



DISREGARD DECISION 122-2021

Regina Police Service

May 17, 2021

Summary: The Regina Police Service (RPS) applied to the Commissioner to disregard a portion of the Applicant's access to information request pursuant to subsection 43.1 of *The Local Authority Freedom of Information and Protection of Privacy Act*. The Commissioner found that the Applicant's access to information request was repetitious, but that it was not an abuse of the right of access, and that it was not frivolous, vexatious or not made in good faith. As such, the Commissioner refused RPS' application to disregard the portion of the Applicant's access to information request under consideration.

I BACKGROUND

[1] On April 30, 2021, Regina Police Service (RPS) received an access to information request (RPS #21-0087) as follows:

Regina Police Service

Name of Record: Street Check and Contact Interview data

Detailed Description of Record

JANUARY 1 2015-DECEMBER 31 2018

- Location of each street check
- Reason for each street check
- Ethnicity of each individual street checked

JANUARY 1 2019- DECEMBER31 2020

- Total number of contact interviews each year
- Date, time, and duration of each contact interview

- Location of each contact interview
- Ethnicity of each individual contact interviewed

If you determine that any or all of the information is exempt from disclosure and will not be disclosed, please cite the legal authority on which you rely.

- [2] On May 4, 2021, RPS made an application to my office seeking authority pursuant to section 43.1 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) to disregard part of the Applicant’s access to information request. RPS agreed to respond to the Applicant’s request for 2020 street check information as it had “not provided [the Applicant] with these results yet”, but seeks permission from my office to disregard the remainder of the access to information request on the grounds that it is an abuse of the right of access, is repetitious and vexatious in nature, and was not submitted in good faith.
- [3] On May 4, 2021, my office provided notification to RPS and the Applicant that I would be considering the application to disregard the remaining portion of the access to information request as outlined in the preceding paragraph.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [4] RPS is a “local authority” pursuant to subsection 2(f)(viii.1) of LA FOIP. Therefore, I have jurisdiction to conduct this review.

2. Should RPS’ application pursuant to subsection 43.1(2)(b) of LA FOIP be granted?

- [5] 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.

[6] 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)

[7] In its application to my office, RPS submitted the Applicant's access to information request (RPS #21-0087) it received on April 30, 2021, and asked that the portion not concerning street check information for the year 2020 be disregarded pursuant to subsections 43.1(2)(b) and (c) of LA FOIP. I will begin by first considering subsection 43.1(2)(b) of LA FOIP.

[8] In order for subsection 43.1(2)(b) of LA FOIP to apply, an access to information request 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 must be met:

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

(Guide to FOIP, Chapter 3: Access to Records, Updated: August 7, 2020, at pp. 87-88 (Guide to FOIP))

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

[9] *Repetitious* requests are requests that are made two or more times (Guide to FOIP, p. 88).

[10] *Systematic* requests are those made according to a method or plan of acting that is organized and carried out according to a set of rules or principles. It includes a pattern of conduct that is regular or deliberate (Guide to FOIP, p. 88).

[11] The following factors should be considered:

- Are the requests repetitious (does the applicant ask more than once for the same records or information or for the same information to be corrected)?
- Are the requests similar in nature or do they stand alone as being different?
- Do previous requests overlap to some extent?
- Are the requests close in their filing time?

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

(Guide to FOIP, pp. 88 – 89)

[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 in concert with each other can lead to the first part of the test being met. There is an important distinction to be drawn between overlap and repetition. Where there is overlap between requests that are made at the same time, only one search will be required for all of the overlapping requests. Where more than one request has been made for the same information at more than one time, more than one search will be required for the same information. The latter is repetitious; the former is not. Evidence of previous requests is relevant to the determination of whether the current request is repetitious (Guide to FOIP, p. 89).

[13] RPS explained its basis for claiming the access to information request was repetitious or systematic as follows:

[The Applicant] first requested access from Regina Police Services in January 2020. In the first request, [the Applicant] was looking for information related to Pedestrian Street Checks from 2015 to 2019. We provided [the Applicant] with a response to which a request for review was submitted to your office in March of 2020. We then worked with your office for early resolution and provided [the Applicant] with additional information related to the original request. [The Applicant] then submitted a request for a search review, as [they were] not satisfied with our search efforts. The review was completed in April of 2021 with recommendations to release source data to the applicant. Our office agreed with your recommendations and provided [the Applicant] with a redacted copy of the source data.

