



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1810

Appeal MA-020102-1

Le Conseil scolaire de district du Centre-Sud-Ouest



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BACKGROUND

In December 1998, the appellant contracted with le Conseil scolaire de district du Centre-Sud-Ouest (the Conseil) to act as the general contractor for the construction of a school. In 1999, the school was completed. In February 2000, disputes arose about the interpretation of the contract. The appellant alleges that soon after completion, the Conseil did not complete its contractual obligations to pay for the work. In October 2000, the appellant made his first access to information request to the Conseil under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In December 2000, the appellant commenced a legal action against the Conseil.

NATURE OF THIS APPEAL

The appellant made the request at issue in this appeal in March 2002. The request is for access to the following records:

correspondence referring in any way to the appellant, in both English and French (where it exists), including letters, notes, memos, e-mail, diary entries, handwritten message receipts, notes, etc.:

- within and internal to the Conseil,
- exchanged with anyone including other institutions, externally,
- sent by solicitors acting for the Conseil,
- third party memos received or sent, and
- minutes of Board meetings or other records from Board meetings in which the appellant was discussed and that are not publicly available.

The appellant asked that the Conseil only exclude that correspondence of which he had already received copies.

The Conseil issued a decision refusing to process the appellant's request on the basis that it was frivolous or vexatious under section 4(1)(b) of the *Act*.

The issue for me to decide is whether the appellant's request is frivolous or vexatious under section 4(1)(b).

The evidence before me is contained in the representations of the Conseil and the appellant. The Conseil's representations on this appeal include the representations the Conseil made on six other appeals involving this appellant. The appellant was provided with all of these representations and he delivered representations in response. I also asked the appellant to address the pertinent issues with specific reference to the circumstances that arose in his appeal MA-010103-3. I enclosed the final correspondence related to the disposition of that appeal for his reference.

IS THE REQUEST FRIVOLOUS OR VEXATIOUS?

General principles

Section 4(1)(b) provides institutions with a summary mechanism to deal with frivolous or vexatious requests. The relevant portion of that section 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,

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

Section 5.1 of Regulation 823 under the *Act* elaborates on the meaning of the terms “frivolous” and “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.

The Conseil takes the position that the request is frivolous or vexatious under both sections 5.1(a) and (b) because

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

I consider first whether there is sufficient evidence before me to conclude that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access.

Is the request part of a pattern of conduct that amounts to an abuse of the right of access?

Summary of the parties' positions

The Conseil makes lengthy representations about the issues in this appeal. As it has done in other appeals with this office, the Conseil reiterates and repeats arguments it has made in the past about the manner in which the appellant abuses his right to access under the *Act*. Below is a brief summary of the Conseil's argument.

[The appellant] is abusing the process by requesting information that is already available to him as part of the discovery process inherent in the action commenced against the Conseil in December 2000. Unfortunately, given the scope of his request ("correspondence, including letters, notes, memos, e-mail, diary entries, hand-written message receipts, notes referring in any way to [the appellant], excluding only those copied to [the appellant] – in both English and French"), the Conseil's one FOI Officer must still comb through an 18-month period looking for needles in hay-stacks that refer to the appellant on the slight chance that correspondence exists which is not part of the discovery process. This request is identical to that made on April 10, 2002 (MA-010103), wherein [the appellant] simply changed the time frame. Responding to the litany of [the appellant]-initiated requests is not an efficient use of a Charter-protected minority's tax dollars.

For his part, generally, the appellant accuses the Conseil of abusing the process of the *Act* by refusing to process his requests:

The [Conseil] rather than take proactive steps to disclose records of interest, has acted counter-active in all of my requests to attempt to deter, hinder and delay access to any and all records I have sought. They now are trying to use the fruits of their improper strategies to attempt to refuse my request for access to records, which are akin to the personal records of my company and potentially of me as well.

Below, I examine the evidence before me about the particular circumstances of the relationship between this appellant and the Conseil and their conduct throughout the process of access.

General principles

This office has explored the meaning of "a pattern of conduct that amounts to an abuse of the right of access" in numerous orders. Generally, the approach has been to define the various elements of the concept. From those earlier orders, we can identify some basic requirements.

