

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2703

Appeals MA11-24, MA11-25, MA11-26, MA11-27, MA11-28 and MA11-93

City of Greater Sudbury

March 22, 2012

**Summary:** The city received a series of repetitive and overlapping requests for information relating to the operation of its building department. The city claimed that the requests formed part of a pattern of conduct that rendered the requests frivolous and vexatious, as contemplated by section 4(1)(b) and Regulation 823. The city's decision was upheld as the requests were found to be frivolous and vexatious as they were made for a purpose other than to obtain access. As a result of this decision, the appellant will be limited to having a single request at a time processed by the city.

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

**Orders and Investigation Reports Considered:** MO-2390 and MO-2488

### OVERVIEW:

[1] The six appeals addressed in this order arose from six separate requests made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the appellant to the City of Greater Sudbury (the city or CGS). Specifically, the appellant sought access to the following:

1. I would like a copy of the final judgment against the City of Greater Sudbury (I believed total fines were in the area of \$1,000.00 for violating its own by-laws). See attached article where CGS was

taken to court in 2003 for violating its own by-laws pertaining to "no smoking signs".

2. Please disclose information pertaining to calls by [first, second and third named individuals] for Dec. 2, 2009 between 11:30 am and 12:30 p.m. For each, disclose to whom each caller was talking. For example, [first above-stated individual] shows a call at 11:36 am so does [second above-stated individual].... were they talking to each other? Provide all caller/callee info for each of [first, second and third above-stated individuals] for the given time period on Dec. 2, 2009. See attached call record details for [first, second and third above-stated individuals] as provided via previous FOI requests.
3. I would like to see copies of property damage and liability insurance coverage for CGS employees (City Council, Senior Management and Building Services Personnel) for the past 10 years (since my designer admitted in writing that he had designed 100s of "not-to-code" homes over the past 9+ years). I would like to see name and contact info (address, tel.#, etc.) for each provider as well as the policies themselves – including any clauses pertaining to "exclusions", things "not covered", clauses pertaining to denial of coverage or nullification of coverage (i.e. under what circumstances could a claim be denied?)
4. Need to know employment record as it relates to years of service in specific functions for 1) Chief Building Officer [the CBO], 2) [a named individual], 3) Building Inspectors, 4) Plan examiners, 5) Manager of Code Compliance. See attached for more details of what I need. Provide for each employee having each title (i.e. if 10 building inspectors, provide for all 10). – I don't need specific names – just experience in years for each title for ea. person.
5. Please respond to my email pertaining to M & Ps in your office (copy of my email dated Jan. 2, 2011 is attached) Re: 1) How documents are processed and 2) processing of large/many documents submitted as one document.
6. Information relating to Title Insurance held by the City.

[2] The first five requests were submitted to the city between December 2, 2010 and January 5, 2011 while the sixth was received by the city on approximately February 10, 2011. In each case, the city took the position that the requests were frivolous and vexatious, citing section 4(1)(b) of the *Act* and O. Reg. 823, sections 5.1(a) and (b).

[3] The appellant appealed the city's decisions and this office opened six appeals, addressing each of the six requests, and numbering them MA11-24 to MA11-28 and MA11-93. During mediation, other issues were identified and several submissions were received by this office from the appellant.

[4] In the interests of expediting the resolution of these appeals, I initially sought and received representations from the City on whether all six of the requests fell within the ambit of the frivolous and vexatious provisions in section 4(1)(b) of the *Act* and O. Reg. 823, sections 5.1(a) and (b). Portions of the City's representations were shared with the appellant while some other excerpts were not because of my concerns about their confidentiality. The appellant also provided me with extensive representations in response to the Notice of Inquiry, only some of which were relevant to the issue identified in the Notice.

[5] For the reasons that follow, I uphold the city's decision that the requests are frivolous and vexatious and have set out a remedy which will enable the appellant to continue to pursue information using the *Act*, while limiting her contact with the city to a manageable level.

