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

WRITTEN REPORT ATD25-05

May 8, 2025

Commissioner's Written Report on an Application to Disregard

Department of Service Nova Scotia

Summary: The Department of Service Nova Scotia (public body) submitted an application to disregard (Application) four access requests 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 on the basis that the access requests are frivolous and vexatious and an abuse of process as they are unduly repetitive and systematic.

The public body sought the additional relief of banning the applicant from submitting access requests 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 approved this remedy in part. The applicant will be prohibited from submitting access requests to the public body for a 6-month period, followed by a 12-month period during which the applicant can only have one request open at a time.

If the applicant again abuses the right to request access to information, the public body is free to submit a new Application to this office to disregard one or more access requests.

INTRODUCTION:

[1] On April 8, 2025, the public body submitted the application to disregard (Application) four access requests pursuant to sections 6A(2)(a), 6A(2)(c) and 6A(2)(d) of *Freedom of Information and Protection of Privacy Act* (*FOIPOP*).

ISSUE:

[2] Has the public body established that the applicant's access requests meet the requirements of sections 6A(2)(a), 6A(2)(c) and 6A(2)(d) of *FOIPOP*?

PUBLIC BODY'S SUBMISSIONS:

[3] The public body's position is that the four access requests are repetitive, systematic, and not mad in good faith and therefore are an abuse of process. The public body further submitted that the access requests are also trivial, frivolous and vexatious.

[4] The public body made extensive submissions regarding the applicant's pattern of behaviour in submitting access requests across various public bodies served by Information, Access and Privacy (IAP) Services. It is not necessary to repeat the details here in full, but I would highlight the following points made by the public body:

- The applicant alone is responsible for approximately 10% of all access requests received across all government departments serviced by IAP Services

- The applicant escalated the number of access requests submitted in early 2024, and in one day alone submitted 38 requests across various departments

- The applicant showed disrespectful conduct towards government staff, including threatening lawsuits, and making complaints to senior officials about the conduct of staff; this resulted in the applicant being subject to a communications protocol, and only be able to engage with a senior manager in IAP services

[5] The public body also provided copies of the access requests submitted by the applicant, which allowed me to understand the specific nature of the requests made, and to compare these requests with prior requests made by the applicant across government. The public body states that the current requests use similar language to past requests, and request records of a specific public body staff member for specific time periods.

APPLICANT'S SUBMISSIONS:

[6] The applicant provided two detailed written submissions regarding this Application. The applicant shows an understanding of the law. The applicant states that the access requests were made in good faith for a legitimate purpose and are not repetitive or systematic.

ANALYSIS & FINDINGS ON SECTION 6A(2)(a):

[7] Are the access requests trivial, frivolous or vexatious as contemplated by s. 6A(2)(a)?

[8] The power to disregard access requests under the British Columbia provisions (s. 43 of British Columbia's *Freedom of Information and Protection of Privacy Act*) are parallel to Nova Scotia's *FOIPOP* s. 6A(2)(a). This power to disregard was discussed by the British Columbia Information and Privacy Commissioner in *Insurance Corporation of British Columbia*, [2002] B.C.I.P.D. No 57; several key paragraphs are reproduced below beginning at 17:

[17] The first point of interpretation is that, by using the word "or" in the phrase "frivolous or vexatious", the Legislature clearly intended those two words to have different meanings. This is consistent with the interpretation the courts have given to the same phrase in Rule 19(24) of the *Rules of Court*. In *Borsato v. Basra* (2000), 43 C.P.C. (4th) 96, [2002] B.C.J. No. 84 (appeal allowed on another ground: [2000] B.C.J. No. 2855), for example, Master Baker said the following, at paras. 24 and 25:

> The plaintiff also attacks the statement of defense under rule 1924. A pleading is frivolous if it is without substance is groundless, fanciful, "trifles with the court" or wastes time. This statement of defense does, in my view, waste time and verges on the fanciful. There may, somewhere in the general denial, be grounds, but as pleaded it lacks substance. It is therefore frivolous.
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> A pleading is vexatious if it is without *bona fides*, is "hopelessly oppressive" or causes the other party anxiety, trouble or expense. This statement of defense cannot be said to be oppressive and possibly without *bona fides*, but is almost certain to cause the plaintiff (and indeed has already caused) anxiety, trouble and expense. It is therefore vexatious.

