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

WRITTEN REPORT ATD25-08

May 8, 2025

Commissioner's Written Report on an Application to Disregard

Nova Scotia Health

Summary: Nova Scotia Health (public body) submitted an application to disregard (Application) one access request that the public body received under the *Freedom of Information and Protection of Privacy* Act (*FOIPOP*). The Application was made under sections 6A(2)(c) and 6A(2)(d) of *FOIPOP.*

I have decided to deny this Application.

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, Nova Scotia Health (public body) submitted an Application to disregard one access request that the public body received under *FOIPOP*. The Application was made under sections 6A(2)(c) and 6A(2)(d) of *FOIPOP* because the public body is of the opinion that the request amounts to an abuse of the right to make a request because they are unduly repetitive or systematic and excessively broad or incomprehensible (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 request meets the requirements of sections 6A(2)(c) and 6A(2)(d) of *FOIPOP* because the public body is of the opinion that:

> (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,
> (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?

PUBLIC BODY'S SUBMISSIONS:

[5] The public body's position is that the access request is unduly repetitive and systematic, and therefore an abuse of process, as per s. 6A(2)(c). The public body submitted that the access request is overly broad, as it "substantively requested all records held by NSH relating to a named individual." Finally, the public body also argued that the access request should be disregarded because responding would unreasonably interfere "with the operations of the public body and the requests are repetitious or systematic in nature," as per s. 6A(2)(d).

[6] The access request in question is the third in a series of requests submitted by the applicant. The public body provided a detailed summary of the two prior requests by the same applicant. Both prior requests resulted in the release of responsive records to the applicant. The public body submitted several charts documenting the similarities between the three access requests.

[7] The access request that is the subject of this Application has been partially processed. Approximately 7000 pages of responsive records have been identified. The public body argued that processing the large request would unreasonably interfere with the operations of the public body, in large part because there is only one *FOIPOP* administrator and the review and severing of the records could take more than 100 hours.

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

APPLICANT'S SUBMISSIONS:

[8] While it is the public body's burden to establish that the conditions of s. 6A(2)(c) and 6A(2)(d) are met, the applicant provided detailed written submissions regarding this matter. The applicant stated that the access request under consideration in this case was materially different than their prior requests. The applicant also argued that the Commissioner has no jurisdiction to consider this issue as the access request was submitted and processing began before section 6A was added to *FOIPOP* earlier this year.

ANALYSIS:

Jurisdiction

[9] I will briefly address the access applicant's argument that I have no jurisdiction to consider this matter. The applicant is likely unaware of clause 61 of *An Act Respecting Government Organization and Administration*, Chapter 8, S.N.S. 2025, (referred to commonly as "Bill 1"), which extended the power to disregard access requests to those requests made before the coming into force of Bill 1:

> 61 Any power created under Sections 9 to 13 and 23 to 28 of this *Act may be exercised in respect of outstanding requests and complaints made before the coming into force of that power* [emphasis added].

[10] Based on clause 61 above, I am satisfied that I have jurisdiction to consider this Application, and similar Applications, respecting outstanding requests and complaints made before the coming into force of Bill 1.

Has the public body established that the applicant's request meets the requirements of sections 6A(2)(c) and 6A(2)(d) of *FOIPOP?*

[11] I have reviewed the public body's Application form, written submissions and any supporting documents provided. I have reviewed and considered the written submissions provided by the original access applicant. I carefully reviewed the specific language of the access requests made by the applicant.

[12] As I explain in detail below, I am not persuaded that the applicant's access request may be disregarded pursuant to the above-noted sections and am therefore declining to grant the relief requested by the public body.

Section 6A(2)(c)(i) - unduly repetitive or systematic

[13] 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
- Can the requests be seen as a continuum of previous requests rather than in isolation[2]

[14] I accept that there was significant overlap between the applicant's requests. All touch in some way on a complaint investigation. This is the third request, and most comprehensive, and lists all the records of the compliant investigation the applicant is seeking; for example, the applicant identified the "final report," "formal records of consultations," and records of external sharing of the investigation's findings as relevant records.

[15] The public body acknowledges that the access request is not "entirely repetitious" and that there are aspects of the request that go beyond the scope of the prior requests. It is also relevant that the prior access requests resulted in the disclosure of comparatively small numbers of records (less than 100 pages in each case); the public body has indicated that close to 7000 potentially responsive pages have been identified in their most recent search. While I understand

[2] NB IPC Interpretation Bulletin, Section 15 – Permission to disregard access request.

that many of these pages may ultimately be duplicates, or outside the scope of the request, it does suggest that the latest request is not wholly repetitive.

[16] On the whole, while there is overlap between the access requests, I find that the third request is not unduly repetitive or systematic, and therefore not an abuse of process.

[17] Because I have found that this reason does not allow the public body to disregard this access request, I must go on to examine the next reason the public body provided in their Application.

Section 6A(2)(c)(ii) – excessively broad or incomprehensible

[18] Excessively broad is meant to capture a single request that is excessively broad in scope. 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.

[19] While the public body argued that the request essentially "substantively requested all records held by NSH relating to a named individual," I am not persuaded of this. The applicant is seeking records related to a complaint process and human resources matters (regarding leave taken by a named individual and employment applications by a named individual). These records can be identified. There is a section of the request that could be read as excessively broad – as seeking any instance where personal information (which could include simply the individual's name) was shared in any way. However, this section must, in my view, be read in context as seeking only records shared by the investigation committee. It is not reasonable to read this as seeking all records related to that individual.

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

[20] As I have determined that the access request is not part of a repetitious and systematic pattern, I do not need to consider if it unreasonably interferes with the operations of the public body. The first step in an Application under s. 6A(2)(d) is to determine that the access request is repetitious or systematic in nature; only then would I consider the specific interference with the operations of the public body.

CONLUSION:

[21] I am not persuaded that the applicant's access request may be disregarded pursuant to s. 6A(2)(c) and 6A(2)(d) and am therefore declining to grant the relief requested by the public body.

[22] In closing, I would refer both parties to the decision of the NS Supreme Court in *Stewart v. Nova Scotia (Community Services) #2*, 2024 NSCC 182, which confirms there is no right to seek repeated production of the same records; at paragraph 11:

> The filing of numerous overlapping requests has actually slowed down the response time as staff must parse through the requests and cross-reference pieces of them to other requests. The only refusal is to duplicate the work by conducting two, three or more independent searches for the same documents and provide duplication (or triplication) of disclosures. While Ms. Stewart is entitled to request the documents that government has relating to her, within the confines of the *Freedom of Information and Protection of Property Act*, S.N.S. 1993, c.5**,** *she does not have the right to ask for repeated production of the same documents* [emphasis added].

[23] Based on this case, the public body has no obligation to release the same documents it released in the previous two access requests.

[24] I would also encourage the applicant to work with the public body to further refine the scope of their request; this will allow the public body to focus only on these records and expedite the delivery.

[25] 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.

May 8, 2025

David Nurse
Information and Privacy Commissioner for Nova Scotia