## **ISSUES:**

[6] The sole issue for determination in these appeals is whether the requests are frivolous or vexatious.

## **DISCUSSION:**

### **Are these requests frivolous or vexatious?**

[7] Section 4(1)(b) 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.

[8] 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.

[9] Section 4(1)(b) provides institutions with a summary mechanism to deal with frivolous or vexatious requests. This discretionary power can have serious implications on the ability of a requester to obtain information under the *Act*, and therefore it should not be exercised lightly [Order M-850].

[10] An institution has the burden of proof to substantiate its decision to declare a request to be frivolous or vexatious [Order M-850]. In many cases, ascertaining a requester's purpose for making a request requires the drawing of inferences from his or her behaviour because a requester seldom admits to a purpose other than access [Order MO-1782].

## **Representations**

[11] The city has provided lengthy representations in support of its position that the requests are frivolous and vexatious.

[12] The city states that the volume of requests filed by the appellant demonstrates part of a pattern of conduct that leads to a conclusion that she is abusing the right of access. It indicates that appellant submitted a total of 32 requests under the *Act* during the 13 months between January 27, 2010 and March 1, 2011. The six requests which gave rise to these six appeals form only a portion of the actual number of requests that the appellant has filed with the city. It also notes that eight of these requests involved "multi-part" requests which encompassed an actual total of at least 40 requests. In a table attached to its representations, the city carefully describes each component of the appellant's requests, including the date and the city's response, as well as a brief description of the subject matter of each.

[13] The city also takes the position that, in many cases, the requests are repetitive and involve requests for the same information. It provides examples of these duplicated or similar requests. In addition, the city submits that these requests have given rise to a total of eight appeals, six of which are the subject of this order, as well as one privacy complaint to this office during the time period in question.

[14] The city argues that many of the requests were made for a purpose other than to obtain access to information. First, the city appears to suggest that the appellant is using the access procedure under the *Act* to obtain answers to questions that she wishes to have responded to by the city's building department. It also submits that the appellant is burdening the city with trivial requests and questions about its efforts to manage her requests and the subsequent appeals that have followed. In addition, the city states that the appellant has attempted to control who at the city ought to respond to her requests, asking that certain individuals be required to complete charts and answer her questions and that other individuals or departments not be entitled to respond. She has also attempted to instruct the city about how to conduct its searches for responsive records, providing it with "attachments, charts and diagrams, as well as lengthy narratives about how to obtain document properties and how to query the records".

[15] In addition, the city provides extensive evidence in support of its position that the appellant is consistently uncooperative, angry, harassing, volatile and unreasonable when she attends at its offices and on the telephone with its staff. The city further submits that the appellant's email correspondence with the city's staff is voluminous, confrontational, accusatory and disrespectful in its tone and content and has provided me with many examples of such communications.

[16] Finally, the city argues that these actions, taken together, support the position that the requests form part of a pattern of conduct that amounts to an abuse of the right of access.

[17] In her detailed and voluminous representations, the appellant goes to great lengths to refute what she describes as "simply blatant lies and attacks on my character" by the city. The vast majority of these submissions relate directly to the original dispute between the appellant and the city's building department over an inspection issue. Included with the appellant's representations are a series of internal building department policies and procedures and the appellant's submissions with respect to another appeal with this office, MA10-412-2. She goes on to indicate that each of the requests made to the city were submitted in order to obtain information to assist her in holding the city's building department accountable for what she perceives to be illegal and improper conduct in the manner in which it inspected her home and required that certain corrections be made to it.

## **Findings and Analysis**

### ***Section 5.1(a)***

#### *Pattern of Conduct that Amounts to an Abuse of the Right of Access*

[18] Previous orders of this office have found that in order to meet this criterion, the institution must demonstrate that the appellant has made recurring requests of a related or similar nature or that requests have been made of this nature that the requester is connected with in some material way [Order M-850]. In determining whether or not the "pattern of conduct" exists, the focus should be on the cumulative nature and effect of a requester's behaviour.