First, many orders consider certain factors as relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access (see for example Order M-864). These factors include:

- *Number of requests*

Is the number excessive by reasonable standards?

- *Nature and scope of the requests*

Are they excessively broad and varied in scope or unusually detailed? Are they identical to or similar to previous requests?

- *Timing of the requests*

Is the timing of the requests connected to court proceedings or the occurrence of some other related event?

- *Purpose of the requests*

Are the requests intended to accomplish some objective other than to gain access? For example, are they made for “nuisance” value, or is the requester’s aim to harass government or to break or burden the system?

It has also been recognized that 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. I find that a consideration of the listed factors is appropriate in this appeal. I also find that there are other particular factors, raised by the parties, which are relevant to my decision. These factors are:

- the conduct of the Conseil
- the conduct of the appellant toward the Conseil, subsequent to the filing of the request under appeal

Past orders offer other direction as well. It is clear from past orders that, in examining whether a pattern of conduct exists, the focus should be on the cumulative nature and effect of a requester’s behaviour. (See for example Order MO-1782.) It is also clear that in many cases, ascertaining the purpose of requesters requires the drawing of inferences from their behaviour because it is seldom the case that requesters admit to a purpose other than access.

Below, then, I consider whether the facts relevant to this case support a conclusion that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access.

Number of requests

The Conseil submits that between 2000 and 2002, the appellant submitted at least 15 different requests. The appellant submits that the Conseil is “misrepresenting to the [IPC] the number,

frequency, nature and extent” of his requests but does not elaborate with specific examples or details.

Considered in isolation, the very fact that an appellant has made 15 requests to the same institution would be an insufficient basis upon which to conclude that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access. But, this fact must be considered in light of all of the other present circumstances.

The current request is repetitive of an earlier request for exactly the same types of records though the relevant period of time is different.

In the circumstances, the number of requests is sufficiently high to be considered a factor weighing moderately in favour of a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

Nature and scope of the requests

General

The appellant comments as follows about the character of his requests:

The [Conseil] is misrepresenting to the Commission, the number, frequency, nature and extent of request from me. It is also attempting to fabricate an illusion of frivolousness and/or vexatiousness in its submissions to you. The [Conseil] has created many of the requests, amendments to request, and appeals within requests, in my attempts to work-around and overcome the difficulties created by the systemic abuse of process the [Conseil] has consistently applied. All of my requests relate in some specific way to the general relationship and interactions of the [Conseil] and my company and the background described above. Each would be seen as highly proper and bona fide requests that would interest anyone in my general position.

The appellant's previous requests in detail

I have examined the appellant's previous requests to the Conseil. The qualities of the requests are evident through an examination of the texts of those requests.

October 10, 2000

All correspondence (letters, memos, email) exchanged between Conseil and [a named individual] from October 1, 1998 to date, including those sent by solicitors acting for Conseil, excluding only those documents already copied to [the appellant]; copy of all internal memos, notes, messages, e-mails referring in any way to [the appellant]; copy of all third-party memos, notes, messages, e-mails referring in any way to [the appellant], excluding those copied to [the appellant];

all minutes of Conseil meetings in which [the appellant] was discussed. If both English and French versions of documents exist, kindly provide both versions.

October 25, 2000

names of the individual persons and departments at the Ministry of Education, and/or others at the Provincial Government level responsible for (1) maintaining funding for the institution (2) creating and maintaining the existence of the [Conseil] (3) overseeing the operations of the [Conseil] (4) would be accountable for the [Conseil] in any way (5) also, since the [Conseil] appears to span many municipalities [over 200 of them], which municipality does it officially belong to. The same information above on the responsible municipality.

November 14, 2000

Request for all records dealing in any way with [the appellant] up to that date.

