



DISREGARD DECISION 110-2023

Ministry of Immigration and Career Training

May 2, 2023

Summary: The Ministry of Immigration and Career Training (Immigration) applied to the Commissioner to disregard the Applicant's access to information request under subsection 45.1(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP). The Commissioner found that Immigration did not demonstrate that the Applicant's access to information request should be disregarded pursuant to subsections 45.1(2)(a), (b) or (c) of FOIP. As such, the Commissioner refused to grant Immigration's application to disregard the Applicant's access to information request. As a result of this decision, the 30-day clock for processing this request resumes the date of this decision.

I BACKGROUND

[1] On April 5, 2023, the Ministry of Immigration and Career Training (Immigration) received an access to information request from the Applicant as follows:

Please provide agendas and meeting minutes of the Management and Director meetings. This would include any meetings with just Managers and any meetings with just Directors, as well as any meetings with Managers and Managers, and Directors and Directors. Include a list of attendees as well as any action items that come out of the meetings. Also include any meetings with the Executive Director. Timeframe January 1, 2022 to April 5, 2023.

[2] On the same date, Immigration sought clarification from the Applicant regarding their request or to make their request more accurate. On April 6, 2023, the Applicant clarified their request as follows:

Please provide agendas and meeting minutes of the **Program Integrity Unit and Economic Unit** Management and Director meetings. This would include any meetings with just Managers and any meetings with just Directors, as well as any meetings with Managers and Managers, and Directors and Directors. Include a list of attendees as well as any action items that come out of the meetings. Also include any meetings with the Executive Director. Timeframe January 1, 2022 to April 5, 2023.

[3] On April 6, 2023, Immigration responded as follows:

That absolutely works. I just wanted to be sure that the search would capture the correct meetings, and that we were not searching for meetings that you had not intended.

[4] On April 24, 2023, Immigration asked my office to disregard the Applicant's access to information request of April 5, 2023 pursuant to subsections 45.1(2)(a), (b) and (c) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Immigration also provided my office with a copy of its application and supporting documentation on the same date.

[5] The clock to process the access to information request stopped on April 25, 2023. On the same date, my office emailed Immigration notification of my office's consideration of its request to disregard the Applicant's access to information request. My office also emailed notification to the Applicant on the same date. The Applicant provided a submission on May 1, 2023.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] Immigration is a "government institution" pursuant to subsection 2(1)(d)(ii) of FOIP. Therefore, I have jurisdiction to consider this application to disregard.

2. Should Immigration's application pursuant to subsections 45.1(2)(a), (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. It is important for a government institution to remember that a request to disregard must present a sound basis for consideration and should be prepared with this in mind (*Guide to FOIP*, Chapter 3, "Access to Records", updated June 29, 2021 [*Guide to FOIP*, Ch. 3], p. 86).

[9] Generally, the actions of applicants are not under scrutiny. They have no duty to be accountable to the provincial government. The law is in place to allow for the scrutiny of those who govern, not the other way around. When making access requests, applicants who frequently use the Act are exercising a statutory right. While some requests can be complicated and may even be intended as "fishing expeditions", they are lawful and ought

to be treated with respect. However, FOIP must not become a weapon for disgruntled individuals to use against a government institution for reasons that have nothing to do with the Act (*Guide to FOIP*, Ch. 3, p. 86).

[10] In its application to my office, Immigration submitted that the access to information requests should be disregarded pursuant to subsections 45.1(2)(a), (b) and (c) of FOIP. I will address each subsection separately.

Subsection 45.1(2)(a) of FOIP

[11] For this provision to be found to apply, the government institution would have to demonstrate that the applicant's access to information requests or requests for correction interfere unreasonably with the operations of the government institution due to their repetitious or systematic nature (*Guide to FOIP*, Ch. 3, p. 87).

[12] Both parts of the following test must be met:

1. Are the requests for access or correction repetitious or systematic?
2. Do the repetitious or systematic requests unreasonably interfere with the operations of the government institution?

