Office of the Information and Privacy Commissioner for Nova Scotia

Application to Disregard

An Access to Information Request, A Request for Correction, or A Privacy Complaint.

A Guide for Public Bodies and Applicants

Notice to Users

This document is intended to provide general information and it is not intended nor can it be relied upon as legal advice. The contents of this document do not fetter or bind this office with respect to any matter. The Information and Privacy Commissioner for Nova Scotia will keep an open mind if this office receives a review request (appeal) on the subject matter of this document. As an independent agency mandated to oversee compliance with *FOIPOP* and *Part XX* of the *MGA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot investigate in advance any concerns from an applicant related to an access to information request, so if there are concerns with a public body's or municipality's decision, the applicant must file a review request for this office to investigate the issue and to provide recommendations in response to those appeals. It remains the responsibility of each public body or municipality to ensure that it complies with its responsibilities under the relevant legislation.

Introduction

In 2025, the Nova Scotia Legislative Assembly passed amendments to The Freedom of Information and Protection of Privacy Act (FOIPOP), Part XX of the Municipal Government Act (MGA) and the Privacy Review Officer Act (PRO). These amendments received royal assent on March 26, 2025. One of the changes to these Acts was to give a provincial or municipal government institution (public bodies) the ability to apply to the Information and Privacy Commissioner (known in the laws as the Review Officer) (Commissioner) to disregard:

- A request made pursuant to section 6 of FOIPOP (access to information request); or
- A request for a correction to the applicant's personal information made pursuant to section 25 of FOIPOP (request for correction).
- A privacy complaint filed under the internal privacy-complaint procedure of the public body.

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 in a particular case, to have their personal information corrected, or to have a privacy complaint investigated. It is important for a public body to remember that an application to disregard must present a sound basis for considerations.

A public body must submit the application to disregard in writing and provide any supporting facts, evidence, and arguments to support its case. The Office of the Information and Privacy Commissioner (OIPC) has created an Application to Disregard Form for public bodies to use.

This resource will explain the procedure when a public body makes an application to disregard an access to information request, a request for correction or a privacy complaint.

The right of access to information is not absolute. The Legislature recognizes that there will be certain individuals who may use the access provisions of FOIPOP in a way that is contrary to the principles and objects of FOIP.[1]

How does this Guide work?

This guide breaks down each subsection to assist public bodies and applicants in understanding how the Commissioner will interpret each authority to disregard.

For the purposes of this guide, all references will be to the FOIPOP section numbers only. If you are operating under the MGA, please adjust accordingly.[1] Furthermore, the authority to disregard can also be applied to requests for correction and privacy complaints, please

[1] This guide does not apply to the Personal Health Information Act (PHIA). While PHIA also provides authority to disregard, it does not completely align with FOIPOP, MGA and PRO.

adjust accordingly. There is an Appendix at the end of this guide that sets out the wording of each section. This guide will be applied equally to all authorities to disregard.

For the purposes of this guide, we refer to "public body" to include any and all organisations that are subject to FOIPOP and the MGA.[2] And we will use the title "FOIPOP Administrator" to refer to the person responsible for processing FOIPOP requests.

What does the law say?

6A (2)[3] The head of the public body may apply to the Review Officer for approval to disregard one or more requests for access if the head is of the opinion that

(a) the requests are trivial, frivolous or vexatious;

(b) the requests are for information already provided to the applicant;

(c) the requests amount to an abuse of the right to make a request because they are

(i) unduly repetitive or systematic,

(ii) excessively broad or incomprehensible, or

(iii) otherwise not made in good faith; or

(d) responding to the requests would unreasonably interfere with the operations of the public body and the requests are repetitious or systematic in nature.

How does the law work?

6B of FOIPOP says that the request under subsection 6A(2) must be made within fourteen (14) days of the receipt of an application for access.