[18] It also has to be said, however, that the courts have not always found it easy to distinguish between a frivolous or vexatious pleading or proceeding. The courts sometimes tend to treat the two terms as having some overlap. This may also be the case under s. 43(b) without by any means violating the rule that the Legislature is presumed to have intended the two words to have different meanings.

[19] In this case, ICBC relies on Borsato, as well as the Concise Oxford Dictionary (8th edition) definitions of "frivolous" and "vexatious". That dictionary defines "frivolous" as "lacking seriousness; given to trifling, silly". It defines "vexatious" as "an annoying or distressing thing". In addition to the *Concise Oxford Dictionary* definitions of "frivolous" and "vexatious", which ICBC cites, I note the following definitions from *Black's Law Dictionary* (6th ed.):

> **Frivolous:** Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defence is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense. … [case citation omitted]. Frivolous pleadings may be amended to proper form, or ordered stricken, under federal and state Rules of Civil Procedure.
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> **Vexatious:** Without reasonable or probable cause or excuse. … [case citation omitted]

[20] ICBC also cites Commissioner Tom Wright's decision, under Ontario's *Freedom of Information and Protection of Privacy Act*, in Order M-618, [1995] O.I.P.C. No. 385. In that case, Commissioner Wright said (at p. 15) that "the word 'frivolous' is 'typically

associated with matters that are trivial or without merit" and that the "word 'vexatious' is usually taken to mean with intent to annoy, harass, embarrass or cause discomfort".

[21] In Order M-618, Commissioner Wright also said, at p. 14, that definitions of the words "frivolous" and "vexatious" must be viewed in context:

> … Government officials may often find individual requests for information bothersome or vexing in some fashion or another. This is not surprising given that freedom of information legislation is often used as a vehicle for subjecting institutions to public scrutiny. To deny a request because there is an element of vexation attended upon it would mean that freedom of information could be frustrated by an institution's subjective view of the annoyance quotient of particular requests. This, I believe, was clearly not the Legislature's intent.

[22] I agree with this note of caution. By its nature, an access to information request may be vexing or irksome to the public body. The purpose of access to information is, as s. 2(1) of the British Columbia Act explicitly provides, to "make public bodies more accountable to the public". A request may be vexing or irksome to the public body because it will reveal information the public body might prefer not to disclose, but I cannot imagine a case in which a public body's perception that a request is vexatious in this way could, on its own, ever merit relief under s. 43(b).

…..

[26] As Commissioner Flaherty said in Order No. 110-1996, [1996] B.C.I.P.C.D. No. 36, the right of access under the Act must not be abused as a weapon of information warfare. This still holds true in the wake of this year's s. 43 amendment.

[27] The following discussion does not exhaust the meaning of the words "frivolous or vexatious", since other factors may be relevant in the circumstances of a given case. For present purposes, one or more of the following factors may be relevant in determining whether a request is frivolous or vexatious:

- Regardless of how it is so, a frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
- The determination of whether a request is frivolous or vexatious must, in each case, keep in mind Commissioner Wright's cautionary words in Order M-618 and the legislative purposes of the Act (including s. 43).
- A "frivolous" request is one that is made primarily for a purpose other than gaining access to information. It will usually not be enough that a request appears on the surface to be for an ulterior purpose – other facts will usually have to exist before one can conclude that the request is made for some purpose other than gaining access to information.
- The class of "frivolous" requests includes requests that are trivial or not serious, again remembering the words of caution in Order M-618.

- The class of "vexatious" requests includes requests made in "bad faith", *i.e.*, for a malicious or oblique motive. Such requests may be made for the purpose of harassing or obstructing the public body.
- The fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious. Under s. 43(a) of the Act, the commissioner can authorize a public body to disregard repetitive or systematic access requests that would unreasonably interfere with a public body's operations. I do not consider that, because s. 43(a) explicitly refers to repetitious access requests, the commissioner is precluded, in a s. 43(b) case, from considering the repetitive nature of access requests as one factor in deciding whether requests are frivolous or vexatious. To be clear, the fact that access requests are repetitious or systematic in nature cannot, in the face of the explicit test under s. 43(a), be sufficient to warrant relief under s. 43(b). Alongside other factors, however, the fact that repetitious requests have been made may support a finding that a particular request is frivolous or vexatious.

