



DISREGARD DECISION 182-2023

Town of Asquith

August 15, 2023

Summary:

The Town of Asquith (Town) applied to the Commissioner for authorization to disregard the Applicant's access to information request pursuant to subsection 43.1(2)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that the Town did not demonstrate that subsection 43.1(2)(c) of LA FOIP applied and refused the Town's application to disregard. As such, the Town is required to continue processing the Applicant's access to information request as of the date of this Decision.

I BACKGROUND

[1] On July 22, 2023, the Town of Asquith (Town) received the following access to information request from the Applicant:

Copies of all legal matters between [sic] the town of [sic] Asquith and all citizens or members of the public. Including [sic] any and all correspondence with the owners of the trailer court. I am also requesting all disciplinary actions between any town of Asquith employees or [sic] members of town council. I would also like the correspondence and emails concerning Myself in their entirety [sic].

[2] In correspondence to the Applicant and to my office dated August 2, 2023, the Town asked my office to disregard the Applicant's access to information request pursuant to subsection 43.1(2)(c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[3] On August 2, 2023, my office advised the Town and the Applicant that the clock to process the Applicant's access request was stopped.

[4] On August 3, 2023, my office notified the Applicant and the Town that my office would be considering the Town's application to disregard the Applicant's access to information request.

[5] The Applicant provided their main response to the Town's application to my office on August 7, 2023, and follow-up responses on August 9, 10 and 12, 2023.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] The Town is a "local authority" pursuant to subsection 2(1)(f)(i) of LA FOIP. Therefore, I have jurisdiction to review this application to disregard.

2. Should the Town's application pursuant to subsection 43.1(2)(c) of LA FOIP be granted?

[7] Section 43.1 of LA FOIP provides a local authority with the ability to apply to the Commissioner with a request 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 31(2) resumes.

[8] An application to disregard is a serious matter as it could have the effect of removing an applicant's express right to seek access to information. However, 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)

[9] In this matter, the Town is asking me to disregard the Applicant's access to information request, which it received July 22, 2023, pursuant to subsection 43.1(2)(c) of LA FOIP. For subsection 43.1(2)(c) of LA FOIP to apply, the Town would have to demonstrate that the applicant's access to information request(s) is frivolous, vexatious, not in good faith or concerns a trivial matter. The following definitions are helpful:

- "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.

- “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 continually or repeatedly harass a local authority 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. A 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. However, LA FOIP must not become a weapon for disgruntled individuals to use against a local authority for reasons that have nothing to do with the Act. Some examples of vexatious proceedings are to sue them as collateral attacks, to initiate or escalate proceedings that are hopeless, to persistently engage in inappropriate behaviour, to make unsubstantiated allegations of conspiracy or misconduct and to use scandalous or inflammatory language.
- “Good faith” means that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one’s duty or obligation. Good faith is an intangible quality encompassing honest belief, the absence of malice and the absence of design to defraud or take advantage of something. “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.
- A “trivial matter” is something insignificant, unimportant or without merit. It is similar to frivolous. However, what is trivial to one person may not be trivial to another. Therefore, what is trivial is somewhat subjective.

(*Guide to LA FOIP*, Chapter 3, “Access to Records”, updated May 5, 2023 [*Guide to LA FOIP*, Ch. 4], pp. 167-168).

[10] An access to information request that is frivolous, vexatious, not made in good faith or that concerns a trivial matter can amount to “an abuse of the right of access” if an applicant uses the access provision of LA FOIP in a way that is contrary to its principles and objects. The following factors should be considered by the local authority:

- Number of requests: is the number excessive.
- Nature and scope of the requests: are they excessively broad and varied in scope or unusually detailed. Are they identical to or similar to previous requests.
- Purpose of the requests: are the requests intended to accomplish some objective other than to gain access. For example, are they made for “nuisance” value, or is the applicant’s aim to harass the public body or to break or burden the system.

- Timing of the requests: is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding.
- Wording of the request: are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations. Offensive or intimidating conduct or comments by applicants is unwarranted and harmful. They can also suggest that an applicant's objectives are not legitimately about access to records. Requiring employees to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments can have a detrimental effect on well-being.

(Guide to LA FOIP, Ch. 3, pp. 167-168)

[11] The local authority should address any of the above factors that apply. Depending on the nature of the case, one factor alone or multiple factors together can lead to a finding that a request is an abuse of the right of access.

[12] With respect to the Applicant's access to information request, the Town stated:

[The Applicant] has been tormenting this office for several years. It has only been in the last 3 months that an escalation in [their] behaviour has been noticed. [They] inundates this office with emails and phone calls daily. The phone messages [they] leaves have been degrading, including abusive language towards myself and council. This office on most days receives at least 3 to 6 emails a day with accusations of mishandling the Town's finances, commenting on my ability to do my job calling me "stupid" and saying councillors should all resign, and I should be fired. [They] also has called the Ombudsman daily as well as sending them daily emails. I have been informed that the Ombudsman have now closed [the Applicant's] file.

