

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-4724

Appeals MA24-00439 and MA24-00520

Township of Russell

November 20, 2025

Summary: At issue in these appeals is whether the appellant's requests to the Township of Russell for access to information are frivolous or vexatious under the *Municipal Freedom of Information and Protection of Privacy Act*. In this order the adjudicator finds that the township has not established that the appellant's requests are frivolous or vexatious within the meaning of section 4(1)(b) of the *Act* and does not uphold the denial of access on that basis. The adjudicator orders the township to issue access decisions in relation to the appeals without the ability to claim the requests are frivolous or vexatious.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 4(1)(b); R.R.O. 1990, Reg. 823, sections 5.1(a) and 5.1(b).

Orders Considered: Orders M-850, M-860, M-864, MO-1168-I, MO-1782, MO-1924 and MO-4365-I.

Cases Considered: *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 (reversing 2007 CanLII 65610).

BACKGROUND:

[1] This order addresses two appeals to the Information and Privacy Commissioner of Ontario (the IPC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) arising from two multi-item requests for access to information pertaining to Township of Russell (the township) staff and officials as well as a township

council meeting.

[2] The first request, which is the subject of appeal number MA24-00439 was for access to:

1. Correspondence, from 1 April 2024 to 30 April 2024, between the Mayor/Acting-Mayor and: all Councillors; Chief Administrative Officer; Clerk; Treasurer; Directors/Executive Directors of Infrastructure Services; and Fire Chief.
2. Correspondence between Councillors regarding the appointment of [a named mayor], regardless of the date.
3. The video of the Regular Council Meeting of February 26, 2024 (Meeting 2024-03).

[3] The township granted access to records responsive to item 2 of the first request. In response to item 3 the township referred the appellant to a previously provided link to the video of the Regular Council Meeting of February 26, 2024. The township took the position that item 1 of the request was frivolous or vexatious under 4(1)(b) of the Act and denied access on that basis. The township wrote the following in its access decision with respect to item 1 of the request:

During the past three months, we have received three (3) requests (March 1, April 2 and May 6, 2024) for access to all Correspondence (of February, March and April) between the Mayor and all Councillors, the CAO, the Clerk, the Fire Chief, all Executive Directors and all Directors of the Township. The request is overly broad and varied in scope and unusually detailed, and they are also identical or similar to previous requests which you have refused to provide any reasonable ground or purpose regarding your requests. It is evident that your request is part of a pattern of conduct that amounts to an abuse of the right of access as has been our past experience with you.

[4] The second request, which is the subject of appeal number MA24-00520 was a request for continuing access under section 17(3) of the *Act*¹ to

1. Correspondence between the Mayor/Acting-Mayor and: all Councillors; Chief Administrative Officer; Clerk; Treasurer; Directors/Executive Director of Infrastructure Services; and Fire Chief.
2. Correspondence between Councillors.

¹ Section 17(3) provides that a requester may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years. The requester indicated that this request should continue to have effect for a period of 2 years beginning on May 1, 2024 and ending on April 30, 2026 and that he was awaiting receipt of a section 17(4) schedule with respect to the continuing request. Section 17(4) of the *Act* is reproduced in footnote 23, below.

[5] The township also took the position that the entirety of the second request was frivolous or vexatious under 4(1)(b) of the *Act* and denied access on that basis.

[6] The township wrote the following in its access decision on the second request:

During the past four months, we have received four (4) requests (March 1, April 2, May 6 and June 4, 2024) for access to all Correspondence (of February, March, April of 2024 and now May 1, 2024 to April 30, 2026) between the Mayor and all Councillors, the CAO, the Clerk, the Fire Chief, all Executive Directors and all Directors of the Township. The request is overly broad and varied in scope and unusually detailed, and they are also identical or similar to previous requests which you have refused to provide any reasonable ground or purpose regarding your requests. It is evident that your request is part of a pattern of conduct that amounts to an abuse of the right of access as has been our past experience with you.

[7] The appellant appealed the township's decisions to the Information and Privacy Commissioner of Ontario (the IPC).

[8] A mediator was assigned to attempt to assist the parties in reaching a resolution. At mediation the appellant confirmed that only the township's determinations that his requests for access to information were frivolous or vexatious are at issue.²

[9] Mediation did not resolve the appeals and they were moved to the adjudication stage of the appeals process where an adjudicator may decide to conduct an inquiry under the *Act*. Representations were exchanged in accordance with section 7 of the IPC's *Code of Procedure* and Practice Direction 7.

