



Office of the
Saskatchewan Information
and Privacy Commissioner

DISREGARD DECISION 040-2022, 041-2022, 042-2022

Holy Family Roman Catholic Separate School Division No. 140

March 18, 2022

Summary: The Holy Family Roman Catholic Separate School Division No. 140 (Holy Family) applied to the Commissioner for authorization to disregard the Applicant's three access to information requests under section 43.1(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that Holy Family did not demonstrate that sections 43.1(2)(a), (b) or (c) of LA FOIP applied. Further, he found that the application to disregard did not apply to the first two access to information requests because the application was outside the initial 30-day timeline. Therefore, the first two requests were in a state of deemed refusal. The Commissioner recommended Holy Family provide responsive records to the Applicant subject to applicable exemptions. For the third access to information request, the Commissioner refused Holy Family's application to disregard requiring it to proceed with processing the request within the remaining time available pursuant to section 7(2) of LA FOIP.

I BACKGROUND

[1] On December 20, 2021, the Holy Family Roman Catholic Separate School Division No. 140 (Holy Family) received two access to information requests from the Applicant. The requests were for:

Request #1 (Holy Family file #: HF-2021-02-G):

All communication (electronic, digital, facsimile, verbal) with respect to SARS-COV-2, Covid 19, Sars COVID-2, other related terminology such as Wuhan Virus and all related variants between Holy Family RCSSD #140 and its representatives AND Minister of Education and its representatives.

Also Holy Family RCSSD Policies pertaining to Covid-19 & other related

terminology.

January 1, 2020 to December 31, 2021

Request #2 (Holy Family file #: HF-2021-03-G):

All communication (electronic, digital, facsimile, verbal) with respect to SARS-Cov-2, Covid 19, Sars COVID-2, other related terminology such as Wuhan Virus and all related variants between Holy Family RCSSD #140 and its representatives AND Saskatchewan Health Authority and its representatives.

January 1, 2020 to December 31, 2021

- [2] In a letter dated January 13, 2022, Holy Family responded to the Applicant's two access to information requests indicating that section 6(1)(b) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) required the Applicant to "specify the subject matter of the record requested with sufficient particularity to time, place and event to enable" Holy Family to identify the record. The letter went on to provide a resource from my office on how to draft an access to information request. It also indicated it would be willing to assist the Applicant with "clarifying" the scope of the access to information requests.
- [3] On January 21, 2022, Holy Family received two more access to information requests from the Applicant. One was processed without issue. The second one is included in this application. That access to information request was for the following:

Request #3 (Holy Family file #: HF-2022-03-RS):

1. Copies of all communications sent to Holy Family Parents with respect to COVID-19 and other related terminology, including variants, masking, vaccinations, social distancing, mental health, remote learning etc.
2. Protocols to how schools handle the privacy of a Holy Family student who tests positive, who are un-vaccinated, who have been in close contact with someone who has tested positive.
3. Copies of all communications sent to Holy Family Teachers with respect to COVID-19 and other related terminology, including variants, masking, vaccinations, social distancing, mental health, remote learning, etc.
4. Copies of all information shared with Holy Family schoolboard trustees with respect to COVID-19 and other related terminology including variants, provincial funding, masking, vaccinations, social distancing, mental health, remote learning, etc.

January 1, 2020 to January 21, 2022

- [4] On January 24, 2022, Holy Family emailed the Applicant seeking “clarification” as to whether the January 21, 2022 access to information request was “in addition to” or “in replacement of” the two access to information requests made on December 20, 2021. The Applicant responded on the same day indicating the January 21, 2022 access to information request was a new request. The Applicant also provided a response to the request for clarification by Holy Family on January 13, 2022. The Applicant broke down the three access to information requests and indicated what was being sought. The Applicant extended the date under which records should be captured for requests #1 and #2 from December 31, 2021 to January 24, 2022. The Applicant also appeared to change “Saskatchewan Health Authority” to “Ministry of Health” when clarifying request #2.
- [5] On January 25, 2022, Holy Family sent a response to the Applicant by email pointing out the discrepancy between the “Saskatchewan Health Authority” and the “Ministry of Health”. It also advised the Applicant “the scope of your request remains too large to identify specific records ...”. Holy Family requested additional details to “narrow” the scope of the records. It also indicated that once it received the details enabling it to “clarify” the request, it would proceed with processing and issuing a fee estimate.
- [6] On January 26, 2022, the Applicant responded indicating the requests were “reasonable” and “sufficiently detailed”. The Applicant went further and stated “being a former Holy Family School Board trustee, parent of a former student, and as Separate School tax supporter, I appreciate Holy Family RCSSD #140 has this information readily available in digital format. In the past, this information was digitized and shared with trustees and at times, parents”. The Applicant offered to assist Holy Family with retrieving the information, provided some helpful instruction on how to search email folders, and pointed to the filing system. The Applicant requested the information in digital format. The Applicant also clarified that they meant the “Saskatchewan Health Authority” and not the “Ministry of Health”.

