application submitted an access to information request to PCS

using the SLCOA email address. PCS did not provide anything to suggest that any of the access to information requests at issue here were submitted from the SLCOA email address. I also note that the SLCOA has an active Facebook page. Further, I note that one of the individuals that submitted two of the five access requests lives in Saskatchewan. The other lives in Alberta.

[10] Based on what has been provided, I am not satisfied that the five access to information requests were submitted on behalf of the SLCAO. The two individuals have both indicated that the SLCAO no longer exists and although they share information due to common interests, they are submitting the access requests on their own.

[11] In conclusion, I find that there are two separate applicants involved in this matter. As such, only access to information requests submitted by each individual will be considered when reviewing whether the requests are repetitious, systematic, and vexatious or made not in good faith. Further, when looking at patterns of behavior to see if there is an abuse of the right of access, I will only consider the actions of each applicant separately and not as a group.

3. Should PCS' application pursuant to subsection 45.1(2)(a) of FOIP be granted?

[12] 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.

[13] In its application to my office, PCS submitted that the five access to information requests received on December 3rd, 7th, 8th, and 16th, 2020, should be disregarded pursuant to subsection 45.1(2)(a) of FOIP.

[14] 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…
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> (BC IPC Order 99-01 at p. 7)

[15] In order for subsection 45.1(2)(a) of FOIP to be found to apply, the government institution must demonstrate that the access to information requests interfere unreasonably with the operations of the government institution 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 government institution?

[16] I will consider each of these questions.

1. Are the requests for access repetitious or systematic?

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

[18] *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).

[19] 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*)

[20] In its application to my office, PCS asserted that the five access to information requests were the same as previous requests submitted.

[21] 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 previous requests made by the two applicants when making this decision.

[22] PCS indicated that it received 20 access to information requests between February 2019 and December 2020. PCS asserted that five of those requests were received within a two week period in December 2020. Further, PCS provided the following instances which it asserted demonstrate that the requests being submitted are repetitious:

- PCS 06/19G and PCS 24/19G are for the same information, with overlapping years;
- PCS 11/19G and PCS 05/20G are both seeking mediation records for the same time period;
- PCS 26/19G and PCS 04/20G are for the same records with a slightly different time period and requested by separate individuals who are members of the SLCOA; and

- PCS 26/19G and PCS 08/20G are for similar records with a slightly different time period.

[23] 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 PCS 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]).

[24] There appears to be some repetition in parts of request PCS 05-20G (OIPC 285-2020). The same applicant requested some of the same records previously in request PCS 11-19G which was an access request that ended up in a review by my office and Review Report 247-2019 was issued on December 1, 2020. The matter under consideration in that review was the search efforts undertaken by the PCS to locate records requested. I found that the PCS made a reasonable effort to locate records and my recommendation was for PCS to take no further action. On December 3, 2020, the applicant made a request asking for some of the same records and in addition records based on things learned in Review Report 247-2019.

[25] There appears to be some overlap between PCS 08-20G and an earlier access request PCS 26-19G. However, PCS 08-20G and PCS 26-19G were submitted by two different applicants. Therefore, I cannot find that PCS 08-20G is repetitious as the applicant has not requested or received these records from the PCS before. The other applicant did.

[26] Further, I find that the remainder of the requests are not repetitious. Although seeking records associated to similar issues, I cannot say they are *sufficiently connected* so as to be repetitious. *Sufficiently connected* means the requests repeatedly return to the same general issue or specific event. In this case, there is an evolving situation that appears to have begun in 2015/2016 and although it began with a dispute around tax assessments it has evolved to include different records, events or time frames. Further, some of the requests are for records that do not appear to have been requested before by either applicant. For example, PCS 09-20G. Based on what has been provided by PCS, I am unable to see where

these records have been requested previously. If it is subsumed within an earlier request, PCS has not made that clear.

[27] I also find that none of the five requests meet the definition of *systematic*. An example of systematic requests are requests that are submitted at the same time on a regular basis or a barrage of requests in a short timeframe on more than one occasion. Based on what has been provided by the PCS, I do not see a pattern or method to the requests since they began in February 2019. One applicant submitted two requests in a two week period in December 2020. The other submitted three. This is not sufficient to suggest there is a systematic method at play. From previous requests dating back to February 2019, it appears on two other occasions one of the applicants submitted two requests on the same day. Again, this does not suggest a method or plan of acting that is organized and carried out according to a set of rules or principles.

[28] In conclusion, I find that parts of the following request meets the standard of "repetitious" as required by subsection 45.1(2)(a) of FOIP. I will continue to consider this part of the request under the second part of the test for subsection 45.1(2)(a) of FOIP:

- PCS 05-20G
  - **This part is repetitious:**

    > "I am requesting internal Ministry communications/correspondence records regarding mediation between Ministries, Suffern Lake Regional Park Authority and Cabin Owners that were generated between March 1, 2018 and June 30, 2018."

    These records were already requested in PCS 11-19G

  - **This part is not repetitious:**

    > "all internal communication materials generated between May 17, 2019 and July 30, 2019, related to responding to FOIP request 11-19G including the May 23, 2019 meeting between [Park Planner] and the Access Coordinator as referenced in the OIPC Review Report 247-2019."

[29] Further, I find that the remaining four requests do not meet the standard of "repetitious" as required by subsection 45.1(2)(a) of FOIP. Therefore, they will not be considered under

the second part of the test. Further, as the requirement to be repetitious and/or systematic is also necessary for subsection 45.1(2)(b) of FOIP, I will not consider the remaining four requests for subsection 45.1(2)(b) of FOIP either. However, they will be considered under subsection 45.1(2)(c) of FOIP.

2. ***Do the repetitious or systematic requests unreasonably interfere with the operations of the government institution?***

[30] In order to interfere with operations, the request must obstruct or hinder the range of effectiveness of the government institution's activities. The circumstances of the particular government institution are considered. For example, it would take less to interfere with the operations of a small municipality compared to a large ministry.

[31] *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 government institution'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).

[32] Factors that can be considered when determining if a request unreasonably interferes with the operations of the government institution are as follows:

- Is the request 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 government institution seek clarification and was it obtained?
- Did the clarification of the applicant's request, if obtained, provide useful details to enable the effective processing of the request?
- Does the applicant's request impair the government institution'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*)

[33] The government institution 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 government institution. 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).

[34] In its application to my office, PCS asserted the following:

> PCS is a small ministry with a limited Strategic and Corporate Services branch to respond to Access to Information requests. PCS has .5 of an FTE [full time equivalent] assigned to processing requests. In 2019-20, PCS received 26 access requests, members associated with the SLCOA accounted for 50% of those requests. This trend is continuing with SLCOA comprising over 75% of requests by PCS in 2020-2021.
>
> The repetitiousness and frequency of applications submitted by the applicants interfere unreasonably with the operations of this branch…

[35] To be clear, I am not considering all five requests together as coming from one applicant. I am looking at the requests submitted by two separate applicants. The only one that met the test for being repetitious was parts of PCS 05-20G. Looking at the requests submitted by the same applicant since February 2019, some are broadly worded and others are very specific. There is always a time frame (e.g. PCS 11-19G "March 1-June 30, 2018). It does not appear PCS sought any clarification for the most recent request. Had it sought clarification it likely could have sorted out the repetition. It is unclear how much time would be involved in processing request PCS 05-20G.

[36] I am sympathetic to issues of staffing and the burden that places on government institutions to respond to access requests under FOIP. However, if I were to accept staffing issues alone as a reason to allow government institutions to disregard access requests, many government institutions would apply to me to disregard. That is why staffing issues alone cannot be the reason for allowing an application under subsection 45.1(2)(a) of FOIP. Instead, a government institution may, in certain circumstances, request more time to respond under section 12 of FOIP.

[37] There is a good reason why government institutions must meet a high threshold of showing "unreasonable inference", as opposed to disruption. Access and privacy rights have been identified as "quasi-constitutional" by the Supreme Court of Canada. Citizens must have access to information in order to participate meaningfully in the democratic process, and to hold the state accountable (*Douez v Facebook Inc.*, 2017 SCC 33, paras 4 and 50; *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers*, 2013 SCC 62, para 19; *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 SCR 403, para 61, AB IPC Request to Disregard F2019-RTD-01 at p. 10).

[38] In conclusion, I find that the repetitious part of access to information request PCS 05-20G does not meet the standard of unreasonably interfering with the operations of PCS as required by subsection 45.1(2)(a) of FOIP. I will now consider this repetitious part of the one request under subsection 45.1(2)(b) of FOIP.

4. Should PCS' application pursuant to subsection 45.1(2)(b) of FOIP be granted?

[39] In order for subsection 45.1(2)(b) of FOIP to apply, the access to information request must be of such a repetitious or systematic nature that it can be said to be an abuse of the right of access. 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?

[40] I will consider each of these questions.

1. Are the requests for access repetitious or systematic?

[41] I have already found that part of access to information request PCS 05-20G meets the standard of "repetitious" as required by subsection 45.1(2)(a) of FOIP. The same criteria are applied for subsection 45.1(2)(b) of FOIP. Therefore, the first part of the test is met for the same part of request PCS 05-20G.

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

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

[43] Once it is determined that a request is 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 whether the requests were made for a purpose other than to obtain access to information.

[44] 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).

[45] 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])

[46] 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.

[47] In its application, PCS made the following assertions:

  - Since 2016, the [SLCOA] has brought numerous complaints regarding various aspects of the park authority governance to the attention of [PCS], alleging issues related to taxation and fundraising, lack of transparency in decision-making, appointed park authority structure, vindictive decision making and inappropriate behavior of the authority figures.

  - The concerned group of five individuals (representing three cabins), calling themselves SLCOA, does not represent the majority of cabin owners. They have sent over 50 complaints to PCS officials and other government contacts including the Premier and Minister. Outside of this concerned group, the ministry has not received any other complaints regarding the Park Authority or any access in relation to its operations.