First this office does not have emails from 2007. There is a file in this office of [their] behaviour over the last decade. The documents [they are] asking for is only to "keep me busy" as [they] stated in one of the enclosed emails. [They] states in that same email how [they are] going to keep filing LAFOIP requests on a continual basis.

I have also recently had the Town's lawyer handle a previous LAFOIP request which [the Applicant] filed on June 29, 2023. I sent to [them] what the lawyer's response was. [The Applicant] then wanted the name of our lawyer so [they] could also call him.

[The Applicant] also says [they have] a mental disability, and that the Town is basically making it worse by not giving [them] what [they want]. If [they have] been diagnosed with a mental disability it does not give [them] the freedom to harass this office on an ongoing basis.

This office is including several emails with this application to disregard, and you will be able to understand the reasoning behind why choosing “vexatious and frivolous” as the basis to why this office believes the application to these records be disregarded.

- [13] As previously mentioned in this Decision, there is only one access to information request under consideration. The Town did not include any other access to information requests from the Applicant to demonstrate they were excessively or repeatedly requesting the same information. The Town noted the Applicant threatened to continually submit access requests but did not provide my office with copies of any new ones. The Town also did not include any arguments or evidence to suggest the Applicant was being excessively broad in the information they requested. Upon review, the Applicant’s access to information request may appear a bit broad to some, but it would have been incumbent on the Town as part of its duty to assist to seek clarification from the Applicant if it felt it was necessary to do so. Regardless, I do not find an issue with the number of access requests the Applicant may have made.
- [14] It appears the Town is arguing that the nature of the Applicant’s access request is to keep the administrator busy by submitting multiple access requests. The Applicant made a comment in their email to the Town dated July 23, 2023 (11:08 a.m.) that said, “I am going to make so many access to information requests it will make [administrator] very busy”. This email is included in a string of emails between the Applicant and the Town dated July 16, 2023 to July 31, 2023. The Town did not state if it had received any other access requests from the Applicant between these dates other than the one in question. While the Applicant may have threatened to make multiple access requests, they do not appear to have done so thus far.
- [15] In their submission, the Applicant explained the history between them and the Town, confirming that there is animosity. The Applicant added that they needed the records to “bring this matter to the courts”, meaning matters relating to issues they have with the Town. Requesting information on this basis would be for a legitimate purpose. If an applicant is motivated by fact finding or proof of wrongdoing, these purposes cannot be considered unreasonable.

[16] Regarding the timing of the Applicant's access request, it was made during the exchanges and in relation to questions the Applicant wanted answered; the timing would be appropriate in the given circumstances.

[17] From a review of the string of emails, it is apparent that the Applicant does use language that can appear inflammatory or offensive. For example:

- Email of July 27, 2023 (12:12 p.m.) to the administrator – “Your lies are catching up with you [name redacted]”.
- Email of July 27, 2023 (12:26 p.m.) to the administrator – “It's like I said before none of you are very smart and you are in way over your heads”... “You are going to dig yourselves in deeper and you are so stupid and arrogant that I can even tell you in advance and you still do stupid things and play right into my hands”.
- Email of July 28, 2023 (8:24 p.m.) to the administrator – “I have house plants smarter than you are”.

[18] I have stated in past disregard decisions that public bodies are often subject to individuals who may use language we do not like or that we find offensive. While applicants do not have a right to use abusive or accusatory language, public bodies need to somewhat expect that applicants may do so out of frustration. Much of what the Town points to is email exchanges between the Applicant and the Town, and by the Town's own admission it is only in the past three months that the Applicant's behaviour has escalated.

[19] Based on the preceding, I am not satisfied that the Town has demonstrated a pattern of behaviour on the part of the Applicant that amounts to an abuse of the right of access. There does not appear to be evidence strong enough to support that the Applicant is acting frivolously, vexatiously, or in bad faith, or that they have submitted an access request concerning a trivial matter. As such, I find that the requirements for subsection 43.1(2)(c) of LA FOIP have not been met.

[20] I wish to make some clarifying points, however. It is important for the Applicant to understand that LA FOIP does not require the Town to answer questions that come in an access to information request or in another form. LA FOIP is about accessing records. The

Town, therefore, is not required under LA FOIP to answer questions posed by the Applicant, but it does have a duty to respond with whether it has responsive records.

[21] I also caution the Applicant that using aggressive language or making accusations generally does not get an individual what they want. Applicants do have a right to access records in the possession or under the control of a local authority, but the LA FOIP process only works well when both parties cooperate. This includes asking for the records you want without making accusations through follow up emails or using accusatory language. If you continue this type of approach with the Town, you run the risk of future access to information requests being disregarded as I might decide the conduct is abusive.

III DECISION

[22] I refuse the Town's application to disregard the Applicant's access to information request, which the Town received on July 22, 2023. As a result of this decision, the 30-day clock for processing this request resumes the date of this Decision.

Dated at Regina, in the Province of Saskatchewan, this 15th day of August, 2023.

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