- [7] On January 31, 2022, Holy Family emailed the Applicant attempting to set up a telephone conversation. After some back and forth, the telephone conversation was set up for February 7, 2022.
- [8] Following the telephone conversation, Holy Family sent a letter to the Applicant on February 8, 2022, regarding access to information request #2. The letter broke down Holy Family's understanding of what the Applicant was seeking and asked the Applicant to confirm same. The Applicant responded agreeing to the clarification but added three more points that included "with respect to School Principles; Executive Assistant/Data Administrator; and the Superintendent of Student Services & Assessment."
- [9] Rather than process the requests and issue fee estimates, on February 23, 2022, Holy Family made an application to my office seeking authority under section 43.1 of LA FOIP to disregard the three access to information requests. Holy Family asserted the grounds to disregard the requests were that the requests were repetitious, systematic, would unreasonably interfere with Holy Family's operations, were an abuse of the right of access, were frivolous, vexatious, and were not made in good faith pursuant to sections 43.1(2)(a), (b) and (c) of LA FOIP. Section 43.1(3) of LA FOIP suspends the time for responding to a request where the local authority involved has sought relief under section 43.1 of LA FOIP.
- [10] On February 23, 2022, my office provided notification to Holy Family and the Applicant that I would be considering the application to disregard the three access to information requests. The Applicant was invited to provide representations by March 11, 2022. Representations were received on March 2, 2022.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [11] Holy Family is a "local authority" pursuant to section 2(f)(viii) of LA FOIP. Thus, I have jurisdiction to consider this application to disregard.

2. Should Holy Family's application pursuant to section 43.1(2)(a) of LA FOIP be granted?

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

43.1(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 31.

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

(a) would unreasonably interfere with the operations of the local authority because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is suspended until the commissioner notifies the head of the commissioner's decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or subsection 31(2) resumes.

[13] An application to disregard is a serious matter as it could have the effect of removing an applicant's express right to seek access to information. However, LA FOIP recognizes that not all access to information requests are appropriate. Section 43.1 of LA FOIP exists to preserve the proper intent and functioning of the Act. Former British Columbia Information and Privacy Commissioner (BC IPC), David Loukidelis, said the following about the role of the equivalent provision in British Columbia's Act:

... Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own

personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access ...

([BC IPC Order 99-01](#) at p. 7)

[14] In its application to my office, Holy Family submitted that the three access to information requests should be disregarded pursuant to section 43.1(2)(a) of LA FOIP. In order for section 43.1(2)(a) of LA FOIP to be found to apply, the local authority must demonstrate that an applicant's access to information request interferes unreasonably with the operations of the local authority due to its repetitious or systematic nature. Both parts of the following test are considered:

1. Is the request for access repetitious or systematic?
2. Does the repetitious or systematic request unreasonably interfere with the operations of the local authority?

[15] For the first part of the test, it is important to start with defining the terms "repetitious" and "systematic".

[16] "Repetitious" requests are requests that are made two or more times ([BC IPC Decision F12-01](#) at para. [5]).

[17] "Systematic" requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles ([BC IPC Order F13-18](#) at para. [23]). It includes a pattern of conduct that is regular or deliberate (Alberta Information and Privacy Commissioner (AB IPC) [Request to Disregard F2019-RTD-01](#) at p. 7).