Section 6A(2) of FOIPOP provides public bodies the ability to apply to the Commissioner requesting authorization to disregard an access request (section 6 application). Section 25A FOIPOP provides public bodies to apply to the Commissioner to disregard a correction request. Section 6A of PRO provides public bodies to apply to the Commissioner to disregard a privacy complaint.

Subsection 6B requires a public body to make an application to disregard to the Commissioner. This should be done by filling out the OIPC's Application to Disregard Form, which includes evidence and argument about how the criteria are met.

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, to request a correction to their own

[2] Public bodies include government departments, universities, regional centres for education, municipalities and municipal bodies, municipal police, transit authorities, health authorities, agencies, boards and commissions.

[3] This is the section number for a FOIPOP access request. MGA has mirror wording. See the Appendix for mirror wording for MGA and PRO.

personal information or to file a privacy complaint about their personal information. It is important for a public body to remember that an application to disregard must present a sound basis for consideration and should be prepared with this in mind.[4]

Generally, the actions of applicants are not under scrutiny. They have no duty to be accountable to the public body. The law is in place to allow for the scrutiny of those who govern, not the other way around. When making access requests, applicants who frequently use the Act are exercising a statutory right. While some requests can be complicated and may even be intended as "fishing expeditions", they are lawful and ought to be treated with respect.[5]

However, FOIPOP must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act.[6]

What does each authority mean?

Disregard request(s) that are trivial, frivolous, or vexatious – 6A(2)(a)

For this provision to be found to apply, the public body would have to demonstrate that the applicant's access to information request(s) or request(s) for correction is frivolous, vexatious, or concerns a trivial matter.

When making a determination whether a request is trivial or frivolous, the Commissioner will assess whether a public body has established, on reasonable grounds, that the request is part of a pattern of conduct that amounts to abuse of the right to make a request or is made in bad faith. As approving an application to disregard essentially eliminates an applicant's right to access information, doubt will be resolved by the Commissioner in favour of applicants.

While applicants should be reasonable in making access requests, it is essential that FOIPOP Administrators work with them and recall the duty to assist in providing access to information. FOIPOP Administrators must perform their duties in the spirit of the Act and remember that in Canadian jurisdictions where similar legislative provisions exist, Commissioners are reluctant to support a decision to disregard a request for access unless the evidence is clear and convincing.[7]

The following definitions and factors have been established[8]:

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.[9]

---

[4] Office of the New Brunswick Information and Privacy Commissioner (NB IPC) Interpretation Bulletin, Section 15 – Permission to disregard access request.
[5] AB IPC Investigation Report F2017-IR-01 at [80].
[6] BC IPC Order 110-1996 at p. 6.
[7] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 2.
[8] SK IPC Guide to FOIP, Chapter 3, Access to Records. Updated 5 May 2023.
[9] SK OIPC Review Report F-2010-002 at [57], [60] and [61].

Vexatious means without reasonable or probable cause or excuse.[10] 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.[11]

A request is not vexatious simply because a public body is annoyed or irked because the request is for information the release of which may be uncomfortable for the public body.[12]

However, FOIPOP must not become a weapon for disgruntled individuals to use against a public body for reasons that have nothing to do with the Act.[13]

Vexatious means "with intent to annoy, harass, embarrass, or cause discomfort." While it is not uncommon for FOIPOP Administrators to find requests for information bothersome or vexing in some fashion or another, one cannot disregard a request as vexatious simply because of a subjective view that a request has an annoying or vexatious component. The following factors may support a finding that a request is vexatious:

- A request that is submitted over and over again by one individual or a group of individuals working in concert with each other.
- A history or an ongoing pattern of access requests designed to harass or annoy a public body.
- Excessive volume of access requests.
- The timing of access requests.
- Abusive or aggressive language.
- Administrative burden on the public body.
- Personal grudges.
- Unfounded accusations.[14]