[19] The determination of what constitutes "an abuse of the right of access" has been informed by the jurisprudence of this office and 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":

- *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 is the requester's aim to harass the government or to break or burden the system. [Orders M-618, M-850, MO-1782, MO-1810]

[20] 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 [Order MO-1782].

[21] I will consider whether the facts relevant to these appeals support a conclusion that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access.

### Pattern of Conduct

[22] Previous orders cited above have made it clear that the "pattern of conduct" that is required to support a finding that this part of the test has been met relates to recurring incidents of related or similar requests. In my view, the evidence before me

supports the position that a "pattern of conduct" exists.

[23] The city has identified that the appellant submitted a total of 32 requests under the *Act* during the 13 months between January 27, 2010 and March 1, 2011. It notes that eight of these requests involved "multi-part" requests which encompassed an actual total of at least 40 requests. As indicated above, in a table attached to its representations, the city carefully described each component of the appellant's requests, including the date of the requests and the city's response, as well as a brief description of the subject matter of each. The city also points out that, in many cases, the requests are repetitive and involve requests for the same information, and provides evidence in support of that position.

[24] Based on the evidence provided, I am satisfied that city has established that the appellant has engaged in a "pattern of conduct" as required by section 5.1(a) of the regulations with respect to the six requests addressed in this order. I must now determine whether this pattern of conduct that amounts to an abuse of the right of access, as required by section 5.1(a). I will review each of the factors set out above to make this determination.

#### *Number of requests*

[25] The city submits that the volume of requests filed by the appellant demonstrates part of a pattern of conduct that gives rise to a determination that she is abusing the right of access. The city submits that the appellant submitted a total of 32 requests under the *Act* during the 13 months between January 27, 2010 and March 1, 2011. It notes that eight of these requests involved "multi-part" requests which encompassed an actual total of at least 40 requests. In a table attached to its representations, the city carefully describes each component of the appellant's requests, including the date of the requests and the city's response, as well as a brief description of the subject matter of each.

[26] The city also points out that, in many cases, the requests are repetitive and involve requests for the same information. For example, the request for job descriptions of city employees which was assigned request number 2010-18 by the city is duplicated in requests 2010-19, 2010-39 and 2010-70. Request 2010-38 which seeks access to a Quality Management Plan for building services functions is duplicated in request 2010-188 which seeks access to the identical information. There are a significant number of these kinds of duplicate requests identified in the representations provided to me by the city. In addition, the city submits that these requests have given rise to a total of eight appeals and one privacy complaint to this office during the time period in question.

[27] The appellant's representations, though extremely voluminous and detailed, do not specifically address this aspect of the test under section 4(1). She does not, however, dispute the number of requests that the city states she has filed.

[28] I find that the number of requests filed by the appellant is excessive by reasonable standards and rely on the reasoning set out in Orders MO-2390 and MO-2488. In support of such a finding, I note that many, but not all, of the initial requests sought access to information arising from the appellant's complaints about the manner in which the city, and particularly its building department, addressed an issue relating to her home. Many of the subsequent requests seek access to information that is already the subject of a previous request or decision where access was already granted. I find that, taking into account the subject matter of each and their repetitive nature, the number of requests filed by the appellant is excessive and that this is a highly relevant consideration favouring a determination that there exists a pattern of conduct that amounts to an abuse of the right of access.

#### *Nature and scope of the requests*

[29] The city argues that this is also a consideration favouring a finding that it has established a pattern of conduct on the part of the appellant that constitutes an abuse of the right of access. It argues that many of the requests are repetitive and seek the same information again and again. The city cites several examples where the appellant has asked for access to information and it has been provided, or been withheld based on an exemption in the *Act*, yet the same information is the subject of further requests.