[18] The three access to information requests must be found to be either repetitious or systematic as defined to meet the first part of test. Factors that can be considered when determining if requests are repetitious or systematic are as follows:

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

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

[19] In its application to my office, Holy Family presented arguments pertaining to the second part of the test for section 43.1(2)(a) of LA FOIP. However, it provided limited arguments for the first part of the test. It did state the following, although these arguments appear to pertain to sections 43.1(2)(b) and (c) of LA FOIP:

... It is noted that the applicant has shared with the Division on January 28 that he brought an access to information request under FOIP to access virtually identical information from the Ministry of Education so that he can “catch who is lying” with respect to file HF-2021-02-G. In addition, the applicant shared with the Division on February 7 that he has brought an access to information request under FOIP to access virtually identical information from the “health people” so that he can “see who is hiding what” with respect to file HF-2021-03-G. It appears that the applicant is attempting to conduct a “fishing expedition” through LAFOIP. These admissions by the applicant that he is seeking to “see who is hiding what” demonstrates that he is abusing the right of access and is not acting in good faith ...

[20] Nothing further was provided from Holy Family in terms of how the three access to information requests were repetitious or systematic. Upon the face of the requests, they appear to be neither.

[21] 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 decide whether the case has been met by one party or the other.

[22] As Holy Family has not clearly demonstrated how the three access to information requests are repetitious or systematic, I find that the first part of the test has not been met. As both parts of the test must be met, there is no need to consider the second part.

[23] In conclusion, I find that Holy Family has not demonstrated that the three access to information requests should be disregarded pursuant to section 43.1(2)(a) of LA FOIP. I will now consider the other provisions cited by Holy Family.

3. Should Holy Family's application pursuant to section 43.1(2)(b) of LA FOIP be granted?

[24] In order for section 43.1(2)(b) of LA FOIP to apply, the access to information requests must be of such a repetitious or systematic nature that it can be said to be an abuse of the right of access. Both parts of the following test are considered:

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

[25] I have already found that Holy Family has not demonstrated that the three access to information requests were repetitious or systematic for section 43.1(2)(a) of LA FOIP. It has also not demonstrated it for section 43.1(2)(b) of LA FOIP.

[26] Therefore, the first part of the test is not met. As both parts of the test must be met, there is no need to consider the second part.

[27] In conclusion, I find that Holy Family has not demonstrated that the three access to information requests should be disregarded pursuant to section 43.1(2)(b) of LA FOIP. I will now consider the remaining provision cited by Holy Family.

4. Should Holy Family's application pursuant to section 43.1(2)(c) of LA FOIP be granted?

[28] In order for section 43.1(2)(c) of LA FOIP to be found to apply, the local authority must demonstrate that an applicant's access to information request is frivolous, vexatious, not in good faith, or concerns a trivial matter.

[29] In its application to my office, Holy Family asserted the Applicant's three access to information requests were frivolous, vexatious and not made in good faith.

[30] I will start by defining the terms "frivolous", "vexatious" and "not in good faith", as they pertain to this provision.

- [31] “Frivolous” is typically associated with matters that are trivial or without merit, lacking a legal or factual basis or legal or factual merit; not serious; not reasonably purposeful; of little weight or importance (IPC [Guide to LA FOIP, Chapter 3: “Access to Records”](#), updated June 29, 2021 at p. 128 (*Guide to LA FOIP*, Ch. 3).
- [32] “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 local authority continually or repeatedly in order to obstruct or grind a local authority to a standstill. It is usually taken to mean with intent to annoy, harass, embarrass, or cause discomfort ([Guide to LA FOIP](#), Ch. 3, p. 128).
- [33] An access to information request is not vexatious simply because a local authority is annoyed or irked because the request is for information the release of which may be uncomfortable for the local authority.
- [34] “Not in good faith” means the opposite of “good faith”, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or other contractual obligation, not prompted by an honest mistake as to one’s rights, but by some interested or sinister motive (my office’s [Review Report F-2010-002](#) at para. [89]).
- [35] “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 (my office’s [Review Report F-2010-002](#) at para. [89]).
- [36] When an applicant refuses to cooperate with a local authority in the process of accessing information or if they misrepresent events to the local authority or my office, this could suggest an applicant is not acting in good faith. The intention to use information obtained from an access to information request in a manner that is disadvantageous to the local authority does not qualify as bad faith. To the contrary, it is appropriate for applicants to

seek information “to publicize what they consider to be inappropriate or problematic decisions or processes undertaken” by local authorities. Applicants do not need to justify an access to information request and LA FOIP does not place limits on what an applicant can do with the information once access has been granted (my office’s [Review Report F-2010-002](#) at paras. [103] and [105]; Ontario Information and Privacy Commissioner (ON IPC) [Order MO-1924](#) at p. 10).