April 4, 2001

all records dealing with the hiring or appointment of the following representatives: [three named individuals]. Including without limitation the advertisement used to generate the list of proponents. Details of where and when published including proof of publication. The list of respondents or persons considered for their jobs. Evaluation results of each person considered for their jobs. Description of the procedure used to evaluate and then to select one over all other persons considered for their jobs. Including without limitation the name(s) of the person(s) who made the selection (or was on the committee). Any conflict of interest declared by any member of a selection committee, if any. We would also expect this to generate a detailed job description for each position filled by these persons. If both English and French versions of documents exist, kindly provide both versions. In the event that the [Conseil] claims exemption to the release of any document, kindly assemble a list of documents, with specific references to the exemption applicable to each, to facilitate consideration and appeals.

(Order MO-1477 resulted from this appeal.)

July 30, 2001

(1) the salary and changes in salaries at various times for [three named individuals]; (2) records of each allowance and expense reimbursement for [three named individuals]; (3) prior positions held by [three named individuals] with other institutions (include name and department).

November 19, 2001

April 4, 2001 request modified to

(1) a job description would have been drafted for each of the positions before seeking proponents. I would like copies of such job descriptions, including drafts(s) and final versions and revisions after hiring them; (2) an advertisement would have been published to generate respondents. I would like a copy of each different advertisement and proof of publication which identifies the publishers. Also records which disclose other methods of generating a list of candidates if such was the case; (3) respondents to the advertisement, or otherwise, would have sent submissions. I would like copies of all submissions received applying for these jobs, with any person identifying contents severed. (use John Doe #1, John Doe #2, etc. to identify respondents or some such means.) Portions of records which disclose qualifications of the applicants should not be severed; (4) each respondent would have been evaluated, scored or otherwise marked to short list, rank or choose one over another. I would like copies of all such evaluations which shows scores or logical ranking obtained by each respondent. All personal information to be severed, however, they should be tied back to the "John Doe" as identified in point 3; (5) if committees were involved in evaluation or selections, I wish the committee members identified by name and title, together with any conflicts of interest that may have been declared, or (simple confirmation that no conflicts of interest were declared, if that is so); (6) if individuals made the evaluation and /or election, then identify them with the same information as in point 5 above.

April 10, 2001

all correspondence (letters, memos, e-mail) exchanged between Conseil and [a named individual] and/or [named architects] from Oct. 1, 1998 to date, including those sent by solicitors acting for Conseil, excluding only those documents obviously copied to [the appellant]; copy of all internal memos, notes, messages, e-mails, referring in any way to [the appellant's construction company], excluding only those copied to [the appellant]; copy of all third-party memos, notes, messages, e-mails referring in any way to [the appellant's construction company], excluding only those copied to [the appellant]; minutes of all Board meetings in which [the appellant's construction company] was discussed. If both English and French versions of documents exist, kindly provide both versions.

June 26, 2001

portions of accounting reports for each fiscal year end date, since inception of [the Conseil]. Specifically Vendor Detail Reports showing all accounts paid or payable in each fiscal year, shown in ledger type report forms with all invoices received and payments made to every vendor during the year. If vendors are

coded, the corresponding list of vendors' names and the accounting code used as required to analyze the data. A separate computer report should be produced for each fiscal year end date covering the entire year. The report are requested on magnetic media, such as CD, Zip disk or floppy disk, and not printed on paper. If several report options are available from your accounting software, we would prefer a spreadsheet format such as MS Excel, if not, then RTF format, if not still then ASCII text will suffice.

May 2, 2002

the brand name of the accounting software and systems used for accounting; the supplier of the software; the version numbers and revision dates of the software; the names of any optional software modules; the period of time this software has been in use and when this software was significantly changed from prior software; the ability of the software to export or create reports from the accounting database to digital files that can be transferred onto computer medial, such as floppy disc, CD, etc. The common name of each field type that can be generated by the software; a list of all of the different types of reports that the software can generate.

June 13, 2002

Modified request to meet Conseil's capabilities for "a summary vendor report, in Excel; File Format showing the names of each vendor and only the total amount paid to each vendor for the following periods of time: from September 1999 (SAP start date) to December 31, 1999; January 1, 2000 to December 31, 2000; January 1, 2001 to December 31, 2001; January 1, 2002 to June 13, 2002".

