Date: May 17, 2010 **File No.: See Appendix A**

SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

REPORT F-2010–002

Ministries of Advanced Education, Employment and Labour, Executive Council, Justice and Attorney General, the Saskatchewan Labour Relations Board and the Saskatchewan Workers' Compensation Board

Summary: A series of requests for similar records were repeatedly submitted by the Applicant to the Ministry of Advanced Education, Employment and Labour, the Ministry of Executive Council, the Ministry of Justice and Attorney General, the Saskatchewan Labour Relations Board and the Saskatchewan Workers' Compensation Board. Requests for Review were submitted on the grounds that these government institutions failed to meet their obligations under section 7 of *The Freedom of Information and Protection of Privacy Act* (FOIP). Through the course of the Reviews the government institutions raised the issue that the requests were frivolous, vexatious and not in good faith pursuant to section 50(2) of FOIP. The issues under review were the lack of a response pursuant to section 7 and whether the Reviews should be discontinued pursuant to section 50(2) of FOIP. The Commissioner found that some of the government institutions failed to meet their obligations pursuant to section 7 of FOIP. Also, in considering the actions of the Applicant, the Commissioner discontinued the Reviews pursuant to section 50(2)(a) and (b) of FOIP.

Statutes Cited: *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, ss. 7, 46(1), 46(3), and 50(2); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 55; *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 43; *Access to Information and Protection of Privacy Act*, S.N.W.T. (Nu.) 1994, c. 20. s. 31(2)(c); *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20, ss. 31(2)(c) and 53; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, ss. 10(1) and 27.1(1); *Freedom of Information and Protection of Privacy Act Regulations* R.R.O.

1990, Reg. 460, s. 5.1; *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, F-15.01, s. 52; *Access to Information and Protection of Privacy Act*, RSY 2002, c.1, s. 43(1); *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11; United Kingdom, *Freedom of Information Act* (2000), chapter 36, s. 14.

Authorities Cited: *Bonsma* v. *Alberta (Information and Privacy Commissioner)*, 2010 ABQB 209; *London (City) Police Service* v. *Riley*, [1995] O.J. No. 4674; Saskatchewan Office of the Information and Privacy Commissioner Reports F-2000--003, F-2006--002; Office of the Information and Privacy Commissioner for British Columbia Auth. (s. 43) 02-02 and Order 110-1996; Office of the Information and Privacy Commissioner of Alberta, Request for Authorization to Disregard Access Requests Under section 55 of the *Freedom of Information and Protection of Privacy Act*, Edmonton Police Service, November 4, 2005; Information and Privacy Commissioner for Ontario Orders M-618, M-850 and M-947; United Kingdom, Information Tribunal, Appeal Number: EA/2006/0070.

Other Sources Cited: Saskatchewan Office of the Information and Privacy Commissioner *2004-2005 Annual Report*; Saskatchewan Office of the Information and Privacy Commissioner *Helpful Tips*; Office of the Information and Privacy Commissioner for British Columbia *2001-2002 Annual Report;* Remarks of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, *Access to Information and Protection of Privacy in Canadian Democracy*, May 5, 2009; Privy Council Office, *Guide to Making Federal Acts and Regulations*, 2nd Ed., 2001; *Black's Law Dictionary*, 8th Ed., USA: Thomson West, 2004; *Merriam-Webster's Dictionary of Law*; United Kingdom, Information Commissioner's Office, *Freedom of Information Act Awareness Guidance No 22: Vexatious and Repeated Requests*, Version 4, December 3, 2008.

I BACKGROUND

[1] Beginning in early September of 2007 through to and including December of 2009, the Applicant made the same, or highly similar, access requests to the Ministries of Justice and Attorney General (JAG), Advanced Education, Employment and Labour (AEEL), Executive Council (EC), the Saskatchewan Labour Relations Board (LRB) and the Saskatchewan Workers' Compensation Board (WCB) for:

I.
Please send me all docs. and including all phone records, internal and external email, faxes, uploading of data, inter and outer office memos, personal notes of staff, outgoing and incoming letters, etc. that has my name on it or has my name mentioned (from a/any file/file(s) that bear(s) my name, and replete with docs. with my name on them) within [Ministry] which refute(s) the factually proven and documented (but not restricted to) perpetrated criminal act(s)/action(s) of

1) High treason(s) against her Majesty's public order
2) treason(s) against her Majesty's public order
3) Fraud(s) – Criminal Code of Canada Section 380
4) Uttered forgery(ies) – said Code Section(s) 366-368
5) Breach(es) of public trust – said Code Section 122
6) Misprison(s) [sic] of treason(s)
7) Falsification of books and docs. – said Code Section 397
8) False pretence(s) – said Code Section 361
9) Party(ies) to offences – said Code Section 21
10) Misprison(s) [sic] of Fraud(s)
11) Fraudulent misrepresentation (s)
12) Fraudulent concealment(s) – Code Section 341

And as perpetrated by

[Applicant lists numerous current and former government officials as well as other individuals]

And in the possession of (but not restricted to):

[Applicant lists offices of numerous government and non-government officials]

And dated between [start date of request varies] and [end date of request varies]

If there is/are no such docs. of refutation in existence estimates of (in refutation of my documented and factual proof(s) of the said factually proven contravention (s) of the Criminal Code of Canada as perpetrated by the individuals as listed above and dated between [start date of request varies] and [end date of request varies] then please tell me in writing, there are no such docs. of refutation in creation/in existence.

II.
Please cite and reference the Section(s) of the [Applicant lists various Acts] and the Act which allows/allowed the above names (as applicable) individuals (listed above as in "I.") to perpetrate the factually proven criminal act(s)/action(s) against and in contravention(s) of the Constitution Act, 1867, 1982, as consistent with Section 92(14) of the said Act as consistent with the Criminal Code of Canada and the Constitution of Canada as consistent with The Charter of Rights and Freedoms as consistent with Section 32 of the said Charter. If there is/are no Section(s) of the

> said [Applicant lists various Acts] and the said Act which allows/allowed the above named individuals to perpetrate the said factually proven and documented criminal act(s)/action(s) against and in contravention(s)of the said Criminal Code of Canada and the said Constitution and the said Charter and the said section 32 of the said Charter, then please tell me in writing there is/are no such section(s) of the [Applicant lists various Acts] and the Act in creation/in existence. I hope to hear from you in writing soon.

[2] I note that the above is a sample of the manner in which the Applicant phrases his access requests. The access requests submitted by the Applicant are not identical, however the wording in the requests is highly similar and they appear to have evolved over time to include a larger number of persons, offices and alleged activities of named individuals. Further while the start date for the requests for access remains relatively consistent, the end dates of the requests change to coincide with the date of submission of the new request.

[3] I should also note that while the content of the requests does change somewhat amongst the government institutions, the sample above is reflective of the Applicant's requests for access.