[30] In its representations, the city provided me with evidence relating to requests for cell phone numbers (requests 2010-76, 2010-247 and 2010-260), the qualifications of various building department officials (requests 2010-18, 2010-19, 2010-36, 2010-39, 2010-70 and 2011-6), the "truss package" relating to her home, which she supplied to the city (request 2010-28), the inspection activity logs, which were provided to her in response to request 2010-40 and requested again in request 2010-52 and the building services policies and procedures which were sought in request 2010-188, despite already being provided in response to request 2010-38. The appellant also requested on two occasions (requests 2010-36 and 2010-70) information relating to occupancy permits, despite being told that the city does not issue such a document, and information relating to registered code agencies (requests 2010-29 and 2010-36) despite being told after the first request that the city does not use them to enforce the Building Code.

[31] I find that the repetitive nature of many of the appellant's requests is also a significant factor weighing in favour of a finding that there exists a pattern of conduct that amounts to an abuse of process for the purposes of section 4(1).



*Purpose of the requests*

[32] The city submits that many of the requests were made for a purpose other than to obtain access to information. First, the city appears to suggest that the appellant is using the access procedure under the *Act* to obtain answers to questions that she wishes to have responded to by the city's building department. There is nothing improper *per se* in using the access provisions of the *Act* to obtain information that will answer a requester's questions. However, the appellant has asked that certain aspects of requests relating to the building department be responded to by the City Auditor because she is not confident that the building department will honestly answer her questions or it will falsify records and intentionally delay providing access to the information she is seeking. I find that by asking that the City Auditor, rather than staff with the Building Department respond to her requests, the appellant has taken an unreasonable and unwarranted position that demonstrates a motivation that goes beyond simply seeking to obtain access to the information requested.

[33] Second, the city submits that the appellant is burdening it with trivial requests and questions about its efforts to manage her requests and the subsequent appeals that have followed. In particular, the city objects to the manner in which the appellant has twice requested information as to the identity of the city staff person who collated certain records that were provided to her. It also takes issue with the fact that the appellant asked that records be logged in a manner that was satisfactory to her, despite having already been granted access to them. The appellant has also demanded letters of acknowledgement from the city indicating that it had received a request from her and had waived certain fees in response to a request. The appellant has also objected to the subject line in an email sent to her and asked the City Clerk to document what was not included in certain binders of documents that were provided to her in request 2010-188. I agree that the appellant's actions in demanding additional information about the manner in which her requests are responded to is unreasonable and indicates a desire to take control of the process whereby the city responds to her requests. I conclude that this action also leads one to a conclusion that the appellant is motivated by something other than a desire to obtain access to the information she has requested.

[34] Third, in several situations, the appellant has attempted to control who at the city ought to respond to her requests, asking that certain individuals be required to complete charts and answer her questions and that other individuals or departments not be entitled to respond. In my view, she has also attempted to instruct the city about how to conduct its searches for responsive records, providing the city with "attachments, charts and diagrams, as well as lengthy narratives about how to obtain document properties and how to query the records. In other cases, she has provided specific charts that the City is expected to fill out in response to her request for information." This is further evidence in favour of a finding that the requests are motivated by an interest other than to obtain access to information.

[35] Finally, the city has provided extensive evidence of other actions by the appellant which took place when she attends at the city clerk's office to submit her requests or to engage the staff in that office in face-to-face confrontations when the answers she receives are not to her satisfaction. The city submits compelling evidence to substantiate its position that the appellant is consistently uncooperative, angry, harassing, volatile and unreasonable when she attends at its offices and on the telephone with its staff. The city further submits that the appellant's email correspondence with the city's staff is voluminous, confrontational, accusatory and disrespectful in its tone and content and has provided me with many examples of such communications. I have reviewed the material submitted to me by the city with its representations, much of which originated with the appellant. I also note the detailed description put forward by the city which describes a lengthy, confrontational and very difficult history with the appellant since January 2010, particularly as a result of her in person attendances at the city's offices, along with her telephone and email correspondence with various city staff. In my view, this evidence also leads to a conclusion that the appellant is using the Freedom of Information process for a motive other than to obtain access to the information she is seeking.