[10] In this order, I find that the township has not established that the appellant's requests are frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*. I do not uphold the township's denial of access on the basis of section 4(1)(b) of the *Act* and I order the township to issue access decisions in relation to the appeals without the ability to claim the requests are frivolous or vexatious.

DISCUSSION:

[11] The sole issue before me to determine in this order is whether the appellant's requests are frivolous or vexatious under the *Act*.

[12] The frivolous or vexatious provisions in the *Act* provide institutions with a summary mechanism to deal with frivolous or vexatious requests. This power can have serious implications to a requester's ability to obtain information under the *Act*, and therefore it

² Accordingly, the appellant's request for access to items 2 and 3 of the request that became the subject of Appeal MA24-00439 are no longer at issue.

should not be exercised lightly.³ Orders under the *Act* and its provincial equivalent, the *Freedom of Information and Protection of Privacy Act (FIPPA)*, have also stated that an institution has the burden of proof to substantiate its decision that a request is frivolous or vexatious.⁴

[13] Section 4(1)(b) of the *Act* reads:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[14] Section 5.1 of Regulation 823 made under the *Act* elaborates on the meaning of the phrase "frivolous or vexatious":

A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

(a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or

(b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[15] In other words, under the *Act*, the head of an institution is required to conclude that a request for access is frivolous or vexatious if they are of the opinion on reasonable grounds that it fits into one or more of the following categories:

- it is part of a pattern of conduct that,
 - amounts to an abuse of the right of access, or
 - would interfere with the operations of the institution, or
- it is made in bad faith, or
- it is made for a purpose other than to obtain access.

[16] The township claims that the appellant's requests are frivolous or vexatious under the *Act* because they are part of a pattern of conduct that amounts to an abuse of the right of access, processing the requests would interfere with the township's operations

³ Order M-850.

⁴ See, for example, Order M-850.

and they were made in bad faith or for a purpose other than to obtain access.

[17] In the discussion that follows, I explain why I find that neither of the appellant's access requests that are before me are frivolous or vexatious as claimed by the township.

The township's representations

[18] The township states that the appellant has made four requests for access in a four-month period that are identical or similar to the appellant's previous access requests. It submits that the last of the four requests, being the second request at issue before me, was for continuing access over a two-year period and that the appellant refused to narrow the request or advise if there was a "specific subject" to be searched.

[19] The township submits that the appellant also refused to provide the township with "his intention or purpose" in making the requests, indicating that "his reasons for requesting the records were private." The township submits that this establishes that the appellant intended to accomplish some other objective than to obtain access. The township submits that this also establishes reasonable grounds to conclude that the requests were made in bad faith.

[20] The township explains that the appellant has made the following number of access requests in the last seven years: 2018 (6), 2019 (1), 2020 (1), 2021 (2), 2022 (3), 2023 (2) and 2024 (5). The township adds that the appellant commenced 11 appeals in relation to those requests as follows: 2018 (2), 2020 (1), 2021 (2), 2022 (3), 2023 (1) and 2024(2). The township submitted that, except for one, all of these appeals were either dismissed or closed by the IPC or withdrawn by the appellant.

[21] The township submits that the number of requests and appeals demonstrates that there is an abuse of the township's time because it is required to receive, investigate, research and report on these requests and appeals.

[22] The township also submits that the timing of the requests at issue are connected to the existence or occurrence of the following related events or court proceedings:

- In 2018 the appellant commenced a court proceeding against the township concerning election signs. The township submits that the appellant was not elected for a position he sought at the time.
- The appellant campaigned for a position in the 2022 Municipal Election but was not elected.
- In a 2024 by-election campaign the appellant made unacceptable comments about a By-law Enforcement Officer on the appellant's social media account relating to the removal of election signs from in front of the appellant's house.

- In 2024 the appellant commenced a court proceeding against the township concerning election signs.
- In 2024, the appellant was elected as councillor due to a vacated seat.

[23] The township questions whether in making the requests the appellant's purpose or intention was to "gain internal or private municipal knowledge to have individual(s) on council vacate their seats and then take their position(s)."

[24] The township submits that considering the cumulative nature and effect of the appellant's behavior, there are reasonable grounds to conclude that the requests are part of a pattern of conduct that amounts to an abuse of the right of access.