[9] As stated in *Insurance Corporation of British Columbia* above, the applicant's broader pattern of conduct is relevant. It is a key consideration in this case. In my view, based on a holistic review, the access requests are frivolous and vexatious, and likely made for the purpose of harassing or impeding the work of the public body, and gaining attention for the applicant.

[10] I also find the applicant's submissions in regard to this Application are frivolous. The likelihood that specific Department of Service Nova Scotia staff would have personal information of the applicant or their family members – other than that submitted by the applicant - is very low, and the applicant has repeatedly requested the same information. I strongly suspect targeting the public body is a tactic to harass the public body's staff and gain attention for the applicant. This tactic is not a proper use of the access laws, is not fair to other applicants with legitimate access to information request and has backfired.

ANALYSIS & FINDINGS ON SECTION 6A(2)(c):

[11] Because I have found that section 6A(2)(a) applies, it is not necessary for me to consider the other reasons to disregard presented by the public body, but I will.

[12] Do the access requests amount to an abuse of process because they are unduly repetitive and systematic in nature, as per s. 6A(2)(c)?

[13] For section 6A(2)(c) to be found to apply, the public body would have to demonstrate that the applicant's access to information requests are unduly repetitive and systematic nature.

[14] Repetitious requests are those that are made two or more times from the same applicant.[1] Systematic requests are those made according to a method or plan of acting that is organized and

[1] BC IPC Order F10-01 at [16].

carried out according to a set of rules or principles.[2] It includes a pattern of conduct that is regular or deliberate.[3] It is methodical; arranged, conducted, according to system; deliberate.[4]

[15] The following factors should be considered in assessing whether requests are unduly repetitive or systematic:

- 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

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

- Can the requests be seen as a continuum of previous requests rather than in isolation[5]

[16] 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.[6]

[17] Evidence of previous requests is relevant to the determination of whether the current request is repetitious.[7] As noted above, I find it is reasonable to consider the applicant's broader pattern of behaviour across government departments, as it may offer insight into the applicant's motivation.

[18] With respect to the public body specifically, I have reviewed the four access requests under consideration, and find that the applicant's requests are repetitive, similar in nature, and follow a deliberate plan. The access requests are also divided up to target multiple staff and officials over fixed time periods, which has the effect of multiplying requests for no clear purpose.

CONCLUSION:

[19] I find that that the applicant's four access requests are frivolous and vexatious and an abuse of process as they are unduly repetitious and systematic. As a result, I approve the Application in full.

FUTURE REMEDY:

[20] In addition to disregarding the four 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 any access requests to the public body, followed by another 12-month period during which the applicant can only have one request open at a time. I have decided to grant this remedy in part. The applicant will be prohibited from submitting any access requests to the Department of Service Nova Scotia for a 6-month period, followed by a 12-month period during which the applicant can only have one access request open at a time.

[21] In closing, I would caution the applicant that *FOIPOP* is not intended as a tool of "information warfare,"[8] and I encourage the applicant to be reasonable and to exercise common sense in using their remaining right to make access requests to other public bodies. I am concerned that the applicant does not appear to appreciate, or take seriously, the broader impact of their conduct on Nova Scotia public bodies, or on other applicants with legitimate access requests. While the applicant suggests that their *FOIPOP* rights are being violated, my sense

[5] NB IPC InterPublic Bodytation Bulletin, Section 15 – Permission to disregard access request.
[6] BC IPC Order F23-37, para 61.
[7] AB IPC Request to Disregard F2019-RTD-01 at p. 9.
[8] British Columbia (Provincial Health Services Authority) (Re), 2007 CanLII 42406 (BC IPC), <https://canlii.ca/t/1t68v>, retrieved on 2025-04-16.

from the review of this and related matters is that the staff at IAP Services have continued to work with the applicant to narrow and refine requests for many months, and to facilitate access where responsive records may exist, despite the applicant's conduct.

[22] 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.

May 8, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia