



Office of the
Saskatchewan Information
and Privacy Commissioner

DISREGARD DECISION 194-2023

Town of Asquith

September 8, 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)(b) and (c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found there were grounds to disregard the Applicant's access request pursuant to subsection 43.1(2)(c) of LA FOIP, and so granted the Town's application to disregard.

I BACKGROUND

- [1] On August 16, 2023, the Town of Asquith (Town) received the following access to information request from the Applicant:

The recording in digital or analog format of the council meeting on August 9th 2023

I will also be requesting a copy of the video footage that the town of Asquith handed over to the RCMP from June 29 2023 that showed a black truck stunting in front of the fire hall on main street.

- [2] In correspondence to the Applicant and to my office dated August 22, 2023, the Town asked my office to for authority to disregard the Applicant's access to information request pursuant to subsections 43.1(2)(b) and (c) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).
- [3] On August 22, 2023, my office advised the Town and the Applicant that the clock to process the Applicant's access request had stopped.

[4] On August 23, 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 response to the Town's application to my office on August 24th, 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 consider this application to disregard.

2. Should the Town's application pursuant to subsections 43.1(2)(b) and (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 for authority to disregard the Applicant's access to information request, which it received August 16, 2023, pursuant to subsections 43.1(2)(b) and (c) of LA FOIP. I will assess subsection 43.1(2)(c) first.

Subsection 43.1(2)(c) of LA FOIP

[10] 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 include suing a local authority as a collateral attack, to initiating or escalating proceedings that are hopeless, persistently engaging in appropriate behaviour, making unsubstantiated allegations of conspiracy or misconduct and using 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 interest 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*, Ch. 3, pp. 167-168).

[11] 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 objectives. 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)

[12] 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.

[13] Regarding the Town council recording of August 9th, 2023, the Town’s position is as follows:

... [They have] stated in emails to this office that [they have their] own copy of this recording that [they have] witnessed recording at the August 9, 2023, meeting. [They were] present at said meeting...

... [They are] asking for a recording that [they have stated they have in their own] possession...

[14] Regarding the matter before me, it does not appear that the Applicant has made more than one formal access request for each recording. The Town has not provided copies of any other additional requests the Applicant may have recently made. As such, I am not dealing with an excessive number of access requests.

[15] The nature and scope of the Applicant’s access to information request does not appear to be varied in scope and does not seem overly broad. The Applicant has clearly identified

each recording they would like access to, and from its responses, the Town appears to understand which recordings these are.

[16] Regarding the timing of the Applicant's access requests, it appears they made them in relation to their desire to make an application to court. As such, the Applicant's timing is reasonable.

[17] Regarding the purpose of the Applicant's current access to information request, the Town stated as follows:

[They are] filing requests to annoy and harass this office...

[They have] continually harassed this office over the last few months in a pattern very similar to [their] actions towards this office in 2024. [They have] stated many times that [their] goal is to have council and C.A.O. resign.

... [They have] threatened and claims there are active criminal charges and/or investigations against this office and council. (see email dated August 16, 2023) [they are] referring to the August 9, 2023, meeting [they are] asking for the recording of.

[18] As part of its arguments for [Disregard Decision 183-2023](#), which involved the same Applicant, the Town stated as follows:

[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.

[19] In this Decision, as well as in Disregard Decision 183-2023, the Town pointed to a statement the Applicant made in an email where they stated:

I am going to make so many access to information requests it will keep [administrator] very busy. Or you guys could just all resign immediately.

[20] It appears the Town is arguing the purpose of the Applicant’s access request is to keep the administrator busy by submitting multiple access requests. Since I issued Disregard Decision 183-2023, the Applicant has made the access request at issue in this Decision, as well as a third one that the Town has apparently responded to. I am not aware of any other access requests the Applicant has since made. The Town also alleges the Applicant’s conduct is harassing.

[21] The Applicant states their purpose for wanting the recording of the Town council meeting is to gather evidence in support of a court case they hope to put together. The Applicant stated to my office that they had made their own recording of the meeting, but wanted a copy of the Town’s because theirs was missing portions. My office asked the Applicant to provide a copy of the recording they have, and the Applicant advised they have since inadvertently deleted it.

[22] An Applicant’s purpose or objective for requesting records is generally not at issue unless their motives make it appear that their objective is for some reason other than to gain access to records. Since I can consider multiple factors in combination, it is helpful to consider the Applicant’s purpose or objectives in this case in conjunction with their language and overall conduct.

[23] In Disregard Decision 183-2023, I noted the following from exchanges between the Applicant and the Town:

- 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”.