[25] The township further asserts that the facts set out above demonstrate that the appellant's requests interfere with the township's operations by obstructing or hindering the range and effectiveness of the township's activities and its ability to provide services to the rest of the community. The township adds that it is a small institution and processing the requests would interfere with its day-to-day operations through requiring "a lot of hours of research and preparation and involve many Directors and council members for a purpose that is not known."

[26] The township submits that the requests were made for a purpose other than to obtain access because in its view "the appellant seems to be motivated by a desire not only to obtain access, but by some other objective such as a political objective or other objective above and beyond an intention to use the information in some legitimate manner."

The appellant's representations

[27] The appellant submits that while the township has not provided reasonable grounds for concluding that his requests are frivolous or vexatious, "[i]t does provide evidence that the township does not like me."

[28] Regarding the four requests mentioned by the township, the appellant submits that he made four requests in four months for correspondence between the Mayor; and all councillors; the CAO; the Clerk; the Fire Chief and Directors/Executive Director of Infrastructure as well as correspondence between councillors.

[29] The appellant submits that:

The first three requests are for similar data each for a one-month period. The last request [...] was a continuing request for two years.⁵ The first two requests were granted and the last two are the subject of these appeals.

⁵ The appellant referenced section 17(3) in his representations. See footnote 1 above.

[30] The appellant submits that the 20 requests referenced by the township average less than three a year. The appellant submits that the township states that this demonstrates that the requests are frivolous or vexatious but does not explain why. He adds that in those seven years he appealed eleven, as he is permitted to do by the *Act*. He further submits that the township's tally of unsuccessful appeals is wrong.⁶

[31] The appellant points out that he has maintained a continuing interest in township politics and activities and for years prior to his election, frequently asked questions at council meetings. He states that he uses the *Act* to "fill in his knowledge of township activities." He submits that the number of requests he has made does not support an abusive pattern of conduct but rather it is normal for a citizen interested in municipal affairs.

[32] The appellant further submits that the township has not explained how the second ongoing request at issue in this appeal is overly broad. He submits that its focus is on the Mayor's correspondence with specific senior officials and correspondence between councillors.

[33] The appellant submits that his ongoing request is not varied in scope. He takes the position that the focus of the request is on correspondence which may be in the form of written letters/memos, emails, text messages or chat messages. He states that all these forms of correspondence are easily recordable and disclosable. He states that his request is not unusually detailed but that in any event, the township has not explained the basis for claiming that it is. He states that the *Act* specifically allows for continuing requests for up to two years.

[34] With respect to the township's allegation regarding the appellant's purpose in making the requests, the appellant speculates that it may stem from someone in the township administration or a council member taking issue with the appellant's objection to the appointment of the township's Mayor, without a by-election taking place.

[35] The appellant relies on Order MO-4365-I for the principle that a requester does not have to provide a reason for seeking information through the *Act*. He submits that the township has provided no evidence to establish that his reasons for seeking access are intended to accomplish some objective other than to gain access to the requested information or to ensure government accountability and facilitate democracy.

[36] With respect to the township's position that the timing of the requests is related to court proceedings or running for council positions, the appellant submits:

- The 2018 court proceedings arose from the appellant being charged by the township for violating the township's sign by-law. There was no trial as one of the charges was withdrawn and a summons quashed.

⁶ In support of his position the appellant refers to two specific IPC Orders.

- The 2024 proceedings were also commenced by the township arising from the appellant being charged with violating the township's sign by-law. The charges were adjourned pending a constitutional challenge to the sign by-law.
- The timing of his election campaigns are not related to his requests and appeals and running for elected office is not a valid reason to deny access requests.

[37] The appellant also submits that the township has failed to establish the existence of a cumulative nature or effect:

The township has not demonstrated how and why an average of less than three requests per year is too many, misrepresented the scope and nature of my requests including the legislative intent to allow continuing requests, providing no relevant comments with respect to the purpose of the requests and left out relevant information with respect the timing of the requests. ...

[38] The appellant further submits that the township has failed to provide sufficient evidence in support of its assertion that processing the access requests would obstruct or hinder the effectiveness of the township's activities. He submits that the town only commented that processing the continuing request "would require a lot of hours of research and preparation," without providing evidence of how many hours is "a lot."