[4] Between late February of 2008 through to and including December of 2009, the Applicant submitted 100 separate Requests for Review to my office. In every instance the Applicant requests a Review on the grounds that: "I have not received a reply to my application, which I submitted +30 days ago".

[5] Each Request for Review is accompanied by a letter which states:

> Pursuant to the proven and documented act(s)/action(s) of treason(s) as perpetrated against the Constitution of Canada as consistent with the Charter of Rights and Freedoms as consistent with Section 32 of the said Charter as consistent with the SK. Freedom of Information and Protection of Privacy Act by the treasonous, traitorous and corrupt SK. Information and Protection of Privacy Commissioner, R. Gary Dickson, Q.C. (Docs. of proof on file with the Office of the Prime Minister of Canada and Mr. Stephen Harper, the Office of the Justice Minister of Canada and Mr. Rob Nicholson, the Supreme Court, the Federal Court of Canada, Mr. Brad Wall and the Office of the Leader (SK) of Her Majesty's Loyal Opposition, the Office of Her Majesty's Loyal Opposition for Canada and Mr. Stephane Dion, Mr. David Batters, M.P. for Palliser (SK), Mr. Warren McCall, M.L.A. for Regina-Elphinstone

> (SK.), Mr. Gilles Duceppe and the Bloc Quebecois, Mr. Jack Layton and the Federal N.D.P., the treasonous Lorne Calvert and the Office of the Premier (SK.), and the treasonous R. Gary Dickson, Q.C., and the office of the Commissioner of Information and Privacy (SK.)), I trust you will enquire (through duty of office and due process) as to the existence of document(s) (with my name on the said docs.) and in the possession of [Applicant lists various offices], and dated between [Applicant lists various dates].
>
> If there are no such document(s) [Applicant lists various offices and dates], then please tell me (in writing) that there are no such docs. (with my name on them) [Applicant lists various offices and dates]. I hope to hear from you soon.

[6] I should note that the above is a sample, representative of the manner in which the Applicant phrases his Requests for Review to my office. I must note that, much like the Applicant's access requests, the Requests for Review are not identical, however they are highly similar.

[7] Given that providing no response to an access request is a defect under section 7 of *The Freedom of Information and Protection of Privacy Act* (FOIP)[1], in all 100 instances my office has undertaken a Review.

[8] By letter dated August 20, 2009, my office notified the Applicant that 18 of the 21 outstanding Review files he had open respecting AEEL would be consolidated into one file, and that the then 36 outstanding Review files he had open respecting JAG would be consolidated into one Review file.

[9] In a letter to my office dated November 23, 2009, AEEL forwarded that:

> The applicant has submitted a large number of FOI requests to the former Department of Labour and the current Ministry of Advanced Education, Employment and Labour. Due to its voluminous nature, this course of action could reasonably be interpreted as vexatious. Despite the Ministry's best efforts to take his requests seriously and to respond in a timely and professional manner, [the Applicant] has repeatedly accused Ministry staff of being "corrupt", "traitorous", and "treasonous". I am confident that the Information and Privacy Commissioner would not support this abusive language towards individuals, including Government of Saskatchewan officials.

[1] *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01.

[10] Some of these concerns had been previously raised by AEEL with my office. In a letter to my office dated April 21, 2008, AEEL stated that the actions of the Applicant with respect to his numerous access requests had a "… harassing impact because of its voluminous and vexatious nature".

[11] The letter went on to state that the Applicant's requests:

> …reflects an ongoing pattern of behaviour that is having a harassing impact on those of us who are responsible for processing FOI requests. As has been the case previously, it appears that [the Applicant] is intentionally using the FOI process as a mechanism to continue a vexatious course of action, targeting Government officials who he believes have not acted appropriately on his behalf.

[12] The April 21, 2008 letter from AEEL concludes by asking my office to "…consult about [the Applicant's] particular case and to consider options for dealing with frivolous and vexatious applications under The Freedom of Information and Protection of Privacy Act".

[13] In a letter to my office dated November 27, 2009, JAG submitted that:

> Many of the requestor's access to information requests could be considered harassment and I have consulted with the Public Service Commission on the possible action available to government employees when harassed by members of the public. The language used in the packages of materials is inappropriate and the language used in the access requests is often inappropriate.

[14] Through the course of the numerous Reviews open before this office, and given the continued submission of access requests that would appear highly similar to those already under Review, it became apparent that the Applicant may be utilizing the rights of access afforded by FOIP for purposes other than accessing information. I determined it necessary to consider if sufficient grounds exist to discontinue the Reviews.

[15] By way of a letter dated January 5, 2010, my office provided notification to the Applicant of the decision to consider discontinuation and requested that he provide representations on the matter.

II RECORDS AT ISSUE

[16] The matter at hand presents a circumstance under which responsive records have a peripheral effect on the issues under Review.

[17] The government institutions named in this Report have provided representations that they have provided the Applicant with records responsive to requests he had previously placed with these institutions.

[18] AEEL has also provided representations to my office that in two letters, dated September 27, 2007 from the Deputy Minister and December 14, 2007 from the Freedom of Information Coordinator, the Applicant was advised that the records he requested did not exist and that any additional requests for information relating to complaints lodged with the Labour Standards Branch and Occupational Health and Safety "would be considered redundant and would not be acknowledged or responded to by this office."

[19] JAG supplied my office with its representations which indicated that from March 15, 2004 through to November 30, 2007 it responded to all of the Applicant's 91 access requests. In December of 2007 JAG indicates that a letter was sent to the Applicant by the then Deputy Minister indicating that he was satisfied the Ministry had done what it could to assist the Applicant and would no longer be responding to him on these matters. Since that time JAG has stopped responding to the Applicant's access requests.

[20] In a letter to my office dated November 27, 2009, JAG states:

> We do have records that could be considered responsive to these requests. They consist primarily of material sent to us by the applicant (we have received about 20 inches of paper from the applicant since September of 2007); however, additionally there are materials sent to us by your Office; documentation that we have created to track the requests; letters to the applicant and e-mails considering our actions with respect to the applicant. We have determined on a number of occasions that there are no records in the areas of the Ministry referred to by the applicant, other than those created as a result of documents sent to the Ministry and the packages of the documents themselves. That is, there are no independent responsive records.

> There are many of the access requests for which there are no records. Specifically, the requestor asks for all records that "refute" certain act(s)/action(s) of certain individuals and exist in certain offices. … There is no need to conduct searches for these records because they are nonsensical.
>
> …
>
> In a number of requests prior to the batch under consideration here, we have asked the requestor to narrow the scope of the request. We do not receive responses to those requests.

