



Office of the
Saskatchewan Information
and Privacy Commissioner

APPLICATION TO DISREGARD AN ACCESS TO INFORMATION REQUEST DECISION 343-2019, 352-2019

Saskatchewan Workers' Compensation Board

November 22, 2019

Summary: The Saskatchewan Workers' Compensation Board (WCB) 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 two access to information requests were repetitious and an abuse of the right of access. As such, the Commissioner authorized the WCB to disregard the access to information requests.

I BACKGROUND

[1] On October 28, 2019, the Saskatchewan Workers' Compensation Board (WCB) received the following access to information request from the Applicant:

Any and all stored and or communicated electronic, and or hand written, and or verbal, and or other information associated to myself, whether WCB and or third party sources, excluding that which is originating from myself, including all sources though not limited to: [four names removed by OIPC].

November 1, 2014 until the present time.

[2] On November 7, 2019, my office received an application from WCB to disregard the Applicant's access to information request. In its application to disregard, WCB indicated that the access to information request should be disregarded pursuant to subsection 45.1(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP) because the WCB

already addressed the same request in a recent review report by my office. Further, WCB asserted the request should be disregarded because the request falls within subsections 45.1(2)(b) and (c) of FOIP. I note that WCB did not copy the Applicant on its application to disregard. In the future, WCB should copy applicants when it makes an application to disregard to my office. This would be consistent with my office's guidance document titled, *Application to Disregard an Access to Information Request or Requests for Correction*, available at oipc.sk.ca. To correct this oversight, my office copied WCB in its notification email to the Applicant dated November 15, 2019, so all parties were informed.

[3] On November 8, 2019, my office advised WCB that it could not proceed with the application, as it did not include all of what my office required.

[4] On November 13, 2019, my office received additional materials from WCB. In addition, WCB added another access to information request from the Applicant that was received on November 8, 2019, to its application to disregard. The request was an email which stated:

ATTENTION:

Due to failed attempts to receive information requested from 5 years of my injury claims file, one sole email document as requested, completely redacted communication between [name removed by OIPC] and [name removed by OIPC], and one summary of telephone communications with [name removed by OIPC] despite explicitly stating that such information originating from myself is to be excluded, which is distorted, limited in fact, with falsehoods, and out of context, and requests preempted communication to [name removed by OIPC] of the Appeal Tribunal, to "explain the situation and circumstances" apparently biasing any such appeal I should submit, both items illustrating lack of respect for the information disclosure process, my injury claims, and myself, I submit this complaint and request to expediently provide any and all information as originally requested, and attached, with objective supervision, to avoid farce and withholding in the retrieval process.

[5] On November 15, 2019, my office provided notification to WCB 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] WCB is a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP. Thus, I have jurisdiction to consider this application to disregard.

2. Should WCB’s application to disregard the access to information requests 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, WCB submits that the access to information requests should be disregarded pursuant to subsection 45.1(2)(b) and (c) of FOIP. Further, it added, the requests were an abuse of process and not submitted in good faith.

[10] I will begin by considering subsection 45.1(2)(b) of FOIP. In order for subsection 45.1(2)(b) of FOIP to apply, the access to information requests must be of such a repetitious or systematic nature that they 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?

[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]).

[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 Interpretation Bulletin,
Section 15 – Permission to disregard access request)

[15] In its application to my office, WCB asserted that the access to information request received October 28, 2019 was identical to a previous request the Applicant made on November 26, 2018.

[16] I reviewed the access to information request received by WCB on November 26, 2018. It requested access to the following:

Any and all sorted or communicated electronic, and or hand written, and or verbal, and or other information associated to myself, whether WCB and or third party sources, excluding that which is originating from myself, including all sources thought not limited to: [four names removed by OIPC]

November 1, 2014 until the present time.

[17] The access to information request received by WCB on October 28, 2019, appears to be asking for the same information as the request of November 26, 2018, which was already processed by WCB. Records have already been provided to the Applicant by way of letter from WCB dated December 14, 2018. The Applicant was not satisfied with what was provided by WCB and requested a review by my office. My Review Report 310-2018 was issued October 4, 2019. Recommendations were made to the WCB in my report, which the WCB complied with in full. The option for the Applicant, if still not satisfied, was to appeal to the Court of Queen's Bench. Instead, the Applicant appears to have asked the WCB again for the same information. The Applicant's submission for this disregard application supports this conclusion. In the submission received November 15, 2019, the Applicant stated:

I was provided 1 completely redacted 3 page document, and 1-3 page email which was not in the scope of what was requested, from 5 years of injury claims...

WCB needs to provide what was requested. Had they done so initially, further requests would not be required.

[18] The third access to information request received by WCB on November 8, 2019, also appears to be re-asking for the same records or information. In the request, the Applicant stated, “[d]ue to failed attempts to receive information requested...” In addition, the Applicant sent the request by forwarding the email in which the Applicant sent the October 28, 2019 request.

[19] In conclusion, I find that the access to information requests of October 28, 2019, and November 8, 2019, are repetitious. This conclusion is based on the following factors:

- The Applicant is asking more than once for the same records or information;
- The requests are similar in nature and do not stand alone as different;
- A previous request significantly overlaps with the two new ones; and
- The two new requests were filed within a week or two of each other.

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

[20] 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.

[21] 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.

[22] 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.

[23] 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?

(Ontario Information and Privacy Commissioner Order MO-3108 at [24], Alberta Information and Privacy Commissioner Order F2015-16 at [39] and [54])

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

[25] Based on a review of these factors, I find that one factor is relevant in this matter. That being, the nature and scope of the requests. The nature and scope of requests can be relevant where they are found to be similar, unusually detailed or indicate an applicant wishes to revisit an issue over and over again that has already been addressed. I would also add as a consideration whether the request is the same as a request considered in a report by my office, as in this case, my Review Report 310-2018, issued October 4, 2019.

[26] I have already found that the requests were repetitious. It also appears the Applicant wishes to revisit an issue over and over again that has already been addressed. While I can appreciate the Applicant's frustration over not receiving records or information that were previously requested, FOIP provides an appeal process for applicants that are not satisfied with the decision of a government institution. The first level of appeal is my office. The Applicant utilized this option when the Applicant requested a review that has now been concluded. The next level of appeal, if still unsatisfied, is the Court of Queen's Bench.

[27] The fact that the requests are near identical and the Applicant appears to be revisiting an issue repeatedly supports a conclusion that the repetitious requests are part of a pattern of conduct that amounts to an abuse of the right of access.

[28] As both parts of the test have been met, I am satisfied that the requirements for subsection 45.1(2)(b) of FOIP have been met. Given this finding, it is unnecessary for me to determine whether the requests were also not submitted in good faith pursuant to subsection 45.1(2)(c) of FOIP.

III DECISION

[29] I grant the WCB's application to disregard the Applicant's two access to information requests made by the Applicant on October 28, 2019 and November 8, 2019.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of November, 2019.

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