Communications from applicants unrelated to requests may provide evidence of harassment, abuse or other ulterior motive. As an example, in Ontario Order MO-2488, one of the multitude of reasons for finding that a request was made for a purpose other than to obtain access and was therefore frivolous included that the applicant sent more than 300 emails to the public body in a six-month period and telephoned staff almost daily.[15]

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.[16] In *Chutskoff v Bonora*, 2014 ABQB 389 (CanLII), Michalyshyn J identified a "catalogue" of features of vexatious litigation:

---

[10] SK OIPC Review Report F-2010-002 at [62].
[11] Office of the Northwest Territories Information and Privacy Commissioner (NWT IPC), Review 17-161 at p. 10. Also, in SK OIPC Review Report 2010-002 at [69].
[12] SK OIPC Review Report F-2010-002 at [69].
[13] BC IPC Order 110-1996 at p. 6.
[14] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 4.
[15] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 4.
[16] AB IPC Request to Disregard F2019-RTD-01 at p. 13.

- 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.
- Advancing "Organized Pseudolegal Commercial Argument."

Any of these indicia are a basis to classify a legal action as vexatious.[17]

There is no burden on an applicant to show that the access to information request is for a legitimate purpose. It is not improper to request information from the state for the purpose of seeking civil redress arising from the manner in which the state conducted proceedings against an applicant.[18]

A **trivial matter** is something insignificant, unimportant or without merit. It is similar to frivolous. Information that may be trivial from one person's perspective, however, may be of importance from another's. Therefore, what is trivial is somewhat subjective.[19]

Disregard request(s) for information already provided to the applicant – 6A(2)(b)

When deciding whether to seek approval to disregard a request under this section, the issue is whether the public body has provided the information to the same applicant. It is not enough to surmise that the applicant must already be in possession of the information sought, rather a public body must demonstrate that it has provided the information in the current request to the same applicant. Furthermore, you must consider whether there may be, in exceptional circumstances, a justifiable reason for the applicant to make a request for the same information (i.e. applicant had a fire and records were destroyed).[20]

Disregard request(s) that amount to an abuse of the right to make a request - 6A(2)(c)

Pursuant to section 6A(2)(c) there are three tests which on their own or in any combination may result in a request amounting to an abuse of the right of access. Some factors may be relevant to more than one of the tests.

---

[17] *Chutskoff v Bonora*, 2014 ABQB 389 (CanLII) at [93]. See also AB IPC Request to Disregard F2019- RTD-01 at p. 13.
[18] AB IPC Request to Disregard F2019-RTD-01 at p. 13.
[19] ON IPC Order M-618 at [17].
[20] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 2.

Generally, abuse of the right to make a request means excessive or improper use of the access to information legislation. This section is intended to be applied to those circumstances where the right of access is being employed for illegitimate purposes. The following illustrate some of the relevant factors in assessing whether a request is an abuse of the right of access:

1. Number of requests – whether the number is excessive by reasonable standards.
2. Nature and scope of the requests – whether they are excessively broad and varied in scope or unusually detailed, or whether they are identical to or similar to previous requests.
3. Timing of the requests – whether the timing of the requests coincides with some other event, such as an ongoing complaint against the public body or its staff unrelated to the request.
4. Purpose of the requests – whether they are made for an unreasonable or illegitimate purpose, such as to annoy or harass the public body or to burden the system.[21]
5. Wording of the requests: are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations.[22]

An **abuse of the right of access, correction or privacy complaints** is where an applicant is using the provisions of FOIPOP in a way that is contrary to its principles and objects.

Abuse of the right of access or correction can have serious consequences for the rights of others and for the public interest. By overburdening a public body, misuse by one person can threaten or diminish a legitimate exercise of that same right by others. Such abuse also harms the public interest since it unnecessarily adds to a public body's costs of complying with the Act.

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.

The public body 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 second part of the test being met.

To determine that a request is an abuse of process, one or more of the following three tests must be met first.