[21] In its December 10, 2009 submission to this office, AEEL provided representations which demonstrate that the Applicant has been engaging in a pattern of behaviour which effectively creates its own record responsive to the request. AEEL states:

> Between January 4, 2005 and approximately May 6, 2005 the Applicant filed a total of 101 requests asking for a department officials "written appraisal of the merits of the ***date inserted*** document I sent to her and/or her office, enclosed in a letter dated ***date inserted***". There is one FOI request for every day between the dates given above. The only deviations in the standardized request are the two ***date inserted*** portions. Another request, very similar to those just identified, was received on January 10, 2005[AEEL file number]. It asks for the official's "written appraisal of the merits of the Sk. Labour O.H.S. Officer's report I sent to her and/or her office…in the letter of ***date inserted***." Including [AEEL file number], the Applicant filed a total of 102 similar requests in the four month period.

[22] AEEL provided further representations which demonstrate that:

> Between December 20, 2004 and approximately May 20, 2005, the Applicant filed a total of 92 requests asking for, "a copy of the said response to the said document". In each request, the Applicant attached a letter to a department official …soliciting responses to two questions.

[23] Based on the representations of the government institutions, it is apparent that the Applicant submits documents to government institutions and then subsequently submits access requests for documents created in response to his submissions. In the result, it appears that records responsive to the Applicant's requests are generated by the Applicant's use of the access provisions of FOIP for what may be purposes other than for access to information.

III ISSUES

1. **Is the Applicant entitled to access records in the possession of the Office of the Saskatchewan Information and Privacy Commissioner?**

2. **Have the government institutions satisfied their obligations under section 7 of FOIP?**

3. **Do these Reviews consider trivial matters with regards to section 50(2)(c) of FOIP?**

4. **Did the Applicant request Reviews on "frivolous" or "vexatious" grounds as indicated in section 50(2)(a) of FOIP?**
    a) **Can the Reviews be dismissed as frivolous?**
    b) **Can the Reviews be dismissed as vexatious?**

5. **Is the Applicant not utilizing the access provisions of FOIP in good faith as required in section 50(2)(b) of FOIP?**

IV DISCUSSION OF THE ISSUES

1. Is the Applicant entitled to access records in the possession of the Office of the Saskatchewan Information and Privacy Commissioner?

[24] In response to the notification of my consideration of discontinuation, the Applicant provided letters dated January 22, 23, 24, 25 and 30, 2010 all of which were received by my office on February 8, 2010.

[25] In those letters, the Applicant requested among other things:

- The identities of all those persons involved in the decision to consider discontinuation of the Reviews;
- All records referring to the Applicant and Reviews under discussion;

- Written responses to letters the Applicant claims to have written to me in late January of 2005; and
- All records in the possession of my office which would correspond to those records the Applicant has requested of the government institutions under Review.

[26] With respect to the information sought at the first bullet point above, I offer the following. The ultimate decision to discontinue a Review is my own, but the process of reaching this decision is a team effort involving the input and expertise of the Director of Compliance and the Portfolio Officers of this office. The identities of these individuals are publicly available.

[27] With respect to the final three bulleted points above, my office replied to the Applicant's request by way of letter dated February 16, 2010. The letter notes that my office is:

> …unable to provide these materials pursuant to section 46(1) of *The Freedom of Information and Protection of Privacy Act* (FOIP), which reads:
>
> > 46(1) The commissioner shall not disclose any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner pursuant to this Act.

[28] Clearly, section 46(1) of FOIP prohibits my office from disclosing information that comes before my office in the course of a Review or Investigation. As such, I find that the Applicant is not entitled to access records in the possession of the Office of the Saskatchewan Information and Privacy Commissioner. That being said, section 46(3) of FOIP also provides the discretion to disclose "in the course of a review … any matter that the commissioner considers necessary to disclose to facilitate the review." This discretion is provided to me in order to facilitate an exchange of the submissions made by the parties to a Review, as occurred in this instance, in order that the common law duty of fairness is met.

[29] The discontinuation of a Review pursuant to section 50(2) is largely a preliminary matter. Having provided the submissions of the government institutions to the Applicant, and in affording the opportunity to the Applicant to provide representations on the matter, I am satisfied that the duty of fairness in this matter has been met.

2. Have the government institutions satisfied their obligations under section 7 of FOIP?

[30] Section 7 of FOIP provides:

> 7(1) Where an application is made pursuant to this Act for access to a record, the head of the government institution to which the application is made shall:
>
> (a) consider the application and give written notice to the applicant of the head's decision with respect to the application in accordance with subsection (2); or
>
> (b) transfer the application to another government institution in accordance with section 11.
>
> (2) The head shall give written notice to the applicant within 30 days after the application is made:
>
> (a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;
>
> (b) if the record requested is published, referring the applicant to the publication;
>
> (c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;
>
> (d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;
>
> (e) stating that access is refused for the reason that the record does not exist; or
>
> (f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4).

[31] In every instance the Applicant has requested a Review by my office based on his contention that government institutions failed to provide responses to his requests within

the statutory timeline of 30 days.[2] Only LRB and WCB were able to provide representations which demonstrated that they had provided responses to the Applicant prior to the intervention of my office. Following my request for representations from the government institutions, it is my understanding that all the government institutions would provide responses to the Applicant.

[32] With the exception of LRB, it is apparent that at some point the government institutions made the statutorily unsupported decision to no longer provide responses to the Applicant's access requests. FOIP does not contain mechanisms which authorize government institutions to disregard access requests, nor does FOIP provide mechanisms for me to authorize government institutions to disregard an access request. Such mechanisms are common in other jurisdictions[3]. I have commented on the lack of such mechanisms in FOIP in the past.[4]

[33] I referred earlier to letters from the Deputy Ministers of AEEL and JAG to the Applicant advising the Applicant that the Ministries would no longer be responding to his access requests.[5] Such a response offends section 7 of FOIP. Section 7 does not authorize a government institution to refuse to deal with new requests for access even if it believes them to be frivolous or vexatious or not in good faith.

[34] The appropriate avenue for relief from illegitimate uses of FOIP exists only at the Review stage and can only be exercised by the Commissioner. If a government institution believes that the circumstances which warrant the dismissal or discontinuation of a

[2] For OIPC Files 220 & 221/2009-FOI/AI, the Applicant also requested Reviews on the grounds that access was refused to all or part of the record.
[3] See section 55 of Alberta's *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 [hereinafter Alberta's FOIP]; section 43 of British Columbia's *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 [hereinafter BC's FIPPA]; section 53 of Northwest Territories' *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c.20 [hereinafter NWT's ATIPP]; sections 10(1) and 27.1(1) of Ontario's *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F.31; section 52 of Prince Edward Island's *Freedom of Information and Protection of Privacy Act,* R.S.P.E.I. 1988, F-15.01; and section 43(1) of Yukon's *Access to Information and Protection of Privacy Act*, RSY 2002, c.1 [hereinafter Yukon's ATIPP].
[4] See Saskatchewan Office of the Information and Privacy Commissioner [hereinafter SK OIPC] *2004-2005 Annual Report* at p. 11, available at: www.oipc.sk.ca/annual_reports.htm.
[5] See [18] and [19].