  - In 2019, the Suffern Lake Regional Park Authority (SLRPA) brought separate legal actions against the three cabin owners who belong to the SLCOA seeking eviction for failure to pay taxes and for breach of lease conditions. In May 2020 the court found in favour of the three cabin owners and eviction proceedings were not upheld.

  - The ministry submits that the requests are an abuse of process when the nature and scope of the requests are reviewed. The nature and scope of the requests indicate that the applicants want to revisit an issue over and over again that has already been addressed. The ministry also submits that the request are repetitive in that they are similar in wording and focus, based on their number and timing.

[48] Based on what was provided by PCS, there were a total of 10 requests submitted by the one applicant over 19 months (February 19, 2019 to December 16, 2020). Two of those requests were submitted in a two week period in December 2020. In this case, the number of requests is not 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).

[49] Further, it is possible to have a repetitious request without there being an abuse of the right of access. For example, applicants are not always sure how to word their access to information request and may submit additional requests in an effort to pinpoint the specific records they are seeking. Although the requests may be repetitious, it would not be an abuse of the right of access. Such a situation would be better handled through the duty to assist and clarification with an applicant.

[50] In terms of the other factors, I do not find anything inappropriate about the purpose of the requests, their timing or wording. In conclusion, I do not find a pattern of behavior on the part of the applicant that amounts to an abuse of the right of access. As such, I find that the requirements for subsection 45.1(2)(b) of FOIP have not been met.

5. Should PCS' application pursuant to subsection 45.1(2)(c) of FOIP be granted?

[51] There is no requirement that the access requests be found to be repetitious or systematic for subsection 45.1(2)(c) of FOIP to be found to apply. Therefore, I will be considering all five access to information requests for this provision.

[52] In its application, PCS asserted that the five access to information requests were vexatious and not in good faith. It stated:

> In light of the favourable decision for the SLCOA these frequent requests are vexatious. The purpose of some of the requests appears to be to accomplish an objective rather than to gain access. It also appears the purpose is to harass the ministry and expose some perceived "corruption" on the part of the Suffern Lake Authority because the applicants are dissatisfied with topics mentioned earlier in this letter…
>
> The ministry believes the above information and in the attached documents demonstrate that your office has sufficient grounds to determine that the applications would unreasonably interfere with the operations of the ministry based on their repetitious and systematic nature, **are vexatious and not made in good faith**.
>
> [Emphasis added]

[53] *Vexatious* means without reasonable or probable cause or excuse (SK OIPC 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 public body in order to obstruct or grind a public body 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 SK OIPC Review Report F-2010-002 at paragraph [69]).

[54] In considering whether the access requests are vexatious, I am mindful of the comments of the Ontario Information and Privacy Commissioner in Order M-618:

> "… Government officials may often find individual requests for information bothersome or vexing in some fashion or another. This is not surprising given that freedom of information legislation is often used as a vehicle for subjecting institutions to public scrutiny. To deny a request because there is an element of vexation attendant upon it would mean that freedom of information could be frustrated by an institution's subjective view of the annoyance quotient of a particular request. This, I believe, was clearly not the Legislature's intent."

[55] 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.”

[56] 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]).

[57] The PCS also raised that the five access requests were not in good faith. *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 (SK OIPC Review Report F-2010-002 at [89]).

[58] When an applicant refuses to cooperate with a government institution in the process of accessing information or if a party misrepresents events to the IPC, this could suggest the party 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 (SK OIPC Review Report F-2010-002 at [103] and [105]; ON IPC Order MO-1924 at p. 10)

[59] 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 that amounts to an abuse of the right of access. As noted earlier in this Decision, 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])

[60] I have already found earlier in this Decision that no pattern of behavior on the part of one applicant exists that amounts to an abuse of the right of access. In a submission from the second applicant, the following is asserted:

> Harassment has **never** been my goal. What is my goal is to research and learn information regarding taxation, both property tax and the education property tax, and assessment in regional parks in general and in Suffern Lake Regional Park, specifically…
>
> I find it ironic that [PCS] says the requests are vexatious. I am requesting access to information. There have been a total of 6 law suits against the five people listed in [PCS's] application and another that could be coming at any time. To me that seems to be a more apt definition of the term…

[61] For the same reasons as the first applicant, I find that no pattern of behavior exists on the part of the second applicant that amounts to an abuse of the right of access. There does not appear to be any evidence of an ulterior or improper motive. Information that has been gained through access to information has assisted the two applicants in legal proceedings made against them.

[62] Therefore, I find that the five access to information requests do not meet the standard of vexatious or not in good faith as required by subsection 45.1(2)(c) of FOIP.

III DECISION

[63] I refuse PCS' application to disregard the five access to information requests. As a result of this decision, the 30-day clock for processing these five access to information requests resumes the date of this decision.

Dated at Regina, in the Province of Saskatchewan, this 18th day of January, 2021.

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