[37] When considering whether access to information requests were made on grounds that are frivolous, vexatious or not in good faith, I must consider whether there is a pattern or type of conduct on the part of an applicant that amounts to an abuse of the right of access. An “abuse of the right of access” is where an applicant is using the access provisions of LA FOIP in ways that are contrary to the Acts principles and objects.

[38] The factors that can be considered when determining if requests are an abuse of the right of access are as follows:

- *Number of requests:* is the number excessive by reasonable standards?
- *Nature and scope of the requests:* are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?
- *Purpose of the requests:* are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the applicant’s aim to harass the local authority or to break or burden the system?
- *Timing of the requests:* is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding?
- *Wording of the request:* are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations?

(ON IPC [Order MO-3108](#) at para. [24], AB IPC [Order F2015-16](#) at paras. [39] and [54])

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

[40] In its application to my office, Holy Family asserted the Applicant's conduct amounts to an abuse of the right of access. Its arguments are summarized as follows:

- The Applicant has not complied with section 6(1)(b) of LA FOIP which requires the Applicant to "specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record"
- Holy Family has fulfilled its duty to assist the Applicant by requesting the Applicant to identify additional details and has spent significant time to coach the Applicant in narrowing his request, but the Applicant has not cooperated.
- The Applicant is a former Holy Family School Board trustee.
- On December 2, 2021, a group of individuals went to Holy Family's St. Michael School and "served 29 teachers at St. Michael with a thick envelope filled with different "notices of liability". They then came to Holy Family's Central Office and "served" thick envelopes on 8 Trustees and 5 Central Office staff (Director, CFO, Superintendent, Payroll and Behaviour Consultant.) The envelopes contained 4 different types of notices of liability. The Applicant's name and signature are on the notices titled "*Vaccine Notice of Liability Minor/Concerned Citizen*".
- On February 8, 2022, the Applicant contacted all the teachers, school counsellor and in-school administrative staff at St. Michael School by email entitled "*Teaching curriculum*". In this email, he asserted that staff members communicating regarding COVID-19 to students "are abusing your power as an authority figure in your role as an educator to minors."
- Each time Holy Family contacted the Applicant to clarify the three access to information requests, the Applicant resists clarifying the requests and at times expands them to add extra workload for Holy Family.
- After significant and best efforts by Holy Family to request that the Applicant narrow the scope of search to help identify records, the Applicant's three requests have not narrowed and, in some cases, have expanded.
- The Applicant has failed to specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable Holy Family to identify records.
- The scopes of each request spans almost or in excess of two calendar years.
- The Applicant broadly defines each access request so that it does not identify particular individuals or roles.

- The requests are particularly onerous during the COVID-19 pandemic when staff are trying to provide education services daily to students. In addition, COVID-19 has infected Holy Family staff which also affects daily operations.
- It is noted that the Applicant has shared with Holy Family on January 28 that he brought an access to information request under FOIP to access virtually identical information from the Ministry of Education so that he can “catch who is lying” with respect to the first access to information request. In addition, the Applicant shared with Holy Family on February 7 that he has brought an access to information request under FOIP to access virtually identical information from the “health people” so that he can “see who is hiding what” with respect to the third access to information request. It appears that the Applicant is attempting to conduct a “fishing expedition” through LAFOIP. These admissions by the Applicant that he is seeking to “see who is hiding what” demonstrates that he is abusing the right of access and is not acting in good faith

[41] To support its arguments, Holy Family submitted a copy of the *Vaccine Notice of Liability Minor/Concerned Citizen* which the Applicant signed on November 25, 2021. A second individual also signed it. It was “served” on Holy Family staff including its Administration. From a review of the document, the Applicant’s position on the vaccine mandates related to COVID-19 is articulated. It states in part:

You are unlawfully practicing medicine by prescribing, recommending, facilitating, advertising, mandating, incentivising, and using coercion to insist students, including minors submit to ANY vaccine including the experimental gene therapy injections for COVID-19, commonly referred to as a “vaccine”.

[42] The document ends with a warning to Holy Family Administration that it is liable:

I hereby notify all School Superintendents, Heads of Schools/Universities/Colleges, School Board Executives, Directors, Principals, Teachers, Deans and Administration, that they will be held personally, civilly, and criminally liable for any injuries or deaths that may occur as a result of encouraging, facilitating, coercing, incentivizing or administering ANY vaccine including the COVID-19 experimental injections to children in your care.