Review on the grounds enumerated at section 50(2) of FOIP exist, then it should raise its concerns at the commencement of my review.

[35] Simply put, providing no response to an access request that may be considered frivolous or vexatious is without basis in law, and is a violation of both the spirit and letter of FOIP.

[36] In order to address the lack of response by the government institutions, we asked the government institutions to provide responses, pursuant to section 7 of FOIP, to the Applicant. In some instances this meant that the Applicant received one response to several of his access requests that had been consolidated into one Review file. This practice effectively remedied the outstanding section 7 defect associated with these Reviews.

[37] In view of the foundational importance of section 7 of FOIP, my office has developed a specific policy to address section 7 defects.[6] I have also addressed what is required from government institutions in order to satisfy their obligations under section 7 of FOIP.[7] Only LRB fully satisfied its obligations under FOIP. In not providing responses to the Applicant pursuant to section 7, AEEL, EC, JAG and WCB did not satisfy their obligations under FOIP.

[38] For the reasons noted above, I find the government institutions in question did not satisfy their obligations under section 7 of FOIP.

3. Do these Reviews consider trivial matters with regards to section 50(2)(c) of FOIP?

[6] See SK OIPC *Helpful Tips* at p. 2, available at: www.oipc.sk.ca/resources.htm.
[7] See SK OIPC Report F-2006--003 at [22]-[27], available at: www.oipc.sk.ca/reviews.htm.

[39] The relevant section of FOIP is as follows:

> 50(2) The commissioner may refuse to conduct a review or may discontinue a review if, in the opinion of the commissioner, the application for review:
>
> (a) is frivolous or vexatious;
>
> (b) is not made in good faith; or
>
> (c) concerns a trivial matter.

[40] Prior to considering the issues that follow, I note that, in some jurisdictions[8], access to information legislation focuses on the head of the public body making a determination that access requests are frivolous or vexatious. Following this determination, a request is made to the Commissioner to review the matter and authorize the head to disregard the access request. Under such legislation the onus is clearly on the public body to support their decision on this issue.

[41] In determinations with respect to requests that appear to be frivolous, vexatious or not in good faith, FOIP differs in two significant ways. First, FOIP does not afford public bodies the opportunity to make a request to my office to disregard frivolous or vexatious requests, thus shifting the responsibility in such matters from the public body to my office. Second, FOIP does not consider the frivolous and vexatious nature of a matter at the request stage; rather such determinations occur exclusively at the review stage. While this does represent a significant difference in legislation, I find that the same considerations for determining if a request is frivolous, vexatious or not in good faith would apply to similar determinations regarding reviews.

[42] I also note a recent decision of the Court of Queen's Bench of Alberta with respect to a section similar to 50(2) of FOIP found in Alberta's *Freedom of Information and Protection of Privacy Act.*[9] In her decision the Honourable Madame Justice L.D. Acton states:

[8] This is the case in Alberta's FOIP, BC's FIPPA, Yukon's ATIPP, and NWT's ATIPP, Supra note 3.
[9] See section 55 of Alberta's FOIP.

> In my view, the Commissioner has been given the jurisdiction to define the appropriate procedure and tests under s. 55 by interpreting the legislation. He analysed the language used by the Legislature carefully, applying a neutral analysis of the terms and the appropriate Canadian Oxford Dictionary definitions. He then applied that interpretation to the facts, fairly balancing the interests of both parties.[10]

[43] Pursuant to section 50(2) I have a duty to ensure that the access provisions of FOIP are not utilized for purposes not in keeping with the spirit of the Act. As former Ontario Information and Privacy Commissioner Tom Wright has stated:

> When "open-ended" rights are granted by legislation, such as the right of access to information set out in section 4(1) of the Act, and the Legislature has not expressly built in reasonable limits or other controls on the unbridled use of processes designed to secure those rights, in my view, it falls to those charged with administering the legislation and its processes to do so in a manner that is fair, reasonable and consistent with the legislative purpose.[11]

[44] The right to access information is considered a "quasi-constitutional" right. Indeed, Chief Justice McLachlin has commented:

> The Supreme Court of Canada has interpreted these Acts as quasi-constitutional legislation. It follows that as fundamental rights, the rights to access and to privacy are interpreted generously, while the exceptions to these rights must be understood strictly.[12]

[45] The phrase quasi-constitutional implies that certain rights, such as the right to access information held by government institutions, are fundamentally important in their nature because they reflect primary assumptions about the relationship between citizen and state. Though rights of access to information are not entrenched in the *Charter of Rights and Freedoms*[13], these quasi-constitutional rights are protected by legislation such as FOIP.

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[10] *Bonsma* v. *Alberta (Information and Privacy Commissioner)*, 2010 ABQB 209 at [32].
[11] Information and Privacy Commissioner/Ontario [hereinafter Ontario IPC] Order M-618 at p. 14, available at: http://www.ipc.on.ca/images/Findings/M-618.pdf.
[12] Remarks of the Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada, *Access to Information and Protection of Privacy in Canadian Democracy*, May 5, 2009, available a**t**: www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm2009-05-05-eng.asp.
[13] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982. c.11.

[46] A privileged status is afforded access and privacy legislation wherein it is typically paramount to other legislation. The importance of the rights protected by this legislation must always be borne in mind whenever considering any decisions which impact upon these rights. As the Privy Council Office has stated:

> Whether the quasi-constitutional status of these Acts derives from one of their provisions or from court decisions, the justification for it is the same. These Acts express values that are very important in Canada. Any derogation from them must be explicit.
>
> This requirement of explicit derogation protects the values expressed in those Acts to the maximum extent possible, short of entrenching those values in the Constitution. It also ensures accountability to the public for any decision to derogate.[14]

[47] I have previously stated that the right to access government records is an important matter that should only be extinguished in limited circumstances, such as when there is compelling evidence that a particular request is frivolous or vexatious.[15]

[48] From this perspective I find it difficult to reconcile the phrase "concerns a trivial matter" with the quasi-constitutional status of access to information rights. It would seem that by the nature of the status afforded these rights that few matters would qualify as trivial.

[49] That having been said, by the inclusion of section 50(2) the Legislature appears to have contemplated that circumstances may indeed arise which can be characterized as concerning trivial matters.

[50] To say that something is trivial suggests that it is insignificant or unimportant; again, this is language one would not typically associate with the status of a quasi-constitutional right. I have found three other Canadian jurisdictions which have chosen to use this phrase in their access to information legislation.[16]

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[14] Privy Council Office, *Guide to Making Federal Acts and Regulations,* 2nd Ed., 2001, available at: www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap1.2-eng.htm.

[15] SK OIPC Report F-2006--002 at [18].