[36] In her detailed and voluminous representations, the appellant goes to great lengths attempting to refute what she describes as "simply blatant lies and attacks on my character" by the city. The vast majority of these submissions relate directly to the original dispute between the appellant and the city's building department over an inspection issue. Included with the appellant's representations are a series of internal building department policies and procedures and the appellant's submissions with respect to another appeal with this office, MA10-412-2. She goes on to indicate that each of the requests made to the city were submitted in order to obtain information to assist her in holding the city's building department accountable for what she perceives to be illegal and improper conduct in the manner in which it inspected her home and required that certain corrections be made to it.

### ***Conclusion***

[37] In my view, the city has demonstrated with sufficient detail that the appellant's requests have been made to accomplish some objective other than to gain access to information. In Orders M-850 and MO-2488, it was held that 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. In the present appeal, the detailed representations of the city and the appellant's own writings lead to a conclusion that her main motivation in seeking access to the requested information is to buttress her arguments that the city's Building Department has acted improperly. Seeking access to information to assist in pursuing a course of action against an institution is not grounds for making a finding that the request was motivated by some other, improper, objective. However, in this case, the appellant's own actions, which are described above in my discussion of the purpose for the requests, lead to a different conclusion.

[38] I find that the appellant sincerely believes, improperly or not, that she has been wronged by the city and is seeking to redress this wrong. In my view, however, the methods employed by the appellant demonstrate that she has assumed a confrontational and suspicious approach to her relationship with the city and its staff. As a result, while her initial motives may have been entirely proper, it appears that the purpose behind a number of the appellant's requests, particularly the later ones, is not to obtain access to the information which is requested. I find filing repetitive requests and assuming a confrontational approach in her actions and communications with the city's staff lead to a conclusion that some objective other than to obtain access is the motivating factor behind these requests.

[39] I have reviewed all of the evidence tendered by the city and the appellant herself, as well as each of the appellant's requests. Based on that review, I am satisfied that the city has established that the appellant has entered into a pattern of conduct that amounts to an abuse of the right of access. Accordingly, on this basis I find that the city has established that the appellant's requests are frivolous or vexatious in nature, as contemplated by section 4(1)(b) and sections 5.1(a) and (b) of Regulation 823.

[40] Because of the manner in which I have addressed this issue, it is not necessary for me to also consider whether the city has established that the requests would interfere with its operations or that they were made in bad faith or for a purpose other than to obtain access.

### **ORDER:**

1. I uphold the city's decision under section 4(1)(b) of the *Act* that the six requests which have resulted in these six appeals are frivolous or vexatious. As a result, these six appeals are dismissed, without prejudice to the appellant's right to request the information at issue in each in accordance with the process set out below.
2. I impose the following conditions on the processing of any requests from the appellant with respect to the city 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 made by the appellant to the city under the *Act* that may proceed at any given point in time, including any requests 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 her requests that now exist with the city, including the six requests that have given rise to these appeals to

proceed to completion, the appellant shall notify both this office and the City and advise as to which matters she wishes to proceed. The City will then decide the order in which it wishes to process these requests.

3. At the conclusion of one year from the date of this order, the appellant or the city 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.
4. I impose the following additional conditions on the manner in which the appellant's future access requests are to be processed.
  - the appellant is to specify the exact information or records she is seeking, if possible, the location in which she expects the requested records to be found;
  - each request will deal with only one subject matter and will seek specific information and will not include the phrases "any and all" and "but not limited to";
  - the appellant or her representative is not to otherwise contact the city (verbally or in writing) with respect to the processing of her access requests, except and unless the city contacts her first (or her representative) for clarification of a request;
  - the city is not required to respond to any communication from the appellant concerning her access requests unless it has received this communication from the appellant by mail and this communication is either the filing of an access request made in accordance with this order or is made in direct response to a request by the City for clarification of the appellant's access request.
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:  
Donald Hale  
Adjudicator

March 22, 2012

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