[43] Holy Family also provided a copy of an email sent by the Applicant to Holy Family in which the Applicant states “it is imperative that you cease and desist any and all communications regarding COVID-19 to any minors ...”

[44] From a review of the Applicant's various correspondence with Holy Family, I note the nature of the correspondence is not offensive, vulgar, derogatory or intimidating. The Applicant has clearly stated a position on an issue that some may not agree with, but it would be a stretch to say the wording or nature of the communications suggest an abuse of the right of access.

[45] On March 2, 2022, the Applicant provided representations to my office in response to Holy Family's application to disregard. The Applicant's rebuttals to Holy Family state in part:

- These requests were borne from the concern for the health, safety and proper education of the children ...
- Due to the extended period that the Government implemented various policies, lockdowns and mandates, and the resulting impact on the workforce to gather all the information – the amount of “new” information that was or could have been constantly flowing creates difficulty in narrowing the time scope and the names of people that may have been involved ...
- With respect to “*not cooperated*” (paragraph 3, sentence 4 [of Holy Family's application]), I responded to every email, and agreed to communicate with Holy Family with every opportunity my schedule allowed ...
- Throughout our two phone conversations, I accommodated some of Holy Family's requests to depth of search; i.e., eliminated Teachers, eliminated trustees while revising to Board Chair ...
- With respect to “*expanded*” (page 3, paragraph 6, first sentence [of Holy Family's application]). Phone conversations between parties narrowed the search's scope. As per *adding* (page 3, paragraph 4, sentence 1) [a]fter reviewing Holy Family's corporate hierarchal chart, and discovering [name] acts as executive assistant to [Director], and all communication between myself and [Director] originated from [name]. It was prudent to assume communication between the Ministry of Education and the SHA flowed through [name]. Therefore, [name] was named in the revised FOIP agreed to by both parties ...
- **Harassment** - Page 2, SUBMISSION, Paragraph 3's wording implies I was part of the group serving the Notice of Liabilities (NOLs). I held no involvement in serving the NOLs ...
- As for signing Notice of Liabilities and sending teachers an email (page 2, paragraph 3), both hold no bearing toward requested FOIPs. Being both a practicing Catholic and a former school board trustee, I remain concerned with the direction Holy Family and staff undertook toward our young, impressionable children. Both

communications (NOLs, emails) informed teachers and Holy Family staff about their personal liability if they continued under their current path. Both the NOLs and emails were methods of communication to educate about concerns from parents, grandparents and members of the community regarding the impact of the lockdowns, mandates and masking ...

- **Obstinate** – Holy Family understood the nature of the requests when they accepted and took payment of my initial requests ... (CFO & Human Resources manager), asked if I wished to have Holy Family’s policies included ...
- **Vexatious** - ... All Freedom of Information requests are fishing expeditions. The purpose of FOIP is to create accountability within our public officials and public servants ...
- The amount of work to fulfill a Freedom of Information request should not be included in the basis for denying a request ...

[46] Also included in the Applicant’s package were two recorded telephone calls between the Applicant and Holy Family in regard to the first and second access to information requests. The first telephone call was on January 28, 2022 and related to the first access to information request. It was 26 minutes and 29 seconds long. During the call, Holy Family appears to be requiring the Applicant to narrow the scope of the first access to information request despite the Applicant’s clear directive of what was wanted during the telephone call. When Holy Family indicated it would be expensive for the Applicant if he did not narrow the request, the Applicant instructed Holy Family to send a fee estimate and they could “go from there”. The second telephone call was on February 7, 2022 and related to the second access to information request. It was seven minutes and 35 seconds long. In the second telephone call, again Holy Family attempted to require the Applicant to narrow the scope of the second access to information request. The Applicant agreed to some of the narrowing and again clarified what was being sought. I note that the Applicant’s conduct during the telephone calls appeared to be reasonable, calm, and cooperative despite apparent frustration over Holy Family’s delays in processing the requests.

[47] From a review of all the correspondence my office received, it appears Holy Family conflated two separate concepts in LA FOIP in this matter – clarification versus narrowing. They mean very different things in terms of section 6(1)(b) of LA FOIP.