[39] The appellant submits that the township has failed to provide sufficient evidence in support of its position that the requests were made in bad faith. He adds that the township's statement that the appellant "seems to be motivated by a desire not only to obtain access, but by some other objective such as a political objective," is actually supportive of processing his request. He says that this is because there is an acknowledgement by the township that his desire is to obtain access and political objectives are legitimate reasons for an access request.

The township's reply

[40] The township maintains its position that the appellant's requests are frivolous or vexatious.⁷ The township states that there are four councillors and the Mayor. It submits that the second request is tantamount to multiple requests to multiple individuals for a two-year period.

[41] With respect to the nature and scope of the requests, the township submits that the requests are a fishing expedition and are "clearly over broad and varied in scope" for the following reasons:

- The appellant is not just seeking emails, he is also seeking access to text messages or chat messages that may be located on personal communication devices;

⁷ The township relies on Orders M-850, MO-1782 and MO-3659 in support of its position.

- The subject matter of the correspondence is not identified, and it is a blanket open-ended request for all records of any nature;
- The continuing request at issue in this appeal is similar to previous requests and is subject to a two-year timeframe;
- The continuing request is unusually detailed because it targets many specific representatives within the township;
- although the *Act* permits continuous access, there is no valid basis for the two-year period sought, and this is therefore evidence of the frivolousness and vexatiousness of the second request.

[42] The township submits that the appellant's purported interest in local politics does not explain his behavior or the basis for the requests when viewed in context. Relying on Order MO-1782, the township submits that since the appellant "refuses to admit his purposes, his purpose must be inferred."

[43] The township submits that the appellant's purpose is to cause nuisance, harass township staff and to break or burden the system and that he is acting in bad faith. In support of its position, the township submits:

- the appellant did not deny or apologize for a social media post that the township views as defamatory;
- the appellant is involved in two then active Court proceedings with the township;
- the appellant was involved in a proceeding in 2018 regarding the signage by-law;
- the appellant lost two municipal elections;
- the appellant made 20 requests for access and appealed 11 of the township's access decisions.

[44] The township submits that the two requests at issue in these appeals are related to a signage by-law prosecution initiated by the city in 2024. The township further states that that the first request for access pertains to correspondence for the month of April 2024, "mere weeks before the municipal election in which the [the appellant] ran and was elected."

[45] The township submits that while the fact of litigation may seem insignificant, when it is combined with the other facts, as was the case in Order MO-1782, it contributes to the discussion about the appellant's conduct and weighs in favour of a frivolous or vexatious finding.

[46] The township further submits that given that it is a small municipality with limited

resources, it is implied that it has "limited staffing capabilities." The township submits that it often consults outside legal counsel and that outside counsel represents the township in this matter as well as the court proceedings involving the appellant. The township states that this comes at the expense of the taxpayer and the appellant's "litigiousness has taken time, resources and attention from other pressing municipal matters." The township asserts that satisfying the continuing request will be onerous given its broad scope. The township submits that:

Moreover, it is not possible to estimate the number of hours needed to satisfy the access request because of the broad scope of the request and the unknown and vast quantities of documents subject to the ongoing request.

The appellant's sur-reply

[47] The appellant submits that the township was able to effectively process the two earlier 2024 requests that sought access to the same or similar information sought in part 1 of the first request and in the second ongoing request, but for earlier consecutive one-month periods. He adds that the two 2024 requests that the township processed resulted in partial disclosure of the information he sought. The appellant also submits that two of the appeals he filed, out of the 11 referenced by the township, resulted in orders in his favour, and that another recent appeal was closed without an order after the township disclosed a record.

[48] With respect to the scope of the search required, the appellant points out that all members of council and senior staff are issued township owned devices for official communications.

[49] The appellant submits that unlike the circumstances underlying Order M-850, the requests at issue in this appeal are not related to the recent court proceedings mentioned by the township. The appellant further submits that the by-law facilitating the election post-dated and was unrelated to his requests. The appellant notes that a complaint about his social media message was investigated but found to have no merit and that he was successful in his application with the sign by-laws being found to be unconstitutional.

[50] Finally, the appellant submits that any bad faith that exists is related entirely to the township's actions, not his.

Analysis and finding on a pattern of conduct that amounts to an abuse of the right of access

[51] The *Act* imposes statutory obligations on institutions with respect to the disclosure of government-held information. It requires the institution to disclose information upon request, where that information is not excluded from the *Act* or is not subject to exemption from disclosure. In *Toronto Police Services Board v. (Ontario) Information and*

Privacy Commissioner,⁸ the Ontario Court of Appeal affirmed the strong public accountability purposes served by the *Act* and the need to “ensure that citizens have the information required to participate meaningfully in the democratic process.” This is reflected in the purposes of the *Act* and in the fact that the Commissioner may make orders regarding disclosure of information that are binding on institutions.