[13] I will assess each part of the test.

1. Are the requests for access or correction repetitious or systematic?

[14] "Repetitious requests" are requests that are made two or more times (*Guide to FOIP*, Ch. 3, p. 87).

[15] "Systematic requests" are those made according to a method or plan of acting that is organized and carried out according to a set of rules or principles. It includes a pattern of conduct that is regular or deliberate. To be methodical; arranged, conducted, according to system; deliberate (*Guide to FOIP*, Ch. 3, p. 87).

[16] The *Guide to FOIP* (Ch. 3, pp. 86-87) outlines the following factors that should be considered:

- Are the requests repetitious (does the applicant ask more than once for the same records or information or for the same information to be corrected)?
- 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?

[17] The government institution should address any of the above factors that apply. Depending on the nature of the case, one factor alone or multiple factors in concert with each other can lead to the first part of the test being met. There is an important distinction to be drawn between overlap and repetition. Where there is overlap between requests that are made at

the same time, only one search will be required for all of the overlapping requests. Where more than one request has been made for the same information at more than one time, more than one search will be required for the same information. The latter is repetitious; the former is not. Evidence of previous requests is relevant to the determination of whether the current request is repetitious (*Guide to FOIP*, Ch. 3, p. 88).

[18] Immigration submitted as follows:

The Ministry receives multiple requests from this Applicant each year. This request is one of 33 open access requests received since March 5, 2023, from the Applicant. The Applicant represents 100% of all open access requests currently, and the Applicant has submitted 39 requests since January 24, 2023. On many occasions, multiple access requests are submitted on the same day. For context, in the 2022/23 fiscal year, the Applicant made 51 of 67 requests received by the Ministry, accounting for 76% of all requests received by the Ministry in that fiscal year. In 2021/22, this Applicant made 19 of 55 requests – 35% of all requests.

Typically, the Applicant seeks access to records that are in one Branch, the Immigration Services Branch. Periodically, a request may involve another branch or division within the Ministry, but it is rare. The request that is the subject of the Ministry's application is for records in the Immigration Services Branch.

In 2022/23, all 51 requests received by the Ministry from the Applicant were for records that were located in the Immigration Services Branch. For context, the Ministry has 7 branches (areas led by an Executive Director) – the remaining 16 requests were spread amongst those branches. The Branch in question has the highest workload in the Ministry, due to its area of responsibility.

Immigration is a major priority for the Ministry and for the Government of Saskatchewan, -two of four performance measures in the 2023-24 Ministry Business Plan... clearly demonstrates this, as does the increased budget allocation approved for 2023-24.

The Branch is responsible for handling applications for immigration into Saskatchewan through multiple programs (international skilled workers, entrepreneur, farm owner and operator, worker with Saskatchewan work experience—each of these programs have sub programs under them). The Branch handles thousands of applications each year. Each time a request is received, the same small group of staff are responsible for searching for records. That group is the Program Integrity Unit (PIU) and the management team of the branch. The management team consists of 5 people: the Executive Director, the Director (International Recruitment and Integrity), Director (Economic Immigration), Manager (Program Integrity) and Executive Coordinator. There are five staff in the PIU and they assist with gathering records as needed.

The PIU of the SINP was established to safeguard the integrity of the program; to ensure that applicants are adhering to program criteria, policies and procedures; to ensure that staff are adhering to program policies and procedures, and to promote fairness in the program.

At this time, the Branch in question is dealing with a very large backlog of files that are in need of processing. The PIU has delays of up to two years on program integrity files. Each time a request is received, the staff in PIU and the management team must stop doing their operational tasks to first conduct the search, then to retrieve and prepare the records. This further adds to the delays in the Branch, which have been increasing due to the increased number of requests from the Applicant.

The Applicant's requests unreasonably interfere with the operations of the ministry in a very important and critical area (immigration) and cause unnecessary delays for the clients of this Branch. Of late, there have been multiple requests submitted on the same day by the Applicant. The request the Ministry is requesting be disregarded was one of nine.