[24] At the time, I cautioned the Applicant that using aggressive language or making accusations generally does not get an individual what they want. I asked the Applicant to reconsider their approach with the Town. Since that time, the Applicant has made some of the following comments to the Town:

- Email of August 11, 2023 (12:00 p.m.) to the administrator – “[Name of administrator] you aren’t very good at your job. I know the truth hurts but you just don’t have a frogging clue what you are doing”.
- Email of August 11, 2023 (6:54 p.m.) to the administrator – “[Names of Town councillors] all Blantantly [sic] violated the conflict of interest rules. They must all resign immediately”.
- Email of August 16, 2023 (9:42 a.m.) to the administrator – “... As well I have a criminal complaint lodged the wrong doings of the council Of [sic] Asquith. [Name of individual] suggested that I do that yesterday. Who is [name of individual] he is the deputy chair of the Ombudsman. As there is a criminal investigation taking place nothing can be destroyed”.

[25] As previously stated, the Town also added that the Applicant has their own copy of a recording of the August 9, 2023 council meeting (which the Applicant now claims to have deleted). The Town pointed to numerous occasions where the Applicant indicated they had made their own copy. For example:

- In an email to the Administrator dated August 10, 2023 (12:20 p.m.), the Applicant stated, “It’s all recorded”.

- In an email to the Town and other individuals on August 11, 2023 (6:54 p.m.), the Applicant stated, “All of you witnessed the events of August 9th 2023. I have video of all of you attending the meeting... There were several witnesses but even more is the recording of the events”.
- In an email to the Town and other individuals dated August 14, 2023 (3:20 p.m.), the Applicant stated, “Having a recording of the conflict really helps. Going forward I plan on recording all the meetings”.

[26] The Town also provided my office with copies of two phone messages the Applicant left for the administrator.

[27] In one message, dated August 28, 2023, the Applicant advises the administrator of several records they are going to require, adding they will be sending an access request later that date. The Applicant adds that there is going to be a “criminal investigation”, and states, “make sure you’re thorough because you don’t want your [family member] to have to put handcuffs on you, do you?” The Applicant had stated to my office that the administrator’s family member is in law enforcement.

[28] In the other message, dated August 29, 2023, the Applicant contacted the administrator to follow up on the access request they had submitted. I quote the Applicant as follows:

I will get it [the record], but if you’re going to try and disregard it again, just be warned that you’re already being watched on that. And, uh, if you do it three times in a row, guess what happens. They know you’re being facetious. So, I would kind of watch that. I mean I have enough to get you fired already... just a little warning, don’t want to see that happen, so, uh, yeah, maybe don’t do it three times in a row.

[29] An applicant’s conduct with a public body can suggest that their objectives are not legitimately about accessing records. While public bodies do need to prepare to expect some level of offensive language or intimidation from the public, there is a point at which an applicant can be thought to be using the access to information process to further a personal agenda.

[30] In this matter, it appears the Applicant’s intent is to use the LA FOIP process to harass or threaten the Town, and in particular the administrator processing the requests. In so doing,

they are acting in a vexatious manner by using inflammatory language and making unsubstantiated allegations. Based on the information provided and what I have reviewed, there does not appear to be a time when the Applicant has requested records that they have not also made allegations and threats alongside those requests. Sending multiple emails a day spewing insults and unfounded allegations suggests the Applicant's focus is less on accessing records and more on harassing the Town. If the Applicant truly wants records to mount a court case or for whatever other reason, they can do so by simply asking for records. There is no need for them to also send follow up emails or to leave follow up voicemails where they threaten, for example, that someone will be fired if they do not do as they are told. Meanwhile, I do not see evidence that the Town is acting inappropriately towards the Applicant in return; rather, the Town has taken the steps it needed to understand its role and how to respond to the Applicant as required by LA FOIP. Responding is difficult to do, though, when an Applicant does not cooperate in return and instead takes the approach the Applicant is taking here.

[31] I find, therefore, there are reasonable grounds to establish that the Applicant's request is vexatious within the meaning of subsection 43.1(2)(c) of LA FOIP. As such, I grant the Town's application to disregard the Applicant's access to information request received by the Town on August 16, 2023. With this finding, I do not need to determine if subsection 43.1(2)(b) of LA FOIP applies.

[32] Again, I will issue a word of caution to the Applicant. With any future access to information request you make to the Town, I suggest that you simply ask for the records you want and leave it at that. There is no need to send follow up correspondence where you threaten or belittle Town employees or council members; that type of behaviour is not consistent with the access to information process. I also suggest that any access requests you make are truly for the purpose of seeking access to records. By not acting accordingly, the Town may again apply to disregard future access requests, and I will be open to reviewing them. I encourage the Applicant to pay attention to my words of caution.

III DECISION

[33] I grant the Town's application to disregard the Applicant's access to information request which it received August 16, 2023.

Dated at Regina, in the Province of Saskatchewan, this 8th day of September, 2023.

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