[48] Section 6 of LA FOIP lays out the obligations on applicants when making access to information requests. Section 6 provides:

6(1) An applicant shall:

- (a) make the application in the prescribed form to the local authority in which the record containing the information is kept; and
 - (b) specify the subject matter of the record requested with sufficient particularity as to time, place and event to enable an individual familiar with the subject-matter to identify the record
- (2) Subject to subsection (4) and subsection 11(3), an application is deemed to be made when the application is received by the local authority to which it is directed.
- (3) Where the head is unable to identify the record requested, the head shall advise the applicant, and shall invite the applicant to supply additional details that might lead to identification of the record.
- (4) Where additional details are invited to be supplied pursuant to subsection (3), the application is deemed to be made when the record is identified.

[49] Section 6(1)(b) of LA FOIP is not unique to Saskatchewan. Other jurisdictions have a similar provision that require applicants to provide “sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought” (Section 5(1)(a) of British Columbia’s [Freedom of Information and Protection of Privacy Act](#), s. 24(1)(b) of Ontario’s [Freedom of Information and Protection of Privacy Act](#), s. 6(1)(b) of Nova Scotia’s [Freedom of Information and Protection of Privacy Act](#)).

[50] The courts have considered an applicant’s obligation to provide “sufficient particulars”. The Federal Court in considering an equivalent provision in the [Access to Information Act](#) stated that section 6 “imposes an obligation on the applicant to state precisely what he is seeking and a corresponding obligation is imposed on Canadian institutions to make all efforts to locate and identify documents relevant to the request” (*X v. Canada (Minister of National Defence)*, (T.D.) [1992] 1 F.C. 77 at para 13). Further, there must be a degree of specificity in a request for documents, but only to the extent that the document or record requested is reasonably identifiable (*Horseman v. Canada (Minister of Indian Affairs and*

Northern Development), T-2863-86, decision dated March 30, 1987, F.C.T.D., not reported).

[51] In my view, the requirements of LA FOIP on both applicants and local authorities in combination with the purposes of the Act demonstrate an intention on the part of the Legislature that an individual's access requests will be processed by the local authority in a fair, reasonable, open, and flexible manner (Ontario Information and Privacy Commissioner [Order MO-2063](#) at p. 5 and Nova Scotia Information and Privacy Commissioner [Review Report 16-05](#) at para [23] likewise described this obligation on public bodies).

[52] The Applicant has asserted the three access to information requests were clear in terms of time, place and event pursuant to section 6(1)(b) of LA FOIP. The Applicant asserted the following was sought:

- Subject matter/event – *all documents with respect to COVID-19 and variants.*
- Time – *the period between January 1, 2020 and December 31, 2021.*
- Place – *Holy Family RCSSD #140 and Ministry of Education; SHA.*

[53] In this case, it appears Holy Family wanted the Applicant to narrow the access to information requests because they involved a large volume of records over a two-year period requiring a significant amount of work not because it could not identify records. When its attempts to narrow the access to information requests were unsuccessful, Holy Family should have proceeded to issue an estimate of fees associated with the broad requests. It failed to do so. Rather, it made the application to my office to disregard the requests.

[54] It is important to note that as pointed out by Holy Family, the Applicant made similar access to information requests to the Ministry of Education and the Ministry of Health. On March 11, 2022, my office requested further information from the Applicant regarding these requests. The Applicant provided further information on March 13, 2022. It appears that the access to information request made to the Ministry of Education was identical to access

request #1 in this matter. The Ministry of Education had no difficulty determining what was being requested and issued a fee estimate for \$240.00. To justify the fee estimate, the Ministry of Education stated in its response to the Applicant that “processing this request will involve searching a significant number of records”. The Applicant paid the 50% deposit requested by the Ministry of Education. This is the same process I would expect Holy Family to have followed in this case.

- [55] In terms of “clarification” of an access to information request, many applicants are unfamiliar with an organization and its administrative practices. They may not be aware of the process by which a local authority reaches or implements a decision or policy, the kind of records that may be generated, or the process of disposing of records. As a result, their access to information requests may be unclear and they would be unsure how to articulate what they are looking for.
- [56] Clarification of a request may involve assisting an applicant in defining the subject of the request, the specific kinds of records of interest, and the time period for which records are being requested (Service Alberta, [*FOIP Guidelines and Practices: 2009 Edition*](#), Chapter 3, at p. 51 (*FOIP Guidelines and Practices*)).
- [57] Local authorities have a duty to engage in the clarification process up to the point when a fee estimate is provided. However, a local authority has no obligation [or authority] to require clarification of a request that is, on its face, very clear (*FOIP Guidelines and Practices* at p. 52).
- [58] In terms of “narrowing” of an access to information request, it is important to discuss with an applicant any request that involves a large amount of information or is estimated to require a large amount of search time. The objective of narrowing a large request is to reduce fees for the Applicant and for the provision of better service, in terms of both time and results. However, applicants are not required to narrow a request and refusing to narrow a broad request would generally not be considered an abuse of the right of access.