Reasonable means fair, proper, or moderate under the circumstances, sensible. Interference has been found by your office in the context of subsection 12(1) to mean to obstruct or hinder the range of effectiveness of the government institution's activities. The Ministry submits the principle of statutory interpretation supports the same interpretation being applied to clause 45.1(2)(a) of the Act.

The Ministry relies on the staff in the Branch to search and retrieve their records and explain the sensitivities and concerns, if any exist, in the records. The volume of requests received from the Applicant, including the multiple requests received in one day, is unreasonably interfering with the Ministry's operations, in particular the operations of the PIU, given their systemic and repetitious nature. The Ministry respects the Applicant's right to request a review and would like to point out that it is only requesting that one of the nine requests be disregarded. However, 100% of the requests the Ministry is dealing with concerns one Branch in the Ministry. The number of requests received from the Applicant since January 24, 2023 is quickly nearing the total amount of requests received by the Ministry for the entire 2021/2022 fiscal year. The PIU is a small Branch and the impact these requests are having on it is unreasonable to the point that it is affecting its operations. The Ministry requests the Commissioner grant the Ministry's application to disregard this request pursuant to clause 45.1(2)(a) of the Act.

[19] Including the access request that is under review, Immigration provided my office with copies of 60 PDF documents that appear to be access requests made by the Applicant; I note that two of these documents are marked as "Updated". The dates the documents are tagged with appear to be between June 2022 and April 2023. Immigration did not state

whether the Applicant's access request of April 5, 2023, contained any repetition or overlapped with any of their previous access requests.

[20] Upon review of the 60 documents, I note eight are tagged with a name that is not the Applicant's. Others that are not tagged with names also appear to be made on behalf of other individuals. As the Applicant is an immigration consultant, I assume they made these requests on behalf of their clients. Immigration has not stated this is the case, and I do not have proof as such; regardless, there does not appear to be any repetition or overlap with the Applicant's April 5, 2023, request. Other requests appear to be for items such as, "processing and policy manuals for the Program Integrity Unit"; such requests do not appear to overlap with the Applicant's access request of April 5, 2023.

[21] I am not able to tell if any of the Applicant's access any of the Applicant's access requests are sufficiently connected to the one at question, and Immigration has not made the case that any are.

[22] Regarding whether the access request at question was systematic, Immigration also did not provide arguments or evidence to support that the Applicant made the requests according to a system or a plan. Upon review of the records, it is not clear to me how or if the access requests were made in a systematic way.

[23] In [Disregard Decision 254-2021, 255-2021, 256-2021, 257-2021, 258-2021, 259-2021, 260-2021](#) concerning the Village of Neudorf, I stated as follows at paragraph [15] regarding parallel provision subsection 43.1(2)(a) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP):

[15] When making an application to my office to disregard an applicant's access to information request, it is incumbent on a local authority to present its arguments and evidence in a way that clearly demonstrates its position. My office is charged with neutral oversight responsibility over LA FOIP. It is not my role to put a case together for a local authority but rather look at the evidence provided by both parties in matters that come before me and make a determination whether the case has been met by one party or another.

[24] I make similar comments to Immigration in this matter. On its face, the arguments that Immigration has provided here do not support that the Applicant's access to information request of April 5, 2023 is repetitious or systematic. Immigration has not sufficiently considered the factors outlined at paragraph [16] of this Decision to support a finding that the Applicant's access request is repetitious or systematic.

[25] As the first part of the test is not met, I have no need to consider the second part. As such, I find that Immigration has not demonstrated that the Applicant's access to information request should be disregarded pursuant to subsection 45.1(2)(a) of FOIP. I will still, however, consider if it should be disregarded pursuant to subsection 45.1(2)(b) of FOIP.

Subsection 45.1(2)(b) of FOIP

[26] For this provision to be found to apply, the government institution would have to demonstrate that the applicant's access to information requests or requests for correction are of such a repetitious or systematic nature that they can be said to be an abuse of the right of access or correction (*Guide to FOIP*, Ch. 3, p. 90).

