



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1963

Appeal MA-050036-2

Town of LaSalle Police Services Board



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NATURE OF THE APPEAL:

On December 4, 2004, the Town of Lasalle Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

All information relating to the ‘apprehension’ [of the requester on] August 05, 2004, including but not necessarily limited to the following; the identities of all persons involved at [the Police], the identities of any judge or justice of the peace that were involved, all documents related to the incident including the **facsimile transmission** sent to [a local hospital] by persons at [the Police], any and all other notes, records, memos, and documents.

The Police responded to this request, along with several other requests from the requester, by taking the position that they met the criteria for being “frivolous or vexatious” under sections 4(1)(b) and 20.1(1) of the *Act*. The requester, now the appellant, appealed this decision.

In Order MO-1921 I addressed the application of sections 4(1)(b) and 20.1(1) to certain other requests made by the appellant and upheld the decision of the Police that these requests were frivolous and vexatious within the meaning of these sections of the *Act*. As a result, I imposed a number of conditions on the appellant’s ability to make use of the access provisions of the *Act* with respect to records held by the Police. The Order Provisions of Order MO-1921 stated that:

1. I uphold the Police 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. However, the appellant may choose to re-activate this request in accordance with the terms of my order below.
2. I impose the following conditions on the processing of any requests and appeals from the appellant with respect to the Police 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 Police 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 Police 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.

At the time I was conducting my Inquiry into the appeals that gave rise to Order MO-1921, I placed Appeal Number MA-050036-1 (the present appeal) and Appeal Number MA-050046-1 on hold pending the disposition of that decision. Following the issuance of Order MO-1921 and in accordance with Order Provision 2, this office re-activated the oldest of the two appeal files, and re-named it Appeal Number MA-050036-2.

The Police initially responded to this request by taking the position that the request is frivolous and vexatious within the meaning of sections 4(1)(b) and 20.1(1). Following the re-activation of the appeal file, I sought and received the representations of the Police. The Police representations speak to the issue of whether the frivolous and vexatious provisions apply in the circumstances of this appeal. I summarized the representations of the Police as follows:

- The request which gave rise to this appeal involves information relating to [the appellant's] 'apprehension' on [a specified date].
- An identical request was received on August 21, 2004 (LPS File FOI #37-2004) and again on August 23, 2004 (LPS File #38-2004). The Police granted the appellant partial access to the responsive records sought. The decision in File #37-2004 was appealed to the Commissioner's office which opened Appeal Number MA-040331-1, which was closed at the Intake stage by the Commissioner's office on the basis that it had been filed out of time.
- Order MO-1921 upheld the Police decision that another request made by the appellant fell within the ambit of the frivolous and vexatious provisions of sections 4(1)(b) and 20.1(1) and limited the appellant's right to make requests under the *Act*.
- By filing requests for the same information on more than one occasion, the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access, as contemplated by section 4(1)(a).

- By requesting the same information on more than one occasion, the appellant's request was made in bad faith or for a purpose other than to obtain access, within the meaning of section 4(1)(b).
- The filing of three separate requests for the same information by the appellant relating to his apprehension is excessive.

The Notice of Inquiry provided to the appellant was returned as undeliverable and I did not, therefore, receive submissions from him. The sole issue for adjudication is whether the request is subject to the frivolous and vexatious provisions in sections 4(1)(b) and 20.1(1) of the *Act*.

DISCUSSION:

IS THE REQUEST FRIVOLOUS AND VEXATIOUS?

General principles

The provisions to be considered in determining whether a request is frivolous or vexatious are sections 4(1)(b) and 20.1(1) of the *Act* and section 5.1 of Regulation 823 made under the *Act*.

Section 4(1)(b) of the *Act* specifies that every person has a right of access to a record or part of a record in the custody or under the control of an institution unless the head of an institution is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. The onus of establishing that an access request falls within these categories rests with the institution (Order M-850).

Sections 20.1(1)(a) and (b) of the *Act* go on to indicate that a head who refuses to provide access to a record because the request is frivolous or vexatious must state this position in his or her decision letter and provide reasons to support the opinion.

Sections 5.1(a) and (b) of Regulation 823 provide some guidelines for determining whether a request is frivolous or vexatious. They prescribe that a head shall conclude that a request for a record or personal information 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.

In Order M-850, Assistant Commissioner Mitchinson observed that 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 Police take the position that the present request, taken together with the appellant's previous requests and subsequent appeals, is part of a pattern of conduct that amounts to an abuse of the right of access on the part of the appellant, within the meaning of section 5.1(a) of Regulation 823.

In Order MO-1921, I made certain findings as to the nature of the requests submitted by the appellant. I found that:

It is clear from the material provided to me by the Police that the appellant has submitted a substantial number of very similar requests over the past several years. These requests deal with records created as a result of an incident involving the appellant and the subsequent Police investigation. Since that time, the appellant has initiated a litany of requests, followed in some cases by appeals to this office, which resulted in his obtaining access or being denied access to the same records time and time again.