[16] See section 31(2)(c) of Nunavut's *Access to Information and Protection of Privacy Act*, S.N.W.T. (Nu.) 1994, c. 20; section 31(2)(c) of NWT's ATIPP; and section 63(1)(b) of Manitoba's *Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175.

[51] Again I turn to the words of former Commissioner Wright who stated:

> Information that may be trivial from one person's perspective, however, may be of importance from another's. In this regard, I recall the example offered by an institution intervenor of a request to a fire department for fire fighters' shoe sizes over a certain period of time. Seemingly trivial or without merit, but important to the shoe manufacturer who wishes to create an inventory of fire fighters' shoes to market to fire departments.[17]

[52] I concur with the above comments. In the matter at hand, I cannot find compelling evidence that the Reviews concern trivial matters. As such, I find that section 50(2)(c) of FOIP does not apply.

4. Did the Applicant request Reviews on "frivolous" or "vexatious" grounds as indicated in section 50(2)(a) of FOIP?

[53] Prior to undertaking my consideration of section 50(2)(a), I call to mind the words of former British Columbia Information and Privacy Commissioner Loukidelis who stated:

> [O]**nly the tiniest minority of requesters can be labeled nuisance requesters.** Nor is it is [sic] a bad thing that political parties, the media, business groups and environmental groups regularly use the Act to gather information about what government is doing in the name of the public and with the taxpayers' money. … In any case, **in the rare cases where a requester is abusing the right of access to information, the Act offers appropriate sanctions. Such abuse is rare. Legitimate use of the Act is the norm.**[18] [emphasis added]

[54] While I agree with that sentiment, I draw attention to the fact that there are significant differences between the sanctions afforded by the British Columbia legislation compared to the previously noted inadequacy in FOIP when it comes to dealing with frivolous or vexatious requests.

[55] I note that FOIP provides no statutory definition of the terms "frivolous" or "vexatious". Further, a scan of Canadian access and privacy legislation offers little in terms of statutory definitions of these terms.

[17] Supra note 11 at p. 17.
[18] Office of the Information & Privacy Commissioner for British Columbia *2001-2002 Annual Report* at p. 5, available at: www.oipcbc.org/publications/annual_reports/Annual_Report2001-2002.pdf.

[56] The Ontario *Freedom of Information and Protection of Privacy Act Regulations* (Ontario Regulations)[19] goes further than any other piece of legislation in providing criteria for determining if a request for access is frivolous or vexatious, but stops short of defining these terms. Section 5.1 states:

> A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,
>
> (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
>
> (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[57] Former Ontario Commissioner Wright has offered what is perhaps the closest to a definition of the terms we can find in Order or Report form, when he stated:

> "Frivolous" is typically associated with matters that are trivial or without merit.
>
> …
>
> "Vexatious" is usually taken to mean with intent to annoy, harass, embarrass, or cause discomfort.[20]

[58] That former Commissioner's comments offer some insight into his interpretation of the terms, but do not offer concise definitions for the purposes of interpreting section 50(2)(a).

[59] I have considered some dictionary definitions of the terms frivolous and vexatious.

[60] *Black's Law Dictionary* defines "frivolous" as "lacking a legal basis or legal merit; not serious; not reasonably purposeful."[21]

[19] *Freedom of Information and Protection of Privacy Act Regulations* R.R.O. 1990, Reg. 460.
[20] Supra note 11 at p. 17.
[21] *Black's Law Dictionary*, 8th Ed., USA: Thomson West, 2004, at p. 692.

[61] The *Merriam-Webster's Dictionary of Law* defines "frivolous" as "lacking in any arguable basis or merit in either law or fact."[22]

[62] The term "vexatious" is defined in *Black's Law Dictionary* as "without reasonable or probable cause or excuse; harassing; annoying."[23]

[63] While the *Merriam-Webster's Dictionary of Law* defines 'vexatious' as "lacking a sufficient ground and serving only to annoy or harass when viewed objectively."[24]

[64] I found these definitions to be of some use in providing context to the terms for my purposes. These definitions demonstrate that it is difficult to provide a singular definition of these terms that will encapsulate the many circumstances under which they may be considered.

[65] I hesitate to offer a binding definition for the terms "frivolous" and "vexatious". As has been stated, limiting access rights based on the concepts of "frivolous" or "vexatious" is not easily reconciled with a legislative regime which affords broad rights of access to information held by government institutions.[25]

[66] Determinations in these matters will largely be driven by the individual factors of each case. In other words, by necessity, there can be no singular definition of the terms frivolous and vexatious for the purposes of section 50(2)(a). As Brown, J. commented in an Ontario Court of Appeal decision:

> The real thrust of looking at evidence to conclude whether or not there is to be a factual finding that such evidence results in a fact conclusion of frivolous or vexatious is to look beyond the definition type words to the descriptive nature of the evidence. Certain examples of evidence might well be what would be determined to be a nuisance request, something arising from a multiplicity of similar requests, or simply repetitive requests, or perhaps a history of abandonment of requests. It is conceivable that there could be a scenario where the quantity of requests might be so large as to practically and effectively interfere with the operation of the public

[22] *Merriam-Webster's Dictionary of Law*, available at: www.dictionary.reference.com/browse.
[23] Supra note 21 at p. 1596.
[24] Supra note 22.
[25] See Supra note 11 at p. 17.

> institution. There might be some purpose other than the apparent purpose of the request. Such as, for example, a collateral purpose or an ulterior purpose. There is a connotation of something not legitimate in abuse of process. All of those descriptive things should be looked at in consideration of evidence to form factual conclusions of what is frivolous or vexatious.[26]

a) Can the Reviews be dismissed as frivolous?

[67] As noted in the preceding definitions, a matter may be appropriately considered frivolous if it lacks legal merit. I have already found that in some instances the government institutions in question did not satisfy their obligations pursuant to section 7 of FOIP thus creating an appropriate legal basis for a Review by my office. I therefore find that these matters cannot be considered 'frivolous' pursuant to section 50(2)(a).

b) Can the Reviews be dismissed as vexatious?

[68] I have already considered some definitions of the term "vexatious" above. Rather than reiterate those definitions, I quote with approval the words of former Commissioner Loukidelis:

> In interpreting the words "frivolous" and "vexatious", I have kept in mind the accountability goal of the Act. I have also kept it in mind that abuse of the right of access can have serious consequences for the rights of others and for the public interest. As I said in Auth. (s. 43) 99-01, at p. 7:
>
> > … 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. ….[27]

[26] *London (City) Police Service* v. *Riley*, [1995] O.J. No. 4674, available at: J.R. of Court File No. 15540 (Divisional Court).
[27] Office of the Information and Privacy Commissioner for British Columbia [hereinafter BC OIPC] Auth. (s. 43) 02-02 at [25], available at: www.oipcbc.org/orders.

