Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3108

Appeal MA14-187

City of Toronto

October 7, 2014

Summary: The appellant submitted a request to the City of Toronto for communications between specific Parks, Forestry and Recreation staff and "outside parties" regarding an identified tennis club. The city issued a decision to the appellant, advising him that his request would not be processed because the city considered it to be "frivolous and vexatious" under section 4(1)(b) of the *Act.* In this order, the adjudicator does not uphold the city's decision and orders it to issue an access decision to the appellant in response to the request.

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

Orders and Investigation Reports Considered: Orders M-850, MO-1924, MO-2289, MO-2390, MO-2436 and PO-3121.

OVERVIEW:

[1] This order addresses the sole issue arising from the appeal of a decision issued by the City of Toronto (the city) in response to the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for:

> … any records, notes, e-mails, letters and all communications between managers and employees of P,F&R [Parks, Forestry & Recreation] and

> with any outside parties from Dec 15 2013 to March 13 2014, regarding [a named tennis club] and any fraud within [the club].[1]

[2] The city issued a decision to the requester, stating:

> ... You further clarified that you are seeking "any records, notes, e-mails, letters and all communication between [eight named individuals], employees and any outside party regarding fraud within [the club]; and any records, notes, e-mails, letters and all communication between [eight named individuals], employees and any outside party regarding fraud within [the club from] Dec. 15, 2013 to Mar. 13, 2014."
>
> We will not be responding to your request, pursuant to Section 4(1)(b) and 20.1 of the *Act* and s. 5.1 of Regulation 823, as it is evident that your request is part of a pattern of conduct that amounts to an abuse of the right of access given the number of requests you have submitted on the same topic. It is our opinion that you have made these requests for a purpose other than to simply obtain access.
>
> The current request is your 6th within the past 12 months, regarding the [club]. Your previous files #2012 – 02308, #2013-00533, #2013 – 01377, #2013-02144, and #2013-02785 (which is currently under appeal)[2] have all dealt with various matters concerning [the club]. Much of which, as you have been advised by a number of officials within the City of Toronto, does not concern City business. Thus, the City has no role or influence in those matters.

[3] The requester (now the appellant) appealed the city's decision to this office and a mediator was appointed to explore resolution. During mediation, the appellant challenged the city's characterization of his request as frivolous or vexatious. As the city maintained the position taken in its decision letter, no further mediation was possible.

[4] The appeal was transferred to the adjudication stage for an inquiry. I sought representations from the city, initially, which I shared with the appellant, except portions of the city's written representations and Appendix B, which I concluded met the confidentiality requirements in the IPC Practice Direction 7 and the *Code of Procedure*. After I shared the non-confidential portions of the city's representations with the appellant, he provided a response. I decided to proceed directly to order.

---

[1] The named tennis club is referred to in the rest of this order as "the club."

[2] Appeal MA14-45. That appeal is a single issue search appeal respecting a similar request for records from an earlier time period between June 1 and December 15, 2013. There was another appeal respecting the same set of circumstances, but a narrower request, which was opened by this office as Appeal MA13-574. The appellant agreed to close Appeal MA13-574 in order to pursue the search issue in Appeal MA14-45 because the request submitted to the city was broader in the latter appeal.

[5] In this order, I do not uphold the city's decision that the appellant's request is frivolous and vexatious. I order the city to issue an access decision to the appellant.

DISCUSSION:

Is the appellant's request for access "frivolous or vexatious"?

[6] The *Act* and Regulation 823 provide institutions with a summary mechanism to deal with requests that an institution views as frivolous or vexatious. Previous orders have found 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.

[7] Several provisions of the *Act* and Regulations are relevant to the issue of whether a request is frivolous or vexatious. Specifically, section 4(1)(b) of the *Act* states:

> 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] On appeal to this office, the burden of proof rests on the institution to substantiate its decision to declare a request to be frivolous or vexatious.[3]

[3] Order M-850.

[10] In seeking representations from the city in this appeal, I specifically asked the city to address the fact that the time period given by the appellant was different than his earlier requests. I also asked the city to respond to the appellant's assertion that outside parties sent email communications to the city regarding the alleged fraudulent activity within the club during the stated time period that he had not received access to through his other requests.

Representations

[11] The city submits that the request is frivolous and reflects a pattern of conduct by the appellant to use the *Act* not for the purpose of simply obtaining information, but for other purposes not in keeping with the spirit and purpose of the legislation. Further, the city's position is that the appellant's pattern of conduct amounts to an abuse of the right of access for the purpose of section 5.1 of Regulation 823 because there are "recurring incidents of related or similar requests," as discussed in Order M-850.

[12] The city reviews the appellant's alleged pattern of conduct within the framework developed by past IPC orders. Regarding the number of requests, the city acknowledges that the number of requests from the appellant – six from him, two from his spouse over the past year – may not seem voluminous, but maintains that the "excessive level and nature of direct communication with city staff has escalated over time." The city refers to the appellant also having contacted the city's Accountability Office, the mayor and the media regarding the operations of the tennis club that is the subject of all of these requests.

[13] The city provides a detailed outline of the other requests submitted by the appellant (or his spouse) prior to the present one, which was received in March 2014. Specifically, the city identifies: one request from each of the appellant and his spouse in November 2012 and March 2013; and ones from the requester alone in June, October and December 2013. The previous requests