[14] As RPS stated, the Applicant made a previous access to information request for pedestrian street check information for the years 2015 to 2019 (RPS #20-0002). Because evidence of previous requests is relevant to the determination of whether a current request is repetitious or systematic (AB IPC Disregard F2019-RTD-01 at p. 9), I will take the Applicant's previous access to information request (RPS #20-0002) into consideration, which was as follows:

Street Check (sometimes called Contact Interview) date 2015 to December 31, 2019, including but not limited to

- a) Total number of people checked each year
- b) Date, time, duration, and location of street check
- c) Reason for street check
- d) Gender of individual checked
- e) Ethnicity of individual checked

If you determine that any or all of the information is exempt from disclosure and will not be disclosed, please cite the legal authority on which you rely

[15] Upon comparison of request RPS #20-0002 to the portion of the current request RPS #21-0087, though they are not worded exactly the same, I note repetition exists in timeframe (2015 to 2019) and what is being asked for including: location of street check, reason for street check, ethnicity of individual involved in street check, total number of contact interviews (people checked) each year, and date, time and duration of street check. As

such, I find the access to information request meets the threshold for *repetitious* and will now consider the second part of the test.

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

[16] An *abuse of the right of access* is where an applicant is using the access provisions of FOIP in a way that is contrary to its principles and objects. Once it is determined requests are repetitious or systematic, one must consider whether there is a pattern or type of conduct that amounts to an abuse of the right of access, or are made for a purpose other than to obtain access to information (Guide to FOIP, p. 89).

[17] It is possible to have a repetitious request without there being an abuse of the right of access. For example, applicants are not always sure how to word their access requests and may submit additional requests in an effort to pinpoint the specific records they seek. Although the requests may be repetitious, it would not be an abuse of the right of access. Such a situation would be better handled through the duty to assist and clarification with the applicant (Guide to FOIP, pp. 89 - 90).

[18] I have already noted there appears to be repetition in the access to information requests. For their part, the Applicant summarized what they currently seek from RPS in RPS #21-0081 as follows:

Initially, the RPS was withholding information. Its first response only contained the number and reasons/circumstances for 2019 contact interviews. This withholding of information, as I am calling it, continued at least up until its April 7 2021 response. So my question is this: Is the RPS still withholding information?

In its April 7 2021 response, information is redacted from the data for 2015-2018. I want this redacted information to be made available. Is information also being withheld for these years? And is information being withheld for 2019?

[19] With respect to the Applicant's first point, as quoted in the preceding paragraph, it is important to note in RPS #20-0002, RPS did not initially provide the Applicant with source

data. Rather, it provided the Applicant, at different times throughout that access process, with tables summarizing the numbers of street checks for the years 2015 to 2019.

[20] Then, in Review Report 058-2020, I made the recommendation that RPS provide the Applicant with the source data as the Applicant had a right of access to those records. As a result, the RPS provided the source records. This might have helped the Applicant better understand from the beginning how the types of information they sought, such as “ethnicity” and “location” invariably exist in the source records, which is something I also stated in Review Report 058-2020. To clarify, such information or data existed for some individuals captured in the database, but not for all of them.

[21] Regardless, I found RPS conducted a reasonable search for records in relation to access to information request RPS #20-0002. While it appears the Applicant still questions if RPS is withholding records, it is an issue I have already dealt with through RPS’ search efforts in Review Report 058-2020 and do not agree that it is still an issue under consideration. Although the Applicant appears to be again revisiting this part of their previous access to information request, I do not find it is an abuse of the right of access because the Applicant has not repeatedly done this, and because some of what the Applicant seeks could have been resolved between RPS and the Applicant through some discussion. In my view, there remains two outstanding issues for consideration by RPS and the Applicant.

[22] First, with respect to the Applicant’s first point as quoted at paragraph [18] of this Report, I note RPS provided source data for the years 2015 to 2018 to the Applicant as I recommended in my Review Report 058-2020, even though my recommendation was that RPS provide all source data it used in responding to the Applicant. This included the source data it used to create the table of street check information it did for the Applicant for the year 2019. It does not appear the Applicant has received this source data, and would continue to have a right of access subject to any LA FOIP exemptions RPS determines apply, as well as its reasons for relying on those exemptions.

[23] Second, with respect to the Applicant’s second point as quoted at paragraph [18] of this Report, the Applicant seeks to understand the exemptions RPS applied when it released

source data for the years 2015 to 2018 to the Applicant in response to RPS #20-0002. Upon review of RPS' response, I note RPS did withhold information throughout the source data pursuant to subsections 13(2), 14(1)(e), 14(1)(k) and 28(1) of LA FOIP. The Applicant would have a right to now seek RPS' response as to how it concluded it is able to withhold that information pursuant to these subsections of LA FOIP. If this is what the Applicant is actually seeking, this may be accomplished by the Applicant requesting a review by my office.

[24] While the Applicant has been repetitive, I do not find that there has been an abuse of the right of access because they have not repeatedly asked for the same information. As such, the requirements for subsection 43.1(2)(b) of LA FOIP have not been met. As I mentioned previously, I consider the issue of whether or not RPS is withholding further records one that has been dealt with in Review Report 058-2020 where I found RPS' search efforts were reasonable.