[69] I also adopt the criteria utilized by Alberta's Information and Privacy Commissioner Frank Work in his determinations of whether a request has been undertaken on vexatious grounds as follows:

> [25] A request is not "vexatious" simply because a public body is annoyed or irked because the request is for information the release of which may be uncomfortable for the public body.
>
> [26] 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.
>
> [27] In Order 110-1996, the British Columbia Information and Privacy Commissioner said:
>
> > *"…The Act must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act…"*
>
> [28] Factors that may support a finding that a request is vexatious include:
>
> - a request that is submitted over and over again by one individual or a group of individuals working in concert with each other;
> - a history or an ongoing pattern of access requests designed to harass or annoy a public body;
> - excessive volume of access requests; and
> - the timing of access requests.
>
> [29] Depending on the circumstances of a given case, other factors may also be relevant in determining whether a request is vexatious or not.[28]

[70] Alone, no one of these factors is enough to determine that a Review is vexatious. Each factor must be considered in concert with each other in order to demonstrate that an applicant is using the legitimate rights of access afforded by legislation for purposes other than access alone.

[71] I have also found some useful tools and interpretation of vexatious requests from the United Kingdom.

[28] Office of the Information and Privacy Commissioner of Alberta, Request for Authorization to Disregard Access Requests Under section 55 of the *Freedom of Information and Protection of Privacy Act*, Edmonton Police Service, November 4, 2005, available at: www.oipc.ab.ca/ims/client/upload/Sect55_EPS_Nov4_05.pdf.

[72] The *Freedom of Information Act* (2000)[29] of the United Kingdom contains the following provision for frivolous and vexatious requests in section 14:

> Vexatious or repeated requests
> (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

[73] The Information Commissioner of England offers practice suggestions to the public bodies it oversees by publishing "Guidances". Guidance 22 is a resource for determining if an access to information request is vexatious, it states:

> Deciding whether a request is vexatious is a flexible balancing exercise, taking into account all the circumstances of the case. There is no rigid test or definition, and it will often be easy to recognise. The key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause.
> To help you identify a vexatious request, we recommend that you consider the following questions, taking into account the context and history of the request:
>
> • Can the request fairly be seen as obsessive?
> • Is the request harassing the authority or causing distress to staff?
> • Would complying with the request impose a significant burden?
> • Is the request designed to cause disruption or annoyance?
> • Does the request lack any serious purpose or value?
>
> To judge a request vexatious, you should usually be able to make relatively strong arguments under more than one of these headings.
>
> The questions are likely to overlap, and the weight you can place on each will depend on the circumstances. You do not need to be able to answer yes to every question, and may also consider other case-specific factors. However, if you consider each of the questions in turn, you should be able to more easily and consistently assess the overall balance of the case.[30]

[74] The Information Tribunal of the United Kingdom hears appeals from Notices issued by the Information Commissioner; it has offered the following comments regarding vexatious requests which I find useful to my current considerations:

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[29] United Kingdom, *Freedom of Information Act* (2000), chapter 36, available at: www.opsi.gov.uk/Acts/acts2000/ukpga_20000036_en_1.

[30] United Kingdom, Information Commissioner's Office, *Freedom of Information Act Awareness Guidance No 22: Vexatious and Repeated Requests*, Version 4, December 3, 2008, at p. 2, available at: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf) .

32. To the extent that the request should or might have been treated as a valid request under the Act, requiring us to consider whether it is vexatious within the meaning of section 14(1) of the Act, we have taken into account the following matters:

    i. There is no statutory definition for the term vexatious and its normal use is to describe activity that is likely to cause distress or irritation, literally to vex a person to whom it is directed.

    ii. The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University.

    iii. The tendentious language adopted in several of the questions, demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess.

    iv. The background history between the Appellant and the University, as summarised in paragraph 2 above, and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before.

33. In the light of those conclusions we have decided that the Appellant's information request, viewed as a whole, was vexatious and that the Information Commissioner was correct in concluding that the University had handled the request in accordance with the Act and had been justified in refusing it.[31]

[75] I adopt the criteria suggested above in my determinations.

[76] I return again to the Ontario Regulations which explicitly identify which criteria to consider in frivolous and vexatious determinations related to the Ontario legislation. Section 5.1 contemplates a "pattern of conduct that amounts to an abuse of the right of access".

[77] The Ontario Information and Privacy Commissioner (Ontario IPC) Order M-850 states the following regarding what constitutes a "pattern of conduct":

[31] United Kingdom, Information Tribunal, Appeal Number: EA/2006/0070, at p. 15, available at: http://www.informationtribunal.gov.uk/Documents/decisions/mrvahilathirunayagamvInfoComm_LonMetpolitanuni20jun07.pdf.

> [I]n my view, a "pattern of conduct" requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).[32]

[78] I adopt the definition of a 'pattern of conduct' above for use in my analysis.

[79] It is true that the requests submitted by the Applicant vary to some degree; however they seek what are essentially the same records, and have been submitted on an ongoing basis by the Applicant. With respect to AEEL and JAG, the Applicant has on a monthly basis submitted virtually identical access requests in which the only change is the end date of the time period for which records are sought. This same pattern has begun to emerge with respect to the LRB, WCB and EC. This effectively demonstrates a pattern of conduct on the part of the Applicant. Further, it appears that the Applicant is utilizing the access provisions of FOIP to create records responsive to his requests. In my opinion, the Legislature intended FOIP to be a tool for accessing records; FOIP was never intended to be utilized as a method of creating records.

[80] FOIP does not specifically enumerate what constitutes an excessive number of requests. Indeed, a single applicant may submit a large number of access requests for various records to a government institution without making illegitimate use of the access rights afforded by FOIP.

[81] I am reluctant to consider a specific number of requests as being representative of an excessive volume of requests. The fact that the Applicant has submitted more than 100 access requests which have resulted in Reviews by my office does not in and of itself demonstrate an excessive volume of requests. In the current circumstance, what makes this number of requests excessive is the volume of requests combined with the repetitive nature of the requests, and the cyclical manner in which both access requests and requests for Review are submitted.

[32] Ontario IPC, Order M-850 at p. 4, available at: www.ipc.on.ca/images/Findings/Attached_PDF/M-850.pdf.

[82] In the matter at hand, I find that the Applicant has engaged in a pattern of conduct which is vexatious pursuant to section 50(2)(a) of FOIP.

5. Is the Applicant not utilizing the access provisions of FOIP in good faith as required in section 50(2)(b) of FOIP?

[83] In a January 5, 2010 letter, the Applicant was provided with notice of my intention to consider discontinuation of his outstanding Reviews before my office. In a January 23, 2010 letter to my office the Applicant states:

> Since the Labour Relations Board's statement of Dec. 24th, 2009, (as above) both precedes and fulfills my Dec. 21st, 2009, FOI request the said AEEL doc. supersedes and legally invalidates the invokation [sic] of section 50(2) of the said FOIPP Act.