[27] Both parts of the following test must be met:

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

(*Guide to FOIP*, Ch. 3, pp. 90-92)

1. Are the requests for access or correction repetitious or systematic?

[28] I have already found that Immigration has not demonstrated that the Applicant's access to information request is repetitious or systematic for the purposes of subsection 45.1(2)(a) of LA FOIP. Regarding subsection 45.1(2)(b) of FOIP, Immigration added the following arguments:

As stated above, the Applicant's request are mostly for records in one Branch in the Ministry. The Ministry submits this request is an abuse of the right of access because of the repetitious nature of the requests. The Ministry has established that the Applicant's requests are repetitious both in their volume at one time and increasing consistency over the last two years. The requests mostly seek information from one Branch in the Ministry, the PIU. The Ministry submits the current request is an abuse of the right of access because of the repetitious nature of the request. The request was submitted along with eight other requests and all those requests were seeking information from one Branch. The Applicant is responsible for all the open requests the Ministry is currently handling and was responsible for the majority of requests received last year. These requests mostly seek information from one area. The request the Ministry is requesting be disregarded is for records from staff involved in the majority of the Applicant's access requests. The Ministry submits it has provided enough information to establish the request is requesting to be disregarded should be on the basis that it is an abuse of the right of access pursuant to clause 45.2(b) of the Act.

[29] This is not enough to further convince me that the Applicant's request has been repetitious or systematic for the purposes of subsection 45.1(2)(b) of FOIP. Therefore, part one of the test is not met, and so there is no need to consider the second part.

[30] I find Immigration has not demonstrated that the Applicant's access to information request of April 5, 2023, should be disregarded pursuant to subsection 45.1(2)(b) of FOIP. I will now consider if it should be considered pursuant to subsection 45.1(2)(c) of FOIP.

Subsection 45.1(2)(c) of FOIP

[31] For this provision to be found to apply, the government institution would have to demonstrate that the applicant's access to information request is vexatious, not in good faith or concerns a trivial matter (*Guide to FOIP*, Ch. 3, p. 93).

[32] Immigration submits that the Applicant is being vexatious.

[33] "Vexatious" means without reasonable or probable cause or excuse. A request is vexatious when the primary purpose of the request is not to gain access to information but to harass a public body continually or repeatedly 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. 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 (*Guide to FOIP*, Ch. 3, p. 94).

[34] 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 is attempting to abuse or misuse the legal process”: [Jamieson v Denman, 2004 ABQB 593](#) 2004 ABQB 593 (CanLII), para 127. In [Chutskoff v Bonora, 2014 ABQB 389](#) (CanLII), Michalyshyn J identified a “catalogue” of 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.

Any of these indicia are a basis to classify a legal action as vexatious.

(*Guide to FOIP*, Ch. 3, pp. 95-95)

[35] When considering whether a request was made on grounds that are frivolous or vexatious, the Commissioner is determining whether there is a pattern or type of conduct on the part of the applicant that amounts to an abuse of the right of access or correction. An “abuse of the right of access or correction” is where an applicant is using the access/correction provisions of FOIP in a way that are contrary to its principles and objects (*Guide to FOIP*, Ch. 3, p. 95).

[36] The following factors should be considered:

- Number of requests: is the number excessive?
- 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 public body 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? Offensive or intimidating conduct or comments by applicants is unwarranted and harmful. They can also suggest that an applicant’s objectives are not legitimately about access to records. Requiring employees to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments can have a detrimental effect on well-being.

[37] Immigration submitted as follows:

In this request, the Applicant is requesting agendas, meeting minutes, lists of attendees, and action items for meetings that Manager or Director responsible for PIU attended in the last 16 months. While any Applicant can ask for any record that a government institution has within its possession or under its control, the Applicant has threatened to request a review in previous requests if access was denied.