[25] Since I find the requirements for subsection 43.1(2)(b) of LA FOIP to have not been met, I will continue to assess if the requirements for subsection 43.1(2)(c) of LA FOIP have been met.

3. Should RPS' application pursuant to subsection 43.1(2)(c) of LA FOIP be granted?

[26] For this provision to be found to apply, the local authority would have to demonstrate the applicant's access to information request(s) or request(s) for correction is frivolous, vexatious, not in good faith or concerns a trivial matter (Guide to FOIP, p. 91).

[27] *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 (Guide to FOIP, p. 91).

[28] *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 public body in order to obstruct or grind a public body

to a standstill. It is usually taken to mean with intent to annoy, harass, embarrass, or cause discomfort. A request is not vexatious simply because a local authority is annoyed or irked because the request is for information the release of which may be uncomfortable for the local authority (Guide to FOIP, p. 91).

[29] A vexatious proceeding means “...that the litigant’s mental state goes beyond simple animus against the other side, and rises to a situation where the litigant is attempting to abuse or misuse the legal process”: *Jamieson v Denman*, 2004 ABQB 593 (CanLII), para 127. In *Chutskoff v Bonora*, 2014 ABQB 389 (CanLII), Michalyshyn J identified a “catalogue” of features of vexatious litigation:

- collateral attack;
- hopeless proceedings;
- escalating proceedings;
- bringing proceedings for improper purposes;
- initiating “busybody” lawsuits to enforce alleged rights of third parties;
- failure to honour court-ordered obligations;
- persistently taking unsuccessful appeals from judicial decisions;
- persistently engaging in inappropriate courtroom behavior;
- unsubstantiated allegations of conspiracy, fraud, and misconduct;
- scandalous or inflammatory language in pleadings or before the court; and
- advancing “Organized Pseudolegal Commercial Argument.”

Any of these indicia are a basis to classify a legal action as vexatious (Guide to FOIP, p. 92).

[30] When considering whether a request was made on grounds that are frivolous or vexatious, the Commissioner is determining whether there is a pattern or type of conduct on the part of the applicant that amounts to an abuse of the right of access. An abuse of the right of access is where an applicant is using the access provisions of LA FOIP in a way that are contrary to its principles and objects. The following factors should be considered:

- Number of requests: is the number excessive?
- Nature and scope of the requests: are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?

- Purpose of the requests: are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the applicant’s aim to harass the public body or to break or burden the system?
- Timing of the requests: is the timing of the requests connected to the occurrence of some other related event, such as a court or tribunal proceeding?
- Wording of the request: are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations? Offensive or intimidating conduct or comments by applicants is unwarranted and harmful. They can also suggest that an applicant’s objectives are not legitimately about access to records. Requiring employees to be subjected to and to respond to offensive, intimidating, threatening, insulting conduct or comments can have a detrimental effect on wellbeing.

(Guide to FOIP, pp. 91 - 92).

[31] 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 in concert with each other can lead to a finding that a request is an abuse of the right of access or correction (Guide to FOIP, p. 92).

[32] *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 (Guide to FOIP, p. 92).

[33] *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 (Guide to FOIP, pp. 92 – 93).

[34] With respect to the Applicant’s access to information request, RPS stated, “we believe this to be an abuse of the right of access as well as this request is repetitious and frivolous and vexatious in nature. We do not believe the applicant has submitted it in good faith”. RPS has not provided my office with arguments or evidence beyond this to support its assertions.

[35] There is no burden on an applicant to show that the access to information request is for a legitimate purpose (Guide to FOIP, p. 92). Rather, the burden of proof rests with RPS to convince my office that the Applicant's access to information request is frivolous and vexatious, and/or has not been submitted in good faith.

[36] As RPS has not provided information to support its assertions, it has not met its burden of proof. As such, I find the requirements for subsection 43.1(2)(c) of LA FOIP have not been met.

[37] I wish to add that while requests may be repetitious, local authorities need to be mindful that some situations may be better handled through duty to assist and clarification with the applicant, rather than through an application to disregard. In this matter, had RPS sought clarification from the Applicant regarding their access to information request and what they sought in a response, RPS could have potentially avoided making this application to disregard.

[38] Further, knowing that my office already considers the search issue on this matter concluded, if the Applicant does request a review of the outstanding items noted in paragraphs [22] and [23] of this Report, I encourage the Applicant to withdraw this access to information request.

III DECISION

[39] I decline to grant RPS' application to disregard this portion of the Applicant's access to information request. As a result of this decision, the 30-day clock for processing the portion of the access to information request under consideration in this application to disregard resumes the date of this decision.

Dated at Regina, in the Province of Saskatchewan, this 17th day of May, 2021.

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