[21] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 2.
[22] Fifth factor adopted from AB IPC Order F2015-16 at [39] to [54]. Added to criteria in SK OIPC Review Report 053-2015 at [15] and [38] to [41].

… because the requests are unduly repetitive or systematic – 6A(2)(c)(i)

Undue means excessive or disproportionate.[23]

Repetitious requests are requests that are made two or more times.[24]

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.[25] It includes a pattern of conduct that is regular or deliberate.[26]

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.[27]

---

[23] British Columbia Government Services, FOIPPA Policy Definitions at https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions. Accessed March 15, 2025.
[24] BC IPC Order F10-01 at [16].
[25] BC IPC Order F13-18 at [23].
[26] AB IPC Request to Disregard F2019-RTD-01 at p. 9.
[27] Office of the New Brunswick Information and Privacy Commissioner (NB IPC) Interpretation Bulletin, Section 15 – Permission to disregard access request.

The public body 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.[28]

Evidence of previous requests is relevant to the determination of whether the current request is repetitious.[29]

The fact that an applicant makes numerous requests does not mean that the requests are repetitious, as long as they are not requesting essentially the same information.[30]

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 to pinpoint the specific records they are seeking. 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.[31]

A request is repetitive when a request for the same records or information is submitted more than once. "Systematic" involves a pattern of conduct that is regular or deliberate. The number of requests of a similar scope over a period of time or a repeated request for substantially the same information may indicate a repetitive or systematic course of action. Access legislation was not intended to allow an applicant to resubmit the same or similar access requests to a public body simply because of dissatisfaction with a response.[32]

One of the main purposes of the legislation is to allow citizens to obtain access to the records and information that the government retains about them. The purpose is transparency and to allow a citizen to correct any information the government has about them that is incorrect. There is no need to obtain duplicate or triplicate copies of a document to achieve this purpose. One copy is sufficient.[33]

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. Characteristics of systematic requests as:

- a pattern of requesting more records, based on what the respondent sees in records already received;
- combing over records deliberately in order to identify further issues;

---

[28] AB IPC Request to Disregard F2019-RTD-01 at p. 10.
[29] AB IPC Request to Disregard F2019-RTD-01 at p. 9.
[30] BC IPC Order F23-37, para 45.
[31] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 3.
[32] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 4.
[33] *Pottie v. Nova Scotia (Community Services)*, 2024 NSSC 181, at para 16.

- revisiting earlier freedom of information requests;
- systematically raising issues with the public body about their responses to freedom of information requests, and then often taking those issues to review by OIPC;
- behavior suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events; and
- an increase in frequency of requests over time.[34]

… because the requests are excessively broad or incomprehensible – 6A(2)(c)(ii)

Excessively broad is meant to capture a single request that is excessively broad in scope. Prior to seeking approval to disregard on this ground, FOIPOP Administrators must attempt to narrow the scope of a request by discussing with applicants that the volume of records involved in fulfilling a request is more than the public body can handle, and engaging in a good faith discussion to help determine whether a more specifically worded request would capture the information being sought, or whether the request could be limited to certain locations where records may be found, certain employees who may have such records, or certain time periods. This is in keeping with the public body's duty to assist. Bear in mind that a request for a large amount of records is not necessarily excessively broad if it is clear and specific enough to allow the records to be identified and located. A request is more likely to be considered excessively broad if, in addition to being a request for a large amount of records, the wording is overly broad and too general in scope, such that identifying particular responsive records becomes difficult if not impossible.[35]

Incomprehensible implies that the request is worded or structured in a way that it is impossible for the FOIPOP Administrator to respond to it. As with excessively broad, it is incumbent on FOIPOP Administrators to work with applicants, where possible, to identify the records sought and to assist applicants in providing access to the information. When preparing to ask the Commissioner to disregard a request on the basis that it is incomprehensible, the following questions should be considered:

- What difficulty was encountered with the wording of the original request received by the public body?
- What was unclear about the wording of the request?
- What attempts were made to clarify the request with the applicant? If you proceed with an application to disregard to the Commissioner, please include information on the number and dates of attempts to work with the applicant, and copies of any communications with the applicant, with personal information removed.
- Did the applicant agree to amend the original request in any way in an attempt to clarify it? What was the date on which the request was amended? What was the wording of the clarified request?[36]

---

[34] BC IPC Order F23-37, para 48 citing BC IPC Order F13-18, para 23 and BC IPC Order F18-37, para 26.
[35] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 3.
[36] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 3.

Given the 14 day deadline for a public body to file an Application to Disregard, the Commissioner acknowledges that failure by applicants to respond to communications from FOIPOP Administrators in a timely manner will generally frustrate good faith efforts to narrow or make sense of requests. Failure by applicants to engage with the public body, will work in the public body's favour in making their case. As such, the OIPC encourages applicants to engage with the public body's efforts to narrow or make sense of the request(s).

… because the requests are otherwise not made in good faith – 6A(2)(c)(iii)

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.[37]

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.[38]

When an applicant refuses to cooperate with a public body in the process of accessing information or if a party misrepresents events to the OIPC, this could suggest the party is not acting in good faith.[39]

The intention to use information obtained from an access request in a manner that is disadvantageous to the public body does not qualify as bad faith. To the contrary, it is appropriate for requesters to seek information "to publicize what they consider to be inappropriate or problematic decisions or processes undertaken" by public bodies.[40] Applicants do not need to justify a request and FOIPOP does not place limits on what an applicant can do with the information once access has been granted.[41]

Bad faith is not simply bad judgment or negligence but requires intent. It contemplates a state of mind which views the access process with contempt and utilizes it as a nuisance, rather than a valid means of obtaining information. When considering invoking "bad faith", the following questions are relevant:

- Is there a "wrong" or "dishonest" purpose in the applicant's request?
- What indications are there that the request might be being made in bad faith?
- Is the applicant using the Act for its intended purposes?

---

[37] British Columbia Government Services, FOIPPA Policy Definitions at https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions. Accessed March 15, 2025.
[38] SK OPIC Review Report F-2010-002 at [89].
[39] SK OIPC Review Report F-2010-002 at [103] and [105].
[40] ON IPC Order MO-1924 at p. 10.
[41] ON IPC Order MO-1924 at p. 10.

- Is the applicant using the Act as a weapon against the public body, to overburden, or impair the ability of the public body to function?

As an example, in Ontario Order M-850 a request was assessed as being in bad faith where the applicant stated that he was testing or examining the boundaries of the act or was having fun in filing requests. Additionally, some of the requests were made for the purpose of harassing an employee who was involved in an action brought by the applicant in another forum.[42]

Disregard request(s) that would unreasonably interfere with operations and are repetitious or systematic – 6A(2)(d)

For this provision to be found to apply, the public body would have to demonstrate that the applicant's access to information requests or requests for correction interfere unreasonably with the operations of the public body due to their repetitious or systematic nature.

Both parts of the following test must be met:

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

Repetitious requests are those that are made two or more times from the same applicant.[43]

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.[44] It includes a pattern of conduct that is regular or deliberate.[45] To be methodical; arranged, conducted, according to system; deliberate.[46]

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.

---

[42] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, pgs. 4-5.
[43] BC IPC Order F10-01 at [16].
[44] BC IPC Order F13-18 at [23].
[45] AB IPC Request to Disregard F2019-RTD-01 at p. 9.
[46] British Columbia Government Services, FOIPPA Policy Definitions at https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions. Accessed March 15, 2025.