Vexatious is defined as intended to harass. In law, this term is usually assigned to a person who brings an action without sufficient grounds for winning, purely to cause annoyance.

The Applicant, based on the Applicant’s volume and history of access requests, has become savvy in the area of access to information. The Applicant is also intelligent and given the time frame of the request understands that there will be a large volume of records responsive to this request. Based on the Applicant’s understanding of access to information, it is also very likely the Applicant understands that the majority of the information in the records responsive to this request will be denied. Given this, the Ministry submits the current request is vexatious. The Ministry requests the Commissioner grant its application to disregard this request pursuant to clause 45.1(3)(a) of the Act.

[38] I have previously stated that Immigration has not sufficiently demonstrated or shown the Applicant’s access to information request of April 5, 2023, is repetitious or systematic.

[39] I acknowledge that Immigration has stated the volume of requests appears high and that the Applicant made them in a short time span. Based on what Immigration provided my office, it appears the Applicant has made 39 access requests since January 24, 2023. In [Disregard Decision 176-2022, 177-2022, 178-2022](#) concerning Saskatchewan Government Insurance, I stated as follows at paragraph [27]:

[27] SGI also questions the timing of the access to information requests. I note that in the space of approximately 17 months, the Applicant made seven access to information requests to SGI. SGI notes that six of them occurred within a five-month timeframe. SGI points to my office's [Review Report F-2010-002](#) concerning the Ministry of Education, et al, to support its assertion that the Applicant was being vexatious by making the number of access to information requests they did within the given timeframe. In that report, an applicant had made 100 requests for review to my office over the course of approximately 22 months. At paragraph [81] of that Report, it was concluded that the 100 requests themselves did not constitute an excessive volume of requests, but what made the volume excessive was the repetitive and cyclical nature in which the Applicant submitted both access to information requests and requests for review. I do not find that this case is similar to the above.

[40] If volume and timing in this matter are an issue, then Immigration should be demonstrating that the Applicant's access requests are repetitive and cyclical but has not done so.

[41] Immigration further argues that the Applicant is being vexatious by making requests involving large volumes of records knowing they will be denied access to "the majority" of the information. Immigration, however, has not provided any evidence to support its assertion. For example, Immigration did not provide a sample of records that would be responsive to any of the Applicant's access requests and include what its basis would be for denying access. Further, a government institution cannot presume to know what an applicant knows about the access and privacy process or what types of records they may or may not be entitled to receive; rather, government institutions have an obligation to respond to an applicant openly, accurately, and completely.

[42] Immigration has also stated that the Applicant has, "threatened to request a review in previous requests if access was denied". It is not clear to me, however, if the Applicant stated that in relation to their access request of April 5, 2023, or in another request –

Immigration has not pointed this out. Regardless, an Applicant has a right to request a review by my office if they are not satisfied with a government institution's decisions.

[43] Immigration has not pointed out any concerns with the Applicant's language or tone; in the materials Immigration provided, I do not observe any concerns in this area.

[44] Taking all the factors together, I am not satisfied that the Applicant is being vexatious, or that Immigration has demonstrated that they are. As such, I find that the requirements for subsection 45.1(2)(c) of FOIP have not been met.

[45] Although I will not at this stage grant Immigration's request, I want to caution the Applicant on excessive use of the access system under FOIP. To have submitted 39 access requests since January 24, 2023, is a lot of access requests. Each access request takes time to process, and that time is taken away from processing the work that Immigration must do. Access requests at this level runs the risk of burdening the system. The Applicant needs to know that making 39 requests in this type of timeframe may, in the future, result in Immigration asking me to disregard some of those requests. I encourage the Applicant to be reasonable and to think about lessening the number of access requests made.

III DECISION

[46] I refuse to grant Immigration's application to disregard the Applicant's access to information request dated April 5, 2023. As a result of this decision, the 30-day clock for processing this one request resumes the date of this decision.

Dated at Regina, in the Province of Saskatchewan, this 2nd day of May, 2023.

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