[84] The Applicant made similar statements in a January 24, 2010 letter with regards to AEEL, and in a January 30, 2010 letter with regards to WCB.

[85] I am unable to accept the Applicant's argument. To do so would require me to accept that a response to an access request which is not yet before my office satisfies those requests that are currently under Review. While the Applicant has established a pattern which would suggest that the access requests would be the same, I cannot be certain of this and cannot accept the Applicant's argument.

[86] Furthermore, the Applicant's satisfaction in this instance does not undo the impact of the course of action the Applicant has engaged in. As noted in WCB's January 6, 2010 letter to my office:

> …the Applicant's repetitive requests were consuming resources that would better be expended elsewhere. From the perspective of the WCB it appears that [the Applicant's] repeated, identical requests amount to an abuse of the access process afforded to him under FOIP.

[87] In undertaking my consideration of section 50(2)(b) I consider the comments of former British Columbia Information and Privacy Commissioner David Flaherty that "The Act

must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act…"[33]

[88] As I have already noted in [14], section 50(2)(b) provides me the discretionary authority to discontinue a Review if the application for Review has been made "not made in good faith". FOIP offers no statutory definition of the phrase "not made in good faith". In order to determine if I should consider discontinuation of the Reviews on grounds that they were not undertaken in 'good faith' I must determine what the legislature contemplated by that phrase.

[89] Ontario's IPC former Assistant Commissioner Mitchinson commented on the meaning of the term "bad faith". He indicated that:

> Black's Law Dictionary (6th ed.) offers the following definition of "bad faith":
>
> > 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.
> > ...**"bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.**
>
> In my view, the highlighted words from this definition are most useful in interpreting this section.[34] [emphasis added]

[90] I agree with the comments above and am guided by them in reaching my conclusions.

[91] I have discussed above[35] how the Applicant appears to have been utilizing the access provisions of FOIP for purposes beyond access to information. The Applicant has utilized the access processes of FOIP to make allegations of professional and criminal impropriety against numerous members of government.

[33] BC OIPC Order 110-1996, available at: www.oipcbc.org/orders/1996/Order110.html.
[34] Supra note 32 at p. 9.
[35] See [64]-[69] and background section.

[92] I have also considered the fact that the Applicant has asked for the dismissal of the FOIP Coordinator for one Ministry (AEEL), and when provided a response from the Ministry that this would not occur, the Applicant then began to inundate that Ministry with access requests. AEEL provided representations that from December 20, 2004 to May 21, 2005 the Applicant submitted 280 access requests to this Ministry. While these requests are not at issue with respect to the Reviews under consideration, these representations do demonstrate a pattern of conduct on the part of the Applicant.

[93] This behaviour is reminiscent of the findings of Ontario IPC Order M-947[36] which states:

> It is my view that very shortly after these requests began, the appellant's conduct with respect to the City became "an abuse of the right of access" for the following reasons.
>
> The apparent purpose of the requests changed their focus from reasonable or legitimate grounds to one which may be characterized as seeking to accomplish some objective unrelated to the access process. For example, the requester became focused on seeking information related to how the City dealt with his requests and the amount of time and money the City had spent dealing with him. Because the appellant did not feel he was receiving the "service" from the City's Freedom of Information branch to which he felt he was entitled, **he began using the Act and the freedom of information process as a means to express his personal attacks on the personnel involved in the process.** [emphasis added]

[94] It would pose a significant burden on the personnel of this Ministry to maintain statutory compliance to FOIP in responding to these requests. In the circumstances currently under consideration, I believe that the repeated submission of virtually identical access requests by the Applicant poses a burden on the government institutions to maintain statutory compliance and provide responses to the Applicant.

[95] JAG has provided representations that on a number of occasions it has attempted to work with the Applicant in order to more effectively respond to the Applicant's access requests.

[36] Ontario IPC Order M-947 at p. 15, available at: www.ipc.on.ca/images/Findings/Attached_PDF/M-947.pdf.

[96] In a letter to my office dated November 27, 2009 JAG claims "In a number of requests … we have asked the requestor to narrow the scope of the request. We do not receive responses to those requests".

[97] In its representations to this office received December 24, 2009, JAG provided copies of letters from it to the Applicant in which JAG asks the Applicant "I am requesting clarification of the former [request(s)]. I do not understand what you are asking for and I do not understand what branch of the Ministry you would think would have such records".

[98] LRB has also provided representations that demonstrate a lack of willingness on the part of the Applicant to cooperate with it in the process of responding to his access requests.

[99] A letter to my office dated November 25, 2009 provides representations that the Applicant has not been providing accurate information to my office; LRB states:

> This office has attempted to assist the Applicant in his numerous inquiries through the legislation. There is also a discrepancy between what the Applicant alleges was advanced to this office and what appears to have been provided to your office.
>
> Assistance:
>
> - 2009.08.24 the Board [LRB], responded to [the Applicant's] requests dated 2009.07.27. In that response, he was advised that the cost was approximately $30.00 and that it was waived on a one time basis, and any future waiving of fees would be considered at the time of the request.
>
> - 2009.09.14 the Board responded to [the Applicant's] requests dated 2009.09.05. In that response was a letter advising [the Applicant] that it cost $57.83 to compile the information for the request and that the only records existing that have not been provided were the Board's responses to his previous Requests. The Board further advised that payment was required prior to any future searches. This was provided by Registered Mail and received by [the Applicant] on 2009.09.16.
>
> - 2009.10.13 [the Applicant] advanced two new requests which were received the same day. Later that same day, the Board wrote [the Applicant] referencing the previous correspondence wherein it identifies subsection 7(2) and that payment was required. Given that there were two requests, the Board suggested [the Applicant] consolidate both requests and avoid the

> approximate cost of $100.00 by reducing to approximately $50.00. He was also advised that his two requests would be held until he advised how he wished to proceed and provided the payment sought. This was provided by Registered Mail and received by [the Applicant] on 2009.10.16.
>
> …
>
> [T]he Board maintains that it continues to assist [the Applicant], but in doing so, [the Applicant] now refuses to comply with the very legislation that he is relying upon in advancing his complaint to your office.
>
> …
>
> To be clear, your letter dated 2009.11.23 contains two attachments purported to be documents advanced to this office. The one labelled as "Series SLR-01" is not a true copy, as the spacing of the handwriting is different, as is the alteration of [government employee's] name. I don't believe anything turns on this, but I do not want [the Applicant] to think that his request has in any way not been taken seriously or that this office has in any way been dismissive.

[100] Throughout the associated course of the Reviews under consideration, the Applicant has never made mention of the requests of government institutions to clarify or narrow his access requests, nor has the Applicant made any mention of fees. The example above is demonstrative of how the Applicant has, on some occasions, when requesting a Review misrepresented to this office the circumstances of his outstanding access requests.

