



Office of the Information and Privacy Commissioner for Nova Scotia

Report of the Commissioner (Review Officer)

David Nurse

WRITTEN REPORT ATD25-16

May 26, 2025

Commissioner's Written Report on an Application to Disregard Town of Berwick

Summary: The Town of Berwick (the “Town”) asked the Commissioner to approve its decision to disregard one access request received under *Part XX* of the *Municipal Government Act (MGA)*. The Town’s application to disregard (Application) was made under sections 466A(2)(a) and 466A(2)(c)(iii) of the *MGA*. The Town argued that the access request was vexatious, and an abuse of process as it was made in bad faith.

I have decided to deny this Application. An application to disregard should only be approved in exceptional circumstances, and the Town did not establish that the access request was vexatious or made in bad faith.

INTRODUCTION:

[1] The access applicant (“Applicant”) sought employment with the Town. The Applicant was not hired and subsequently made a detailed access request to the Town. The Applicant sought a wide range of information, including general information about the Town’s finances and the Town’s staff and salary expenditures. The Applicant also requested specific information about the

Town's decision not to hire them. The Applicant requested information that is clearly outside the scope of the *MGA* and demanded that records be created by the Town.

[2] The Town did not discuss the access request with the Applicant, as it was concerned that the request was vexatious and an abuse of process. Due to the 14-day deadline for submitting an application to disregard, no effort was made to assist the Applicant in narrowing their request prior to the Town submitting an application to disregard.

ISSUE:

[3] Has the Town established that the applicant's access request meets the requirements of sections 466A(2)(a) and 466A(2)(c)(iii) of the *MGA*?

ANALYSIS:

Legal context and key terms

[4] Section 466A of the *MGA* reads:

466A (1) Subject to clause 467(1)(a), the responsible officer to which one or more requests under subsection 466(1) are made may disregard the requests if the applicant does not provide sufficient particulars in accordance with subsection 466(1).

(2) The responsible officer may apply to the review officer for approval to disregard one or more requests for access if the responsible officer 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 municipality and the requests are repetitious or systematic in nature.

[5] 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

[6] Access applicants generally do not need to justify their motive for requesting access to records. However, in the context of considering an application to disregard, motive is a relevant consideration.

[7] The definition of "vexatious" was addressed by the Saskatchewan Information and Privacy Commissioner in *Saskatchewan (Parks, Culture and Sport)(Re)*, 2021 CanLII 3099 (SK IPC), at paragraph 53:

Vexatious means without reasonable or probable cause or excuse (SK OIPC Review Report F-2010-002 at paragraphs [57], [60] and [61]). 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...

[8] The concept of an abuse of process is also discussed in the Saskatchewan case at para 42:

An abuse of the right of access is where an applicant is using the access provisions of FOIP in a way that are contrary to its principles and objects

Application to this case

[9] I suspect the Town is correct that the Applicant is motivated in part by their frustration that they were not hired by the Town. However, I am not persuaded that the application meets the definition of "vexatious."

[10] This appears to be the first and only access request made by the Applicant to the Town; there is no wider pattern of access requests to harass or annoy Town staff. Further, it is not uncommon

¹ BC IPC Order P25-02 [at 16].

for individuals who are aggrieved by a decision of government to seek information using our access laws. The decision not to hire them has a direct financial impact on the Applicant, and seeking information on the hiring process is fair.

[11] For the same reasons, I cannot find that the access request is an abuse of process. On balance, I believe the Applicant has a genuine interest in obtaining records, but does not have a good understanding of Nova Scotia's access laws.

[12] I would note, for the benefit of the Town and the Applicant, that much of the information the Applicant requested would fall outside the scope of the *MGA*. There is no obligation to create records or populate spreadsheets as directed by the Applicant. To that extent, I find the access request unreasonable. It is also not reasonable to ask that the Town provide information on where staff worked before their employment with municipal government, or to demand statements be produced.

[13] The Town's concerns about the broad scope of the access request should be addressed through a discussion with the Applicant. The Town is obligated under section 467(1)(a) of the *MGA* to make every reasonable effort to assist the Applicant. I recommend that the Town engage with the Applicant and inform the Applicant about the Act. They should provide the Applicant with information on those records that are available through routine disclosure, those records they may obtain without cost, and those records that they may be required to pay fees to obtain.

[14] The Applicant, once better informed about the *MGA*, will be able to refine their request. Further, the Town and the Applicant may wish to deal with the Applicant's request for a follow-up on the hiring process outside of the access to information process; the Town appears willing to do this.

[15] The Town staff showed professionalism throughout the course of this matter. Many small municipalities do not have dedicated or trained staff dealing with access to information cases. Town staff, from CAOs to administrative assistants, are often doing this work off the corner of their desks. They do their best to navigate our access to information laws and procedures. If

possible, I encourage the Town staff to obtain training in this area, and to review resources and guides available from the Office of the Information and Privacy Commissioner (OIPC) and from Service Nova Scotia's Information Access and Privacy Services branch.

CONCLUSION:

[16] I have reviewed the Town's Application form, written submissions and any supporting documents provided. I have reviewed and considered the brief e-mail submission provided by the Applicant. I carefully reviewed the access request made by the Applicant. I am not persuaded that the Applicant's access request may be disregarded pursuant to the above-noted sections, and I am denying the Town's request. The Town must process the access request in accordance with s. 466D of the *MGA*.

[17] The OIPC will share a copy of this written decision with the Applicant. The OIPC will also post a copy to its website, accessible through the "Reports and Court Decisions" page, under "Publicly Issued Reports," in due course.

May 26, 2025

David Nurse

Information and Privacy Commissioner for Nova Scotia

OIPC file: 25-00371