In Order MO-1519, Adjudicator Laurel Cropley was faced with a similar case involving an individual who had made multiple requests for the same information and had behaved in a belligerent and uncooperative manner throughout the processing of his requests by a municipal institution:

As discussed above, I have reviewed the circumstances under which the appellant submitted his request, his behaviour throughout both the request and appeal stages and his past behaviour in dealings with the City. Based on my own assessment of these circumstances, I have concluded that his request is frivolous or vexatious. In my view, the appellant's actions in the manner in which he has and is approaching the freedom of information processes constitutes a clear abuse of the right of access. I find that to permit him to continue his pattern of harassment and belligerence would so offend public policy that I will, pursuant to the Commissioner's inherent supervisory authority under the *Act*, remedy this abuse, regardless of anything that may have occurred at the request stage.

In Order PO-1872, I addressed a similar situation involving requests made under the provincial equivalent to the *Act* in the following manner:

I have reviewed the summary of the appellant's requests which was provided to me by the Ministry along with its representations. In my view, submitting a large number of very similar requests for very similar information since July 1998 represents "recurring incidents of related or similar requests on the part of the requester", as described by Assistant Commissioner Mitchinson in Order M-850.

Although the number of requests which exactly repeat the wording of an earlier request is small, it is clear that the requests all focus on the same basic subject or theme, and I am satisfied that there is a significant overlap between the subjects of many of them. Bearing this in mind, I have concluded that the number of requests submitted between July 1998 and April 2000 is excessive.

I also find that the repeated requests for similar information indicate that the appellant is seeking to use the access procedures available to him under the *Act* for the purpose of obtaining access to records which have already been made available to him or which have been denied under one of the exemptions contained in the *Act*. Despite being advised by the Ministry of his right to appeal its decisions to the Commissioner's office, the appellant has chosen not to do so, with the exception of two requests. In my view, the continued use of the *Act* by the appellant to attempt to obtain access to the same information again and again also represents a "pattern of conduct" within the meaning of section 5.1(a) of Regulation 460.

I must now decide whether this pattern of conduct "amounts to an abuse of the right of access". In this case, the evidence, particularly in relation to the volume of requests, and the recurring and/or continuing pattern of the requests, is in my view sufficient to demonstrate that the requests represent an abuse of the access process within the meaning of section 5.1(a) of the Regulation. I also find that the appellant has clearly made use of the access provisions of the *Act* more than once, for the purpose of revisiting an issue which has been previously addressed by the Ministry through its decisions on his earlier requests for the identical information. This activity is another of the examples from the abuse of process cases in a legal context which are cited in Order M-850. I find that this revisiting of previously-resolved issues also represents a pattern of conduct that amounts to an abuse of the right of access as contemplated by section 10(1)(b) of the *Act* and section 5.1(a) of Regulation 460.

In the circumstances of this appeal, therefore, I find that the Ministry has demonstrated that the appellant's pattern of conduct, which includes the requests at issue in this appeal, is an abuse of the right of access. For this reason, I find that the requests at issue in this appeal are frivolous or vexatious.

In the present appeal, the Police have demonstrated to me that over a 24 month period in 2003 and 2004, the appellant initiated some 33 requests under the *Act* that resulted in 13 appeals to this office. In the first six weeks of 2005, the

appellant submitted an additional five requests to the Police. The Police add that it began to keep a telephone log of its contacts with the appellant in 2004 when some 116 calls were received from him. In addition, the Police have provided me with evidence that the appellant has had contact by email, telephone and regular mail with uniformed members of the Police, members of the Police Services Board, the Mayor, Deputy Mayor and Town Council on many, many occasions over the past two and a half years.

In my view, the evidence tendered by the Police demonstrate clearly and unequivocally a pattern of conduct that amounts to an abuse of the right of access within the meaning of section 5.1(a). The appellant has single-mindedly pursued a campaign of unwarranted contact and requests under the *Act* seeking access to the same information over and over again. Such information was either found to be exempt in my earlier decision in Order MO-1709 or has been provided to the appellant on numerous occasions by the Police. I have no difficulty in finding first that the appellant has embarked on a pattern of conduct consisting of making requests to the Police for the identical or very similar information and then following up those requests with a flood of telephone messages, emails and correspondence addressed to any and all who have any connection whatsoever to the Police.

In my view, this pattern of conduct amounts to an abuse of the right of access within the meaning of section 5.1(a) of Regulation 823 and section 4(1)(b). The fact that the requests are numerous, have been made within a relatively short period of time and all relate to essentially the same subject matter are indicative of the pattern of conduct that lead to a finding of an abuse of the right of access.

In the present appeal, the Police have provided me with substantially the same submissions respecting the appellant's use of the *Act* and point out that the present request represents the third occasion in which the appellant has requested what is, in fact, the same information. Adapting the approach used in Order MO-1921, I find that the appellant's pattern of conduct with respect to this appeal also amounts to an abuse of the right of access as contemplated by section 5.1(a) of Regulation 823 and section 4(1)(b) of the *Act*. As a result of my finding that the appellant has entered into a pattern of conduct that amounts to an abuse of process, I conclude that the current request is frivolous and vexatious.

In Order MO-1921, I imposed certain conditions on the ability of the appellant to make use of the access provisions in the *Act*. Despite the outcome of this appeal and my finding that the present request also meets the criteria for a finding that it represents an abuse of process, I am not satisfied that the conditions set out in the order provisions of Order MO-1921 need to be amended or modified in any way.

ORDER:

I uphold the Police 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.

Original signed by: _____
Donald Hale
Adjudicator

_____ September 14, 2005