- 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.[47]

The public body 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.[48]

Access applicants generally do not need to justify their motive for requesting access to records. In the context of deciding an application to disregard however, motive is a relevant consideration. If it is clear that the motive of the applicant is predominantly to harass, coerce or manipulate the public body, rather than a sincere desire to access records to obtain knowledge, this would support a finding that the requests were systematic.[49]

Evidence of previous requests is relevant to the determination of whether the current request is repetitious.[50]

2. Do the repetitious or systematic requests unreasonably interfere with the operations of the public body?

To interfere with operations, the request(s) must obstruct or hinder the range of effectiveness of the public body's activities. The circumstances of the particular public body must be considered. For example, it would take less to interfere with the operations of a small municipality compared to a large provincial department.

[47] NB IPC Interpretation Bulletin, Section 15 – Permission to disregard access request.
[48] AB IPC Request to Disregard F2019-RTD-01 at p. 10.
[49] BC IPC Order F23-37, para 61.
[50] AB IPC Request to Disregard F2019-RTD-01 at p. 9.

Unreasonably interfere means going beyond the limits of what is reasonable or equitable in time and resources and the impact, which this use of resources would have on the public body's day-to-day activities.[51]

The phrase "unreasonably interfere with the operations of the public body" also appears in Act, in relation to time extensions. Our office has created a document, called "Time Extension Guidelines for Public Bodies", which we encourage public bodies to refer to as well.[52]

Each of the following factors should be considered:

- Are the requests large and complex, rather than confusing, vague, broadly worded, or wide-ranging (e.g., "all records" on a topic), without parameters such as date ranges.
- Did the public body seek clarification and was it obtained.
- Did the clarification of the applicant's requests, if obtained, provide useful details to enable the effective processing of the requests.
- Do the applicant's requests impair the public body's ability to respond to other requests in a timely fashion.
- What is the amount of time to be committed for the processing of the request, such as:
    - Number of employees to be involved in processing the request;
    - Number of employees and hours expended to identify, retrieve, review, redact if necessary, and copy records;
    - Number of total employees in the same office; and
    - Whether there is an employee assigned solely to process access requests.[53]

For the second part of the test, the public body should address all of the above factors in its application to the Commissioner.

Requests for branch-wide searches could be found to amount to unreasonable interference, especially where an applicant is able to name the individuals who may possess the requested information.[54]

The public body must meet a high threshold of showing "unreasonable interference", as opposed to mere disruption. It will usually be the case that a request for information will pose some disruption or inconvenience to a public body; that is not cause to keep information from a citizen exercising their democratic and quasi-constitutional rights.[55]

A public body's circumstances may be relevant in determining whether a request unreasonably interferes with its operations. All public bodies must ensure that they have devoted reasonable resources to process requests, however what is reasonable for a large

[51] British Columbia Government Services, FOIPPA Policy Definitions at https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/policy-definitions. Accessed March 15, 2025.
[52] Time Extension Guidelines for Public Bodies, at pg. 4.
[53] NB IPC Interpretation Bulletin, Section 15 – Permission to disregard access request.
[54] AB IPC Request to Disregard F2019-RTD-01 at p. 11.
[55] AB IPC Request to Disregard F2019-RTD-01 at p. 12.

public body (ie. government department) may not be the same for a small public body (ie. Municipality). Public bodies must establish that responding to a request will unreasonably interfere with their operations. This could be reflected in the number of requests submitted by an applicant or a group of applicants working together or the sheer size of the access request itself. The unreasonable interference could be exhibited in the human resources burden it imposes on the public body, the expense of providing the response, the diversion away from other core duties necessitated by responding to the request, and the effect of the overall burden that the request will impose on the public body.[56]

General considerations

In preparing to make an application to disregard a request, please consider the following:

