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

WRITTEN REPORT ATD25-02

May 8, 2025

Commissioner's Written Report on an Application to Disregard

Department of Justice

Summary: The Department of Justice (public body) submitted an application to disregard (Application) 10 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), 6A(2)(c) and 6A(2)(d) of *FOIPOP.*

I have decided to approve the Application 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 access 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:

[1] 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)
- A request for a correction to the applicant's personal information made pursuant to section 25 of *FOIPOP* (request for correction), or
- A privacy complaint filed under the internal privacy-complaint procedure of the public body

[2] An application to disregard (Application) 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]

[3] On April 8, 2025, the Department of Justice (public body) submitted an Application to disregard 10 access requests that the public body received under *FOIPOP*. The Application was made under sections 6A(2)(a), 6A(2)(c) and 6A(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 unduly repetitive or systematic, excessively broad or incomprehensible and otherwise not made in good faith (s. 6A(2)(c)), 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)).

ISSUE:

[4] Has the public body established that the applicant's requests meet the requirements of sections 6A(2)(a), 6A(2)(c) and 6A(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:

[5] The public body requested that 10 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))

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))

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

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))

[6] I will first address whether s. 6A(2)(c) applies.

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

[7] 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.

[8] 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[2]

5. Wording of the requests: are the requests or subsequent communications in their nature offensive, vulgar, derogatory or contain unfounded allegations[3]

[9] An abuse of the right of access is where an applicant is using the provisions of *FOIPOP* in a way that is contrary to its principles and objectives. Abuse of the right of access 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.

[2] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 2.
[3] 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].

[10] 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.

[11] 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.

[12] To determine that a request is an abuse of process, one or more of the scenarios in one of the subsections must be met first. I will first examine s. 6A(2)(c)(i).

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

[13] Undue means excessive or disproportionate.[4] Repetitious requests are requests that are made two or more times.[5] 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.[6] It includes a pattern of conduct that is regular or deliberate.[7]

[14] 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

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

- 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[8]

[15] 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.

[16] 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.[9]

[17] Evidence of previous requests is relevant to the determination of whether the current request is repetitious.[10] 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.[11]

[18] 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.[12]

[19] 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.[13]

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[8] Office of the New Brunswick Information and Privacy Commissioner (NB IPC) Interpretation Bulletin, Section 15 – Permission to disregard access request.
[9] AB IPC Request to Disregard F2019-RTD-01 at p. 10.
[10] AB IPC Request to Disregard F2019-RTD-01 at p. 9.
[11] BC IPC Order F23-37, para 45.
[12] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 3.
[13] NL IPC *Applying to the Commissioner for Approval to Disregard an Access to Information Request*, page 4.

[20] 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.[14]

[21] 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 are:

- 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
- 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 the Office of the Information and Privacy Commissioner (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[15]

PUBLIC BODY'S SUMBISSIONS:

[22] In this Application, the public body provided a list documenting the applicant's requests. Between August 1, 2023 and March 27, 2025 (about 20 months), the applicant filed 38 requests out of a total of 815 received by the public body. This means that this individual's requests comprised 4.7% of the public body's access request files. While this statistic on its own does not amount to a repetitive or systematic practice that indicates an abuse of process, the wording of the applicant's 10 requests at issue are clearly repetitious – 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 one access request that could incorporate a broader date range and include any and all staff, the applicant has chosen instead to create multiple access requests. Further, 8 of the 10 access requests were submitted on the same day.

[14] *Pottie v. Nova Scotia (Community Services)*, 2024 NSSC 181, at para 16.
[15] BC IPC Order F23-37, para 48 citing BC IPC Order F13-18, para 23 and BC IPC Order F18-37, para 26.

[23] The requests are also systematic in that the applicant bases current requests on the names of staff revealed from previous requests. The nearly identical scope will lead to a result in which there is significant overlap considering all of the named staff are employees of the same public body.

[24] This pattern clearly indicates "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."[16]

[25] As described above, an abuse of this process by a single applicant can threaten or diminish a legitimate exercise of this same right or process by others; it also harms public interest since it unnecessarily adds to a public body's costs of complying with the Act.

APPLICANT'S SUBMISSIONS:

[26] The applicant provided detailed written submissions regarding this Application. The applicant asserts that the requests are not intended to harass or obstruct but made in good faith, and that efforts to narrow requests and use distinct date ranges demonstrates a commitment to compliance with *FOIPOP*.

CONCLUSION:

[27] Considering the criteria listed above, including the repetitious nature, the close filing time of the requests, the deliberate and methodical application strategy, the applicant's requests are clearly unduly repetitious and systematic. In my opinion, this has resulted in an abuse of process as contemplated in s. 6A(2)(c)(i).

[28] In my opinion, the public body has satisfied its burden that the applicant's requests amount to an abuse of the right to make a request and I approve its Application to disregard the 10 access requests at issue.

[29] Because I have found that s. 6A(2)(c) applies, it is not necessary for me to consider whether the applicant's requests are also trivial, frivolous or vexatious, or unreasonably interfere with the operations of the public body.

FUTURE REMEDY:

[30] In addition to disregarding the access requests 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 access requests to the public body, followed by another 12-month period during which the applicant can only have one access request open at a time.

[31] 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

[16] BC IPC Order F23-37, para 48 citing BC IPC Order F13-18, para 23 and BC IPC Order F18-37, para 26.

Offices 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. [17]

[32] This rationale has been followed in numerous Commissioners' orders in British Columbia, Alberta, and Saskatchewan.[18] As the relevant provision in Nova Scotia's *FOIPOP* is substantively similar to those jurisdictions, my opinion is that the Commissioner 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.

[33] 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.[19]

[34] 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 the applicant's requests to one per month for the 12 months following this decision. This will prevent repetitious and systematic requests and, in conjunction with the 10 disregarded access requests, likely mitigate any resulting unreasonable interference. Should this not be the case, the public body may apply under s. 6A of *FOIPOP* for approval to disregard the request(s).

[35] Please inform the applicant of my decision in accordance with s. 6E of *FOIPOP*. 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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[17] 1997 CanLII 4406 (BC SC) *Crocker v. The Information and Privacy Commissioner of B.C.*
[18] *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)
[19] *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC) at [29].

May 8, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia

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