[52] Section 5.1(a) of Regulation 823 under the *Act* sets out that one way that a request can be determined to be frivolous or vexatious is if the institution establishes reasonable grounds for concluding that the requests form part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with its operations. What constitutes “reasonable grounds” requires an examination of the specific facts of each case.⁹

“Pattern of conduct”

[53] A pattern of conduct must be found to exist, prior to determining whether that pattern of conduct amounts to either an abuse of the right of access or would interfere with the operations of the institution.

[54] Previous IPC orders have addressed the meaning of the phrase “pattern of conduct.” For example, in Order M-850, former Assistant Commissioner Tom Mitchinson stated:

[I]n my view, a “pattern of conduct” requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).

[55] The reasoning in Order M-850 has been considered in many subsequent orders issued by the IPC, which have also established that the cumulative nature and effect of a requester’s behaviour may be relevant in the determination of the existence of a “pattern of conduct”.¹⁰

Findings on pattern of conduct

[56] In my view, the evidence demonstrates that the appellant has made some related requests pertaining to municipal matters and communications between high-ranking city representatives, including counsellors, and that the access requests before me form part of that pattern of conduct. Although the requests may not all be identical, because they pertain to different information, or different time frames, at least four are, including the two at issue in this appeal. Furthermore, all of the information sought in the prior requests as well as those at issue in these appeals is related to municipal or political matters or for access to communications between high-ranking city representatives. I am therefore satisfied that the township has established that the two requests before me form a pattern

⁸ 2009 ONCA 20 (CanLII) (reversing 2007 CanLII 65610).

⁹ Order MO-3292.

¹⁰ See, for example Order MO-2390.

of conduct for the purposes of section 5.1(a) of Regulation 823.

Pattern of conduct that amounts to "an abuse of the right of access"

[57] Once it has been established that a request forms part of a pattern of conduct, it must be determined whether that pattern of conduct amounts to "an abuse of the right of access."

[58] The determination of what constitutes "an abuse of the right of access" has been informed by both the jurisprudence of this office in addition to the case law dealing with that term. In the context of the *Act*, it has been associated with a high volume of requests, taken together with other factors. Generally, the following factors have been considered as relevant in determining whether a pattern of conduct amounts to an "abuse of the right of access"¹¹:

- *The number of requests* – whether the number is excessive by reasonable standards;
- *the 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;
- *the timing of the requests* – whether the timing of the requests is connected to the occurrence of some other related event, such as court proceedings; and
- *the purpose of the requests* – whether the requests are intended to accomplish some objective other than to gain access without reasonable or legitimate grounds. For example, are they made for "nuisance" value, or it is the requester's aim to harass the government or to break or burden the system.

[59] Other factors, particular to the case under consideration, can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.¹² Previous orders have also stated that the focus should be on the cumulative nature and effect of a requester's behaviour because, in many cases, ascertaining a requester's purpose requires the drawing of inferences from his or her behaviour.¹³

[60] The IPC may also consider an institution's conduct when reviewing a "frivolous or vexatious" finding. However, an institution's misconduct does not necessarily mean that it was wrong in concluding that the request was "frivolous or vexatious."¹⁴

¹¹ Orders M-618, M-850, MO-1782, MO-1810, MO-2289.

¹² Order MO-1782.

¹³ Order MO-1782.

¹⁴ Order MO-1782.

Finding on “an abuse of the right of access”

[61] As set out in the background above, this order addresses two of five requests made in 2024. In my view, five requests over the course of one year is not an excessive number by reasonable standards.

[62] Furthermore, the appellant provided sufficient evidence to demonstrate that he made a reasonable effort to take a targeted approach to the information sought and avoid making the type of requests that have been found to be an abuse of the rights of access. I am satisfied that the appellant has carefully crafted the requests to avoid being excessively broad and varied in scope, and there are a limited number of individuals captured by the appellant’s requests.¹⁵ Previous orders of this office have determined that the abuse of the right of access described by the regulation refers only to the access process under the *Act*, and is not intended to include proceedings in other forums.¹⁶ I acknowledge that the township had likely dedicated substantial resources to the various proceedings involving the appellant during the months or years leading up to or after the requests at issue before me; however, the only proceeding that are relevant and to be considered for the purpose of my analysis under section 5.1(a) are these appeals, which, based on the evidence before me, are the only proceedings arising under the *Act*.¹⁷

[63] Having regard to the number, scope, nature, and timing of the appellant’s requests, I am not persuaded that the cumulative effect of the appellant’s conduct amounts to an abuse of the appellant’s right of access.