[101] In the matter at hand, I am satisfied that the numerous instances in which the Applicant has, with apparent intent, misrepresented facts and circumstances concerning ongoing Reviews effectively demonstrate that the Applicant is not using the access provisions of FOIP in good faith.

[102] With respect to the clarification of access requests, and in fairness to the Applicant, it is unreasonable of JAG to ask an applicant to clarify what branch of the Ministry may contain a record. Except in limited circumstances, it is unreasonable for government institutions to ask applicants to clarify where the government institution should look for responsive records. Most applicants would not possess sufficient knowledge or understanding of the records management practices of government institutions to provide any manner of reasoned reply to such a request. That having been said it is quite

common and quite reasonable for government institutions to ask an applicant to clarify a request.

[103] I find that when an applicant refuses to cooperate with a government institution in the process of accessing information one might conclude that the applicant is not acting in the spirit of the legislation, and thus not acting in good faith.

[104] Implicit in the process of accessing information under FOIP is an aspect of cooperation between government institution and applicant. Or as stated in Ontario IPC Order M-947:

> [T]he rights afforded the public to access under the Act are accompanied by concomitant responsibilities on the part of requesters. One of these responsibilities is working in tandem with the institution to further the purposes of the Act. In rare cases, actions on the part of an appellant which frustrate this approach can be said to be an abuse of this process.
>
> In this case, the actions of the appellant in dealing with the City's staff, both in its Freedom of Information office and elsewhere, have not exhibited any attempt to work constructively with the City to resolve his requests, and, in fact, demonstrate the opposite. Despite the City's attempts to accommodate the appellant, both within and outside the formal processes of the Act, he has responded in an uncooperative and harassing manner to those who have attempted to assist him. In my opinion, this type of conduct on the part of the appellant is relevant to a finding that not only are certain **requests** frivolous or vexatious, but also that the **requester** is abusing the freedom of information processes ...[37]

[105] I find that when a party to a Review intentionally misrepresents events to this office, such behaviour effectively demonstrates that party is not acting in good faith.

[106] In the matter at hand, I find that the Applicant is not acting in good faith pursuant to section 50(2)(b) of FOIP.

[37] Ibid at p. 19.

V FINDINGS

[107] I find that the Applicant is not entitled to access records in the custody of the Office of the Saskatchewan Information and Privacy Commissioner by virtue of section 46 of FOIP.

[108] I find AEEL, EC, JAG and WCB did not satisfy their obligations under section 7 of FOIP.

[109] I find that section 50(2)(c) of FOIP does not apply.

[110] I find that the Reviews cannot be considered 'frivolous' pursuant to section 50(2)(a) of FOIP.

[111] I find that the Applicant engaged in a pattern of conduct which is vexatious pursuant to section 50(2)(a) of FOIP.

[112] I find that when a party to a Review intentionally misrepresents events to this office, such behaviour effectively demonstrates that party is not acting in good faith pursuant to section 50(2)(b) of FOIP.

[113] I find that the Applicant did not act in good faith pursuant to section 50(2)(b) of FOIP.

[114] I find that the Reviews under consideration have been instituted on vexatious grounds and are not in good faith pursuant to sections 50(2)(a) and (b) and hereby discontinue those Reviews.

VI RECOMMENDATIONS

[115] I recommend that the Legislature amend FOIP in order to create the power for the Commissioner to authorize a public body to disregard requests for access that can be appropriately categorized under the criteria listed in section 50(2) of FOIP.

[116] I recommend that if a government institution receives an access request that is proper on its face then it is required to provide a response pursuant to section 7 of FOIP.

Dated at Regina, in the Province of Saskatchewan, this 17th day of May, 2010.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan

Appendix A

List of OIPC files, by government institution, under consideration in this Report F-2010-002.

Ministry of Advanced Education, Employment and Labour (23 files)

- 193/2009 – FOI/AI
- 020/2008 – FOI/AI
- 021/2008 – FOI/AI
- 022/2008 – FOI/AI
- 023/2008 – FOI/AI
- 024/2008 – FOI/AI
- 025/2008 – FOI/AI
- 026/2008 – FOI/AI
- 027/2008 – FOI/AI
- 028/2008 – FOI/AI
- 029/2008 – FOI/AI
- 030/2008 – FOI/AI
- 031/2008 – FOI/AI
- 032/2008 – FOI/AI
- 033/2008 – FOI/AI
- 034/2008 – FOI/AI
- 035/2008 – FOI/AI
- 036/2008 – FOI/AI
- 037/2008 – FOI/AI
- 038/2008 – FOI/AI
- 039/2008 – FOI/AI
- 040/2008 – FOI/AI
- 041/2008 – FOI/AI

Ministry of Executive Council (6 files)

- 194/2009 – FOI/AI
- 195/2009 – FOI/AI
- 227/2009 – FOI/AI
- 228/2009 – FOI/AI
- 236/2009 – FOI/AI
- 237/2009 – FOI/AI

Ministry of Justice and Attorney General (62 files)

- 013/2008 – FOI/AI
- 014/2008 – FOI/AI
- 015/2008 – FOI/AI
- 016/2008 – FOI/AI
- 017/2008 – FOI/AI
- 018/2008 – FOI/AI
- 019/2008 – FOI/AI
- 083/2008 – FOI/AI
- 084/2008 – FOI/AI
- 096/2008 – FOI/AI
- 104/2008 – FOI/AI
- 112/2008 – FOI/AI
- 116/2008 – FOI/AI
- 135/2008 – FOI/AI
- 150/2008 – FOI/AI
- 151/2008 – FOI/AI
- 152/2008 – FOI/AI
- 154/2008 – FOI/AI
- 155/2008 – FOI/AI
- 156/2008 – FOI/AI
- 001/2009 – FOI/AI
- 002/2009 – FOI/AI
- 003/2009 – FOI/AI
- 078/2009 – FOI/AI
- 079/2009 – FOI/AI
- 080/2009 – FOI/AI
- 129/2009 – FOI/AI
- 130/2009 – FOI/AI
- 131/2009 – FOI/AI
- 132/2009 – FOI/AI
- 133/2009 – FOI/AI
- 160/2009 – FOI/AI
- 161/2009 – FOI/AI
- 162/2009 – FOI/AI
- 163/2009 – FOI/AI
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- 170/2009 – FOI/AI
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Ministry of Justice and Attorney General (continued)

- 173/2009 – FOI/AI
- 174/2009 – FOI/AI
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- 196/2009 – FOI/AI
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The Saskatchewan Labour Relations Board (2 files)

- 218/2009 – FOI/AI
- 219/2009 – FOI/AI

The Saskatchewan Workers' Compensation Board (4 Files)

- 220/2009 – FOI/AI
- 221/2009 – FOI/AI
- 238/2009 – FOI/AI
- 239/2009 – FOI/AI