August 3, 2001

copies of all invoices rendered by [a named law firm] and payments to [a named law firm] for 1998, 1999, 2000 and 2001 to date; copies of all time docket and receipts for disbursement in support of the invoices and payments noted in item 1.

(Order MO-1509 resulted from this appeal.)

February 26, 2002 – narrowed request – original request is broken down into two types of records.

April 8, 2002

records of all payments made as per current SAP system, specifically between September 1, 1999 and April 2002 (date report is printed).

May 9, 2002

Request for confirmation of [the appellant's] understanding of amounts paid (legal fees) with respect to [a specified school].

May 10, 2002

detailed accounting transaction print-out for the Account Reference Number CSDS 459, showing all transactions to this account, both debits and credits.

(Order MO-1608 resulted from this appeal.)

May 13, 2002

the accounting report showing details of all transactions to [a named law firm] from January 1, 1998 to May 13, 2002.

September 3, 2002

reiteration of request (further to May 9, 2002 request) to confirm [the appellant's] understanding of the print-out of accounting report.

January 28, 2002

purchases and/or expenditures made by the [Conseil] under the authorization, direction and/or recommendation of either of [three named individuals]; (1) that did not follow from an advertised open public tender competition process; and (2) that are over \$5000 in size. We request copies of the following records: purchase order or requisition to the vendor; quotations or offers submitted by each vendor proponent (both successful and unsuccessful) in each instance; documents authored by any of the above commenting on the purchase after the offers were received and prior to the purchase order or requisition being issued to the vendors for the years 2001, 2000, 1999, 1998 and 1997. Estimate and quote each year and the named individuals records separately to facilitate narrowing the request, if necessary.

April 26, 2002

records which address and identify the capital costs of constructing [a named school], at various times: (1) prior to tendering the job; (2) after tendering the job; (3) after award of the contract but prior to construction; (4) during construction; (5) following construction. The records of interest are those between: (1) the [Conseil] and financial institutions; (2) the [Conseil] and the Ministry of Education and other governing authorities; (3) the [Conseil] and its administrators and elected representatives and employees; (4) the [Conseil] and any other party

involved in the budgeting and review of the construction costs of the project at various times. The records would include but not be limited to: (1) budgets and cost summaries at various times; (2) review of budgets vs. actual costs at various times; (3) calculations used for obtaining funding and or loans; (4) calculations used to account and reconcile expenditures vs. funds obtained.

(Order MO-1608 was issued in respect of this appeal also.)

In general, the nature of the appellant's requests is best described as detailed; he often asks for "all" or "each" of many different kinds of records. Also, the scope of the appellant's requests is more often than not broad; he wants records produced in each official language; his requests span several years. Many of them are only tangentially, if at all, related to "the general relationship and interactions of the [Conseil] and my company and the background described above", as the appellant claims. While it is unnecessary that a requester provide a reason for making a request for access, it is significant, in my view, that this appellant's stated rationale for making these requests to this institution is not borne out either in the requests themselves or his representations.

Again, these factors in isolation would not necessarily lead to a conclusion that an appellant is engaging in a pattern of conduct that amounts to an abuse of the right of access. But, taken together with the other facts they do weigh in favour of that finding.

Timing of the requests

The vast majority of the appellant's requests were made after he filed suit against the Conseil. Indeed, according to the representations before me, only three of the requests were made before the appellant commenced proceedings against the Conseil; the rest have been submitted subsequent to the initiation of the lawsuit. In isolation, this factor might be insignificant. When, however, it is considered together with the other factors in this case, it sheds light on the appellant's motivation and conduct, and weighs in favour of a frivolous or vexatious finding.

Purpose of the requests

Again, the appellant's *stated* purpose in filing the particular request at issue is as follows:

The records sought are specifically referring to or relating to [the appellant]. These records are those created for a specific period of time and would be easily identifiable and retrievable, contrary to an earlier request which generated a very high prohibitive search fee and would have resulted in numerous unnecessary records, mostly of no interest. From the period of October 2000 onward, the organization and records keeping by the [Conseil] would have naturally taken on a more organized fashion thus allowing easier access to the records created subsequent to October 2000 and which are now being sought in this request.