[64] I have also considered the purpose of the appellant’s requests, that is, whether the requests are intended to accomplish some objective other than to gain access without reasonable or legitimate grounds. Clearly, the township views the appellant’s actions as “a fishing expedition” and imputes a motivation to cause nuisance, harass the township or individuals named in the requests and burden the system. It is evident that the town takes issue with the appellant’s request as well as his actions in other forums, including on social media. However, a requester’s behaviour in another forum, including their media presence, has consistently been held not to constitute an abuse of the right of access under the *Act*.¹⁸ The question is whether the appellant’s behaviour within the request process is such that it constitutes an abuse of the right of access.

[65] The case law discussed in Order M-850¹⁹ provides “abuse of process” examples that include proceedings instituted without any reasonable ground and proceedings whose purpose is not legitimate, but is rather designed to harass, or to accomplish some other objective unrelated to the process being used. On the evidence here, I am not

¹⁵ For example, the township explains that there are only four township councillors in addition to the mayor.

¹⁶ Orders M-906, M-1066, M-1071, MO-1519, and P-1534.

¹⁷ The totality of the appellant’s various proceedings may be relevant to whether his access request was made “for a purpose other than to gain access” under section 5.1(b), which I consider below.

¹⁸ Order MO-3649.

¹⁹ For example, *Foy v. Foy* (No. 2), 1979 CanLII 1631 (ON CA).

persuaded that the appellant has a purpose other than to obtain access. Generally, a requester's potential use of records disclosed under the *Act* to further an ongoing dispute with an institution is not considered a proper basis upon which to characterize a requester's purpose as one other than to obtain access.²⁰ In this context, the possibility that the appellant may put the records disclosed through this request to other use does not, by itself, mean that this request was made for a purpose other than to obtain access.

[66] Contrary to the position of the township, a requester does not have to establish a reason for seeking information through the *Act*,²¹ and the *Act* does not limit a requester's right of access to matters that only involve the requester themselves. The evidence before me shows an interest on the part of the appellant in certain township matters, which I find is a legitimate reason to seek records under the *Act*. Such a purpose is not contradicted by the possibility that the appellant may also intend to use the documents against the township (or any other party).²² Having reviewed the township's representations about the purpose of the requests, I find that the town's evidence is vague and speculative, and amounts to a series of bald assertions about the appellant's purpose in making the requests, insufficiently supported by other evidence. While the relationship between the township may be strained, I find that this is insufficient in the circumstances to establish that the purpose of the requests before me is to accomplish a purpose other than to obtain access.

[67] On balance, I find that there is insufficient evidence to establish that the requests taken individually or cumulatively, amount to an abuse of the right of access.

Pattern of conduct that would interfere with the township's operations

[68] I also find that the township has failed to lead sufficient evidence to establish that the requests are frivolous or vexatious because the appellant's pattern of conduct would interfere with its operations.

[69] In my view, the township has not provided sufficient evidence to establish that responding to the appellant's access to information requests would interfere with the township's operations to meet the threshold under section 5.1(a). The township's submissions lack particularity in that regard. Interference is a relative concept that must be judged on the circumstances faced by the institution in question. While the IPC has recognized that it may take less of a pattern of conduct to interfere with the operations of a small municipality than with the operations of a large provincial government ministry, this does not mean that stating the town's population (or briefly describing limited resources to process access requests) establishes inference for the purpose of section 4(1)(b).

[70] The township does not elaborate on how many staff respond to access to

²⁰ Order MO-1924.

²¹ See, for example, Order PO-4158-I.

²² See, for example, Orders MO-1269 and MO-1488.

information requests or provide sufficient detail regarding how processing the appellant's two requests for information, which type of request the town was able to fulfill previously, would interfere with its operations. It mentions that outside counsel is retained to assist it in various matters and in the appeals before me. Retaining outside counsel is done in a variety of circumstances, and there was no evidence provided that the retainer of outside counsel by the township somehow relates to the actual processing of requests.

