Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner (Review Officer)
David Nurse

WRITTEN REPORT ATD25-01

April 14, 2025

Commissioner's Written Report on an Application to Disregard

Department of Opportunities and Social Development (OSD)

Summary

The Department of Opportunities and Social Development (OSD) submitted an application to disregard (Application) fifty-six (56) access requests that the public body received under the Freedom of Information and Protection of Privacy Act (*FOIPOP*). The Application was made under sections 6A(2)(a), (2)(c) and (2)(d) of *FOIPOP.*

For the reasons that follow, under the delegation of the Information and Privacy Commissioner, I have decided to approve the application to disregard in full.

The public body also sought the additional relief of banning the applicant from submitting access requests to the public body for 12 months following this decision and to limit the applicant to one active request at a time for 12 months following the ban. I have partially approved this remedy – the applicant will be limited to one access request per month for the 12 months following this decision.

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. Other jurisdictions in Canada have noted that the authority to disregard an access request is an "extraordinary remedy" that should only be granted after careful consideration and only in exceptional cases.[1]

On April 4, 2025, the Department of Opportunities and Social Development (OSD) submitted an Application to Disregard (Application) Access Requests that the public body received under the Freedom of Information and Protection of Privacy Act (*FOIPOP*). The Application was made under sections 6A(2)(a), (2)(c) and (2)(d) of *FOIPOP* because the public body is of the opinion that the requests are vexatious (s. 6A(2)(a)), 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; and responding to the requests would unreasonably interfere with the operations of the public body and the requests are repetitious or systematic in nature (s. 6A(2)(d)).

Issues

Has the public body established that the applicant's requests meet the requirements of sections 6A(2)(a), (2)(c) and (2)(d) of *FOIPOP* because the public body is of the opinion that:

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

Analysis

The public body requested that 56 requests for access to information should be disregarded on the following grounds:

1. the requests are trivial, frivolous or vexatious (s. 6A(2)(a))
2. the requests amount to an abuse of the right to make a request because they are unduly repetitive or systematic (s. 6A(2)(c)(i))

[1] BC IPC Order P25-02 [at 16].

3. the requests amount to an abuse of the right to make a request because they are excessively broad or incomprehensible (s. 6A(2)(c)(ii))

4. the requests amount to an abuse of the right to make a request because they are otherwise not made in good faith (s. 6A(2)(c)(iii)); and

5. responding to the requests would unreasonably interfere with the operations of the public body and the requests are repetitious or systematic in nature (s. 6A(2)(d)).

I will first address whether 6A(2)(d) applies:

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

For this provision to be found to apply, the public body would have to demonstrate that the applicant's access to information requests 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 repetitious or systematic?

Repetitious requests are those that are made two or more times from the same applicant.[2]

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.[3] It includes a pattern of conduct that is regular or deliberate.[4] To be methodical; arranged, conducted, according to system; deliberate.[5]

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).

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[2] BC IPC Order F10-01 at [16].
[3] BC IPC Order F13-18 at [23].
[4] AB IPC Request to Disregard F2019-RTD-01 at p. 9.
[5] 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.

- 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.[6]

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.[7]

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.[8]

Evidence of previous requests is relevant to the determination of whether the current request is repetitious.[9]

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

Public Body's Submission

In this application, the public body asserts that the applicant's requests are "repetitious" and continually "refreshed and resubmitted." They state that the applicant has made "identical requests for the same information but for a renewed timeframe. He sources names of civil servants in records that are released to him and then begins a cycle of requesting records specifically from those civil servants, then starts refreshing each request with new timeframes." The public body describes how this strategy has resulted in the applicant generating his own records that he then requests: "Given that any official involvement by DOSD with the applicant ended [in]…2024, the applicant's requests after this point are so frequent that many of the requests only yield the records of processing the applicant's previous requests."

In support of the general claim of repetition and systematic filing, the public body has also provided this Office with a list of the 56 files at issue, including a "request description" in which they provide the text of the applicant's requests. With the exception of one file, the substance of every request is identical; the only variation is that the date range is different, and/or the staff person identified as having "sent, received or handled" the record is different. Rather than submit an application that could incorporate a broader date range and include any and all staff, the applicant has chosen instead to multiply his requests with often many submitted on the same day. One document provided by the public body highlighted 46 different days on which the applicant submitted 3 or more access requests on each day.

Considering the criteria listed above, including the repetitious nature, the close filing time, the deliberate and methodical application strategy, the applicant's requests are clearly repetitious and systematic. In my opinion, the first requirement of s. 6A(2)(d) is satisfied.

I proceed to the next step of the test:

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

To interfere with operations, the requests 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.

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.[10]

[10] 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.

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.[11]

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.[12]

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.[13]

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.[14]

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 public body (ie.

[11] Time Extension Guidelines for Public Bodies, at pg. 4.
[12] NB IPC Interpretation Bulletin, Section 15 – Permission to disregard access request.
[13] AB IPC Request to Disregard F2019-RTD-01 at p. 11.
[14] AB IPC Request to Disregard F2019-RTD-01 at p. 12.

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.[15]

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?