The [Conseil] rather than take proactive steps to disclose records of interest, has acted counter-active in all of my requests to attempt to deter, hinder and delay access to any and all records I have sought. They now are trying to use the fruits of their improper strategies to attempt to refuse my request for access to records, which are akin to the personal records of my company and potentially of me as well.

The Conseil suggests the purposes of this battery of wide requests are clear:

- To harass the institution with which the appellant has a dispute
- To engage the Conseil's resources in responding to the request and dealing with appeals
- To secure tactical or informational advantages in litigation

Past orders of this office have recognised, however, that the *conduct* of requesters often gives a much more accurate picture of their purpose than do their words. Consequently, as is suggested by Order M-864, adjudicators have relied on evidence of the requester's use of the freedom of information process to accomplish objectives *unrelated* to access in order to conclude that they have abused the right of access. (See Orders M-947 and MO-1519.)

For example, in Order M-947 the adjudicator notes that the appellant in that case

became focused on seeking information related to how the City dealt with his requests and the amount of time and money the City had spent dealing with him. Because the appellant did not feel he was receiving the service from the City's Freedom of Information branch to which he felt he was entitled, he began using the *Act* and the Freedom of Information process as a means to express his personal attacks on the personnel involved in the process. To this end, his requests became a springboard for launching attacks on City council members and the City's legal department.

In Order MO-1519, the adjudicator concluded that the appellant in that appeal intended to use the process to further his dispute with the institution rather than simply access information. In so concluding, she highlighted several troubling aspects of the appellant's conduct:

- the appellant had not made efforts to work constructively with the City to resolve his requests
- there was evidence of an escalation of the appellant's uncooperative and harassing manner
- the appellant's behaviour was not explained away by his stated confusion or inexperience with the *Act* because he had a history of experience with this office and the *Act*

The conduct of this appellant suggests that his purpose in using the *Act's* process is to accomplish some objective additional to and distinct from the purpose of obtaining access.

Indeed, I find that the evidence suggests that the appellant's purpose is simply to engage in the *Act's* process for its own sake, as a means to involve the Conseil in a continuing dispute, and that access to the records is a secondary and significantly lesser interest.

By his conduct, he has not facilitated access to the information he seeks. For example, other adjudicators have signalled warnings about the state of the relationship between this appellant and the Conseil. In both Orders MO-1505 and MO-1509, the adjudicators comment on the reason for which this appellant filed four letters requesting that the Commissioner apply to the Attorney General for Ontario for consent to prosecute the Conseil under section 48 of the *Act*:

...the appellant's letters to this office are clearly a reflection of the level of *animosity* that has developed between the parties, but they do not detract in any way from the legitimacy of his request (at least at this point in time).

Subsequent to these two orders, I find no improvement in the appellant's conduct in particular. In Order MO-1608, while ultimately concluding that the appellant was not frivolous or vexatious, the adjudicator is still compelled to note:

...In its representations, the Conseil states that the appellant has appealed its actions before the Board's deadline to respond has expired, and that some of his requests have been modified slightly, requiring a duplication of efforts to respond to him. I have reviewed the Conseil's representations in this area and, accepting their accuracy, the appellant's conduct does give rise to some measure of concern. On balance, however, I am unable to clearly conclude from the examples given that the requests were submitted for their nuisance value only and without genuine interest in the information for its own sake.

And, later,

I conclude therefore, on balance, that the circumstances described by the Conseil in its representations do not establish a "pattern of conduct" that amounts to an "abuse of the right of access". However, I am compelled to caution the appellant that my finding should not be seen as a "green light" to escalate his activities. Although I am not convinced of the Conseil's position on balance, *certain aspects of the appellant's conduct as described by the Conseil suggest something less than the type of constructive approach to seeking access under the Act that might be expected from a requester who is genuinely interested in having access to information for its own sake.* (my emphasis)

Furthermore, the appellant's follow-up to a previous similar request and the ensuing appeal indicates that he engages in the process for its own sake rather than to obtain access to the records he seeks.