- Has the public body considered applying to the Commissioner for an extension of time rather than applying for permission to disregard the request?
- Was the applicant requested to break the request down into smaller requests to be submitted over a manageable period of time?
- What is the approximate number of pages in the responsive records?
- What is the approximate number of records that need to be searched?
- In what format are the responsive records stored?
- When was the search for the records begun?
- Who was responsible for conducting the search?
- What was the approximate time taken to search for the records?
- Was the search discontinued at some point? If so, when and for what reason?
- Were all responsive records provided to the FOIPOP Administrator? If so, when?
- How would completing the response and providing the records unreasonably interfere with the operations of the public body?
- How many active requests is the public body currently processing?
- What other access and privacy activities is the public body currently managing and have these activities been influenced by the time taken to respond to this access request?
- How has this access request affected the public body's staffing resources and the current workloads of staff?
- Were staff members required to work overtime to process the access request?
- Were staff members re-allocated from other activities to respond to the access request?
- Were staff members from other business areas required to assist in responding to the access request?
- Has responding to the access request affected the public body's ability to respond in a timely manner to other access requests or other access and privacy related activities?

[56] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, p. 2.

- Does the public body have an alternate/back-up FOIPOP Administrator who is able to assist in processing this access request?
- Are there multiple concurrent requests submitted by the applicant?
- If applicable, what are the dates on which the public body received each of the applicant's requests?
- If applicable, on what dates did the public body receive requests from persons with whom the applicant is working in association?
- If applicable, what is the evidence that the applicant is working in association with others who have submitted access requests?
- What is the wording of the multiple concurrent requests in question?[57]

How does a public body make an application to disregard and what to expect?

The public body must fill out the OIPC's Application to Disregard Form. The completed form must be sent to: oipcns@novascotia.ca.

The public body must make the application to disregard within fourteen days after receiving a request. If it is not made in time, the Commissioner has no discretion to accept it late, or to extend the time to submit the application.

Once the application to disregard is received, the Commissioner has up to fourteen days after receiving an application, to decide to approve or disapprove the application to disregard.

The public body will not be given another opportunity to provide information about the application to disregard unless the Commissioner asks for further information or clarification.

The Commissioner reserves the right to contact the applicant and discuss the application to disregard if necessary. If this step is deemed necessary, the OIPC will collect the name and contact information of the applicant from the public body.

The Acts grant the applicant rights. Any doubt by the Commissioner whether to approve an application to disregard will be resolved in favour of the applicant.

The public body's file is on hold for the period between when the application to disregard is made and the time when the Commissioner provides a written report to the public body.

Where the Commissioner does not approve the application to disregard, the public body must respond to the request in the manner required by the law.

If the Commissioner does not approve the public body's application to disregard, the process of responding to the request must continue. Any time spent by the public body to prepare, submit and receive a decision from the Commissioner on an application to

[57] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, pgs. 5-6.

disregard does not extend the other timelines as set out in the Act. The original 30 day time period to process the request still applies. That being said, if the grounds are present, the public body can apply to the Commissioner for an extension of the time limit to respond to the applicant.

Where the Commissioner approves the application to disregard, the public body must notify the applicant in the manner required by the law.

Where the Commissioner approves the application to disregard, and there is an active review related to the public body's file(s), the Commissioner will discontinue the review(s) (under section 37A).

If an applicant disagrees with the decision of the public body to disregard their request, they can appeal to the Supreme Court of Nova Scotia.

Acknowledgements

Special thanks to all of our Canadian counterparts who have had these provisions in their laws and who have produced Guides and decisions that helped us to make this guide and will assist our decision making for these new powers.

Disclaimer

This guide may be updated as new cases become available. The Commissioner reserves the right to rely on additional cases and resources in the decision-making process, not only those listed above.

Questions?

This guidance was prepared by the Office of the Information and Privacy Commissioner for Nova Scotia. Whether you are an applicant, a public body or a municipality, we encourage you to contact us if you have any questions about the access to information process in Nova Scotia.

Phone: 902-424-4684
Toll Free (NS): 1-866-243-1564
TDD/TTY: 1-800-855-0511
Fax: 902-424-8303
Email: oipcns@novascotia.ca

Appendix

Please note, at the time of this Guide being published, the final wording of the new provisions was not yet available. As such, this Appendix cannot be completed. We will update it as soon as the final wording is available.