[59] In this case, the Applicant was clear in terms of the subject matter for which they were seeking records. In addition, the Applicant provided a reasonable timeline. Two years worth of records is not unreasonable given the subject matter the Applicant is interested in (i.e. COVID-19 pandemic).

[60] In this case, I am satisfied that the three access to information requests are described with sufficient particularity that Holy Family could have identified responsive records. In my office's [Review Report 323-2019](#) at paragraph [16], I stated the following regarding overly broad access to information requests:

I encourage public bodies to communicate with the applicant when a request appears overly broad to determine if there is an opportunity to narrow or focus a request to assist the applicant in obtaining the records they are seeking. However, this should be presented as an option to the applicant, especially if a fee estimate will be involved. It should not be a requirement for processing a request and should not prevent the public body from processing the request if the applicant does not agree to narrow or focus their request. This should be done within the first 30 days of receiving an access request.

[61] I will now return to the issue of whether to disregard these three access to information requests pursuant to section 43.1(2)(c) of LA FOIP.

[62] Given that I have found that the three access to information requests were clear pursuant to section 6 of LA FOIP, then Holy Family had 30 days pursuant to section 7(2) of LA FOIP to provide a response or make an application to disregard to my office. As per section 43.1(5) of LA FOIP, it is clear that a decision must be made by the Commissioner within the initial 30-days mentioned in section 7(2) of LA FOIP. In this case, Holy Family has missed the 30-day timeline to submit this application to disregard for the first and second access to information requests which were received on December 20, 2021, and the \$20 application fees paid on the same date. For the third request made on January 21, 2022, with the \$20 application fee paid on February 3, 2022, the application to disregard would be applicable for only that request.

[63] Where an applicant's motivation is fact finding or to obtain proof of wrongdoing, these purposes cannot be considered unreasonable or illegitimate. Applicants may seek

information to assist them in a dispute with a local authority, or to publicize what they consider to be inappropriate or problematic decisions or processes undertaken by local authorities.

[64] I find that Holy Family has not demonstrated a pattern of behavior on the part of the Applicant that amounts to an abuse of the right of access. There does not appear to be any evidence of an ulterior or improper motive indicative of bad faith or vexatious intent. Further, the concerns or intent of the Applicant's requests cannot be said to be frivolous. What is considered unimportant, not reasonably purposeful or serious to one person might be very important, purposeful and serious to another. Although the issue of vaccines and mandates is a hotly discussed issue in this province, the Applicant has a right to utilize the access to information process to gain access to information that might assist in what they believe is improper conduct or decision making. Whether I agree with the Applicant's position on vaccines and mandates is of no consequence in this Decision.

[65] In conclusion, I find that the requirements for section 43.1(2)(c) of LA FOIP have not been met.

[66] Based on the findings in this Decision, the first two access to information requests received by Holy Family on December 20, 2021, are in a state of deemed refusal pursuant to section 7(5) of LA FOIP. Despite this, I encourage Holy Family to immediately provide access to what records are responsive to the Applicant's request subject to exemptions. Holy Family is not able to issue a fee estimate at this stage pursuant to section 9 of LA FOIP. There is no other mechanism in LA FOIP to issue a fee estimate after the initial 30 days has elapsed. This is consistent with several Review Reports I have issued (see for example [Review Report 323-2019](#) at paras. [34] and [35]).

[67] For the third access to information request, Holy Family should process the Applicant's request keeping in mind that the 30-day clock started on February 3, 2022, stopped on February 23, 2022 and restarted the date of this Decision. If necessary, it can issue a reasonable fee estimate pursuant to section 9 of LA FOIP and sections 5, 6, 7 and 8 of *The Local Authority Freedom of Information and Protection of Privacy Regulations*.

III DECISION

[68] I refuse Holy Family's application to disregard the Applicant's third access to information request. As a result of this Decision, the 30-day clock for processing the third access to information request resumes the date of this Decision.

Dated at Regina, in the Province of Saskatchewan, this 18th day of March, 2022.

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