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

- 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?
- 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?[16]

Public Body's Submission

In this application, the public body provided a 31-page document listing 163 of the applicant's files that had received a decision between October 2, 2023 and March 27, 2025. The public body was able to show that between these dates, more than a quarter of all files it issued a decision on came from this applicant. It also provided a 96- page document that listed all closed files for the same period across all of its client departments. The public body closed 629 files total during the same period. This means that 26% of all files closed were for files from this applicant alone; more than a quarter of the department's resources are utilized to respond to this one applicant.

The public body submits that the volume and nature of these requests has led to staff undertaking unique measures to address them: "the applicant submits so many requests at a time that he will often make duplicate requests or mix up staff between departments and IAP Services [Nova Scotia's Information Access and Privacy Unit] is then required to go back to confirm the scope in order to process his requests which compounds the work required to manage the sheer volume of his requests. In order to confirm what files had already been requested, the IAP Administrators

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

who manage the DOSD files had to create a master spreadsheet to determine what information the applicant had already received."

Perhaps the most significant effect of this strain on the operations of the public body is its recent "deemed refusal rate." Three recent Review Reports issued by this Office[17] document the public body's contravention of its requirement to provide other applicants with a decision within the legislative timeline, or "deemed refusal."

In other words, with its current resources, the public body has been unable to meet its statutory deadlines to respond to access to information requests on several occasions.[18] Considering the disproportionate time spent on one individual who is consuming a quarter of this public body's resources, it is clear that the applicant's repetitious and systematic requests have resulted in an unreasonable interference with the operations of the public body.

Applicant's submissions

The application to disregard process as currently outlined in s. 6C of *FOIPOP* does not provide any mechanism for soliciting representations from the applicant and only provides this Office with a 14-day response period after receiving the public body's request. As a result, submissions were not solicited from the applicant.

Conclusion

In my opinion, the public body has satisfied its burden that the applicant's requests are repetitious and systematic and have unreasonably interfered with its operations, as provided in s. 6A(2)(d). As a result, I approve its application to disregard the 56 files at issue.

Because I have found that s. 6A(2)(d) applies, it is not necessary for me to consider whether the applicant's requests are also trivial, frivolous or vexatious, or amount to an abuse of the right to make a request.

Future remedy

In addition to disregarding the files at issue, the public body has requested that a future remedy be provided, consisting of a 12-month period after this decision during which the applicant is not permitted to submit requests to the public body, followed by another 12-month period during which he can only have one request open at a time.

While there is no specific reference in *FOIPOP*'s relevant provision to future or prospective relief with respect to disregarding access requests, other Courts and Commissioner's Offices

[17] Nova Scotia OIPC Reports 24-03, 24-16, and 25-03

[18] In NS Review Report 25-03, Acting Commissioner Carmen Stuart wrote "This is the sixth report that the Commissioner has made since August 2023 because this public body has failed to respond to the applicant within the statutory deadline."

across Canada have interpreted similar provisions to import a remedial power to make prospective orders. The BC Supreme Court in *Crocker* provided:

> Section 43 [BC FIPPA's application to disregard provision] would be rendered useless if a public body, which is being unduly burdened by a number of repetitious or systemic requests, had to make separate applications to the Commissioner every time it received a new request from that person. Section 43 could not have been intended to increase the administrative burden on public bodies which would likely occur if the Commissioner did not have the power to make authorizations that extend to future requests. [19]

This rationale has been followed in numerous Commissioners' orders in British Columbia, Alberta, and Saskatchewan.[20] As the relevant provision in Nova Scotia's *FOIPOP* is substantively similar to those jurisdictions, my opinion is that the Commissioner's Office has the authority under s. 6A to provide future or prospective relief from repetitious or systematic requests that interfere with the operations of the public body.

With respect to the measure of the prospective remedy, the B.C. Supreme Court provides:

> the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body. This is especially so when the requests relate to personal information for two reasons. First, personal information is more restricted by its nature and it is less likely that a request for personal information will unreasonably interfere with the operations of the public body. Second, the applicant has a stronger claim to have access to records of a personal nature than to general records.[21]

In accordance with these principles and because the applicant's requests from this public body have historically been for personal information, I do not approve of the 12-month ban and following one-request-at-a-time limit proposed by the public body; I believe a more proportionate remedy would be to limit his requests to one per month for the 12 months following this decision. This will prevent repetitious and systematic requests and, in conjunction with the 56 disregarded files, likely mitigate any resulting unreasonable interference. Should this not be the case, the public body may apply again under s. 6A for an authorization to disregard the request(s).

Please inform the applicant of my decision in accordance with s. 6E. Please share a copy of this written decision with the applicant. We will be posting a copy to our website, but there will be a delay.

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[19] 1997 CanLII 4406 (BC SC) *Crocker v. The Information and Privacy Commissioner of B.C.*
[20] *Saskatchewan Government Insurance (Re)*, 2021 CanLII 74037 (SK IPC), BC Order 25-02, 2025 BCIPC 16, *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC), *Calgary (Police Service) (Re)*, 2020 CanLII 97987 (AB OIPC)
[21] *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC) at [29].

April 14, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia

OIPC file: 25-00218