[71] As noted above, the township has already issued access decisions in response to the appellant's earlier requests made in 2024 and the first two parts of the first request at issue before me in these appeals. I find that the township's position about interference with its operations is largely undermined by the fact that it already issued access decisions to the appellant in relation to request for similar information, after having conducted a search and identifying responsive records.

[72] It is the township's legal obligation to process requests under the *Act*, even if it serves a small population and has limited resources. Despite the township's size and stated limited resources, it had tools available in the *Act*, such as fee provisions and time extensions as well as preparing a schedule in the case of a continuing access request under section 17(3).²³ I find that these tools weigh against concluding that an activity would interfere with the institution's operations,²⁴ especially in the absence of evidence that any of these tools were used.

[73] A claim that a request is frivolous or vexatious because the requester's pattern of conduct would interfere with the operations of the institution should not be made just because an appellant is frustrating or because responding to the request is burdensome. There must be more. In my view, in the circumstances of this appeal and considering these legislative provisions "confer a significant discretionary power on institutions which can have serious implications on the ability of a requester to obtain information under the *Act*," and that this power should not be exercised lightly, the conduct of the appellant alleged by the township does not satisfy the requisite threshold.

²³ Sections 17(4) and (5) of the *Act* state:

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

(a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen;

and

(b) a statement that the applicant may ask the Commissioner to review the schedule.

(5) This Act applies as if a new request were being made on each of the dates shown in the schedule. a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen.

²⁴ Order PO-2151. Note that where an institution has allocated insufficient resources to the freedom of information process, it may not be able to rely on limited resources as a basis for claiming interference (Order MO-1488). Also note that, while government organizations are not obligated to retain more staff than is required to meet its operational requirements, this is qualified by the fact that an institution must allocate sufficient resources to meet its freedom of information obligations (Order MO-1488).

[74] In summary, I find that the township has failed to establish reasonable grounds for concluding that the requests form part of a pattern of conduct that amounts to an abuse of the right of access.

Bad faith

[75] Under the "bad faith" portion of section 5.1(b), a request will qualify as "frivolous" or "vexatious" where the head of the institution is of the opinion, on reasonable grounds, that the request is made in bad faith. If bad faith is established, the institution need not demonstrate a "pattern of conduct".²⁵

[76] "Bad faith" has been defined as:

The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.²⁶

[77] In Order M-864, former Assistant Commissioner Glasberg found that, in the situation where the appellant used information to assist his wife with her legal proceeding against the institution, the access request was filed for legitimate reasons. Having found that the objects of the appellant's requests were genuine and that they were not designed to harass the Board, he concluded:

I find that the appellant filed his access requests for a legitimate, as opposed to a dishonest, purpose and that he was not operating with an obvious secret design or ill will.

[78] In Order MO-1168-I, the adjudicator followed the reasoning set out by the former Assistant Commissioner in Order M-864 stating:

... The *Act* provides a legislated scheme for the public to seek access to government held information. In doing so, the *Act* establishes the procedures by which a party may submit a request for access and the manner in which a party may seek review of a decision of the head. It is the responsibility of the head and then the Commissioner's office to apply the provisions of the *Act* in responding to issues relating to an access request. In my view, the fact that there is some history between the

²⁵ Order M-850.

²⁶ *Ibid.*

[institution] and the appellant, or that records may, after examination, be found to fall outside the ambit of the *Act*, or that the appellant may have obtained access to some confidential information outside of the access process, in and of itself is an insufficient basis for a finding that the appellant's request was made in bad faith. The question to ask is whether the appellant had some illegitimate objective in seeking access under the *Act*. I am not persuaded that because the appellant may not have "clean hands" in its dealings with the Board that its reasons for requesting access to the records are not genuine.

[79] The adjudicator also noted that:

... [T]here is nothing in the *Act* which delineates what a requester can and cannot do with information once access has been granted to it ...

In my view, the fact that the appellant may decide to use the information obtained in a manner which is disadvantageous to the [institution] does not mean that its reasons in using the access scheme were not legitimate.

[80] In Order MO-1168-I, the adjudicator ultimately concluded that because the appellant was seeking the information for genuine reasons, even if those reasons might have been against the institution's interests, the request could not be said to have been made in bad faith.

[81] I found above that the requests considered in this order were made in relation to municipal or political township matters, but the timing, in my view, does not support a finding that the requests before me were made in bad faith. It may instead point to the appellant's expressed intention to obtain information in relation to the municipal or political township matters of interest to him.

[82] In my view, the requests made by the appellant were made for a genuine purpose, namely, to seek information to assist to him to obtain information in relation to the municipal or political township matters of interest to him. I cannot agree that the evidence supports a conclusion that the appellant's reasons for seeking access to the information or the uses to which the appellant puts any information the appellant may receive are either illegitimate or dishonest.

[83] Finally, the failure to apologize for an allegedly defamatory social media post is not sufficient to support a finding of bad faith.

[84] In conclusion then, there is insufficient evidence before me to suggest that, with respect to the access request before me, the appellant is acting with some dishonest or illegitimate purpose or goal. I am satisfied that he legitimately seeks access to the requested information, and I am unable to ascribe "furtive design or ill will" on the appellant's part. As a result, I find that the township has failed to establish that the requests were made by the appellant in bad faith for the purposes of section 5.1(b) of

Regulation 823.

Purpose other than to obtain access

[85] A request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.²⁷ Previous orders have found that an intention by the requester to take issue with a decision made by an institution, or to take action against an institution, is not sufficient to support a finding that the request is "frivolous or vexatious."²⁸

[86] In Order M-860, the adjudicator noted:

... if the appellant's purpose in making requests under the *Act* is to obtain the information to assist him in subsequently filing a complaint against members of the Police, in my view this does not indicate that the request was for a purpose other than to obtain access; rather, the purpose would be to obtain access and use the information in connection with a complaint.

[87] In Order MO-1924, the adjudicator provided extensive comments on when a request may be found to have a purpose other than to obtain access. In that case, the institution argued that the objective of obtaining information for use in litigation or to further a dispute between an appellant and an institution was not a legitimate exercise of the right of access. In rejecting that position, the adjudicator stated:

This argument necessitates a discussion of whether access requests may be for some collateral purpose over and above an abstract desire to obtain information. Clearly, such purposes are permissible. Access to information legislation exists to ensure government accountability and to facilitate democracy (see *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403). This could lead to requests for information that would assist a journalist in writing an article or a student in writing an essay. The *Act* itself, by providing a right of access to one's own personal information (section 36(1)) and a right to request correction of inaccurate personal information (section 36(2)) indicates that requesting one's personal information to ensure its accuracy is a legitimate purpose. Similarly, requesters may also seek information to assist them in a dispute with the institution, or to publicize what they consider to be inappropriate or problematic decisions or processes undertaken by institutions.

To find that these reasons for making a request are "a purpose other than to obtain access" would contradict the fundamental principles underlying the *Act*, stated in section 1, that "information should be available to the public" and that individuals should have "a right of access to information

²⁷ *Ibid.*

²⁸ Orders MO-1168-I and MO-2390.

about themselves". In order to qualify as a "purpose other than to obtain access", in my view, the requester would need to have an improper objective above and beyond a collateral intention to use the information in some legitimate manner.

[88] I adopt the approach set out by the adjudicators in orders M-860 and MO-1924 in the present appeal.

[89] I am not convinced that the appellant has deliberately engaged the access provisions of the *Act* in an effort to unduly burden the township or harass or intimidate the individuals referenced in his request. In my view, he is simply attempting to obtain information relating to municipal and political township matters. I am satisfied that the appellant's purpose for making the requests is genuine and that he legitimately seeks access to the responsive records.

[90] Accordingly, I find that the township has not provided me with sufficient evidence to establish that the appellant's requests form part of a pattern of conduct that amounts to an abuse of the right of access, would interfere with the operations of the township or were made in bad faith or for a purpose other than to obtain access under sections 5.1(a) or (b) of Regulation 823. Therefore, I do not uphold its decision to deny the requests on that basis under section 4(1)(b) of the *Act*.

ORDER:

1. I do not uphold the township's decision to deny the access requests at issue in this appeal on the basis that they are frivolous or vexatious under section 4(1)(b) of the *Act*.
2. I order the township to issue revised access decisions with respect to the appellant's requests, in accordance with the requirements of the *Act*, and without claiming they are frivolous or vexatious, treating the date of this order as the date of the request for the purpose of the procedural requirements of the *Act*.
3. The township is to provide me with copies of the revised access decision letters it sends to the appellant in accordance with Order provision 2.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ November 20, 2025