This previous request, made in April 2001, is identical in its nature and scope to the current request. In that case, the appellant requested a similar collection of documents but pertaining to

an earlier period of two years spanning approximately October 1998 to October 2000. The “frivolous or vexatious provisions” were not at issue; instead, the Conseil applied a number of exemptions to some of the information and provided a fee estimate with respect to the records it anticipated disclosing to the appellant. The appeal from that earlier request was eventually disposed of by way of Interim Order MO-1558-I. It is clear from the order that this particular request became complicated for various reasons, not the least of which was the conduct of both parties, such that three separate appeal files had to be opened to resolve all of the issues. Following receipt of that order, the appellant responded by informing this office and the Conseil that

Based on the results of [the] order, I am unable to determine the nature of the records I will receive should I accept any of the fees. Based on the quantity of responsive records claimed by the [Conseil], it is clearly not within the range I expected. I am therefore unable to accept any of the quoted fees.

Other than the records which are clear from your order, in Point #1, “the minutes of the in camera sessions of the Board held on December 11 and 12, 1998 and October 22, 1999”, which I do hereby request.

By copy of the memo to the [Conseil], I ask that they provide the records identified in Point 1 of the order only. Based on the order there should not be a fee for the records.

The balance of my request is hereby dropped.

I asked the appellant to consider whether the final outcome of this earlier request and appeal had any bearing upon his position in this case. His response appears to be as follows:

The records sought are specifically referring to or relating to [the appellant]. These records are those created for a specific period of time and would be easily identifiable and retrievable, contrary to an earlier request which generated a very high prohibitive search fee and would have resulted in numerous unnecessary records, mostly of no interest. From the period of October 2000 onward, the organization and record keeping by the [Conseil] would have naturally taken on a more organized fashion thus allowing easier access to the records created subsequent to October 2000 and which are now being sought in this request.

I do not accept the appellant’s reasons for abandoning this earlier request for access. The adjudicator’s order reduced the Board’s fee estimate of \$4330 to \$2230. The appellant would only ultimately have had to pay for the actual records to which he obtained access. His apparent willingness to abandon this part of the request, when he had so vehemently pursued access to these records in the first place, suggests that his main focus was the process itself and not the end result of obtaining the records.

Regardless of how he intends to use the records themselves, the appellant's use of the process is abusive. By design, he frames his requests in ways that hamper the access process. His entire approach is counterproductive, all of which leads me to conclude that his chief interest is in the use of the process rather than in access to the information.

Conduct of the Conseil

The appellant submits that:

It is submitted that the [Conseil] has applied similar systemic abuses of process with the Information and Privacy Commission to delay the process. I infer this from the fact that this request was commenced on March 11, 2002 and today, July 28, 2003, some 16 months later I am making my first submission on the very first on the issue of refusal on the grounds of "Frivolous and Vexatious". This decision arose on April 9, 2002, 15 months ago, and it would appear that the Information and Privacy Commission has been delayed by systemic abuses of process applied on the IPC up to this time, though I am not privy as to what exactly has transpired.

One of the questions to be answered here is whether one party's conduct is such that it outweighs the conduct of the other. Seen from another perspective, is there anything in the overall conduct of the Conseil that would justify the appellant's behaviour or negate a finding that a pattern of conduct exists that amounts to an abuse of the right of access?

These questions must be answered having regard to the overall context. The Conseil has not behaved in an exemplary way, to the extent that it has occasioned some delay in the processing of some of the appellant's requests and has resorted to the frivolous or vexatious provisions prematurely in some cases. On the other hand, this office has indicated to the appellant that his own conduct has been wanting or inappropriate. Furthermore, there is no indication before me that the appellant's conduct has improved over the span of time he has been engaged in this relationship with the Conseil. One could reasonably expect that where his intention is to actually obtain access to the information in a timely and efficient manner, the appellant would have modified his own behaviour in order to work more constructively towards this goal.

In certain circumstances, the conduct of an institution may be so inappropriate as to outweigh any factors in favour of a frivolous or vexatious finding. However, in this case, while not exemplary, there is nothing in the overall conduct of the Conseil that would justify the appellant's behaviour or negate a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

Conduct of the appellant subsequent to the filing of the request under appeal

About this issue, the appellant submits:

It is interesting to note that many of the documents produced by the [Conseil] relate to other FOI requests, matters and/or events that occurred after April 9, 2002. I cannot understand how the [Conseil] can claim that subsequent events give rise of support a position taken on April 9, 2002. Unless the [Conseil] claims to be psychic or intentionally took position designed to generate specific reactions from me that it could then use to support its earlier position.

Insofar as the events subsequent to the decision in this matter are considered, I have decided to consider them in reaching my conclusions about this appeal. My reasons for this are two. First, the inquiry before an adjudicator is a de novo hearing where I can consider anew all that has occurred. I am not restricted to the information that was before the institution when it came to its conclusion on the same issue that is now before me. At the time I commenced my inquiry into this case, the appellant's conduct with respect to the more recent requests was raised before me and the appellant had an opportunity to know the Conseil's case and respond to it. Furthermore, as has become evident, while each of the requests filed by the appellant is a snapshot in time, the picture does not substantially change, if at all, from one incident to another. That is to say, the appellant's conduct has been consistent and it has been consistently inappropriate.

Conclusion

There are reasonable and sufficient grounds for making a finding that the appellant's request is frivolous or vexatious under section 4(1)(b). This appellant has been engaged in the access process with the Conseil since late 2000. The Conseil has questioned his conduct in making access requests on other occasions. While this office did not make a finding that the appellant's requests were frivolous or vexatious before, in my view the evidence now has accumulated to the point where such a finding can be made. I have based this finding on a consideration of numerous factors including the total number of the appellant's requests, their timing, their detailed nature and broad scope and the appellant's purpose in making his requests. I have also considered the appellant's more recent conduct with the Conseil. In addition, I find nothing in the Conseil's conduct that would negate a conclusion that the appellant's request is frivolous or vexatious.

In light of this conclusion, it is not necessary for me to consider whether the appellant's request would unreasonably interfere with the Conseil's operations or whether it was made in bad faith.

Remedy

Given that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access, I must decide on an appropriate remedy.

In the circumstances, I have decided that the appropriate remedy is to uphold the Conseil's decision that the appellant does not have a right of access to the information he requested in this appeal.

In addition, in order to deal with the broader issues of the appellant's conduct, I have decided to limit the number of his active access to information matters with the Conseil to one at any given time. The decision to limit the appellant's active matters to one at a time does not preclude a finding, where appropriate, that any current or future request is frivolous or vexatious. The appellant may apply to this office for an order varying the terms of this order after one year has passed from the date of this order.

ORDER:

1. I uphold the Conseil's decision under section 4(1)(b) of the *Act* that the appellant does not have a right of access to the records he requested because the request is frivolous or vexatious, and I dismiss this appeal.
2. I impose the following conditions on the processing of any requests and appeals from the appellant with respect to the Conseil now and for a specified time in the future:
 - (a) For a period of one year following the date of this order, I am imposing a one-transaction limit on the number of requests and/or appeals under the *Act* that may proceed at any given point in time, including any requests or appeals that are outstanding as of the date of this order.
 - (b) Subject to the one-transaction limit described in provision 2(a) above, if the appellant wishes any of his requests and/or appeals that exist at any given time to proceed to completion, the appellant shall notify both this office and the Conseil and advise as to which matter he wishes to proceed.
 - (c) If the appellant fails to pursue any of his appeals that are with this office on the date of this order within two years of the date of this order, this office may declare those appeals to have been abandoned.
3. The terms of this order shall apply to any requests and appeals made by the appellant or by any individual, organization or entity found to be acting on his behalf or under his direction.
4. At the conclusion of one year from the date of this order, the appellant, the Conseil and/or any person or organization affected by this order, may apply to this office to seek to vary

the terms of provision 2 of this order, failing which its terms shall continue in effect until such time as a variance is sought and ordered.

5. This office remains seized of this matter for whatever period is necessary to ensure implementation of, and compliance with, the terms of this order.

Original Signed By: _____

Rosemary Muzzi
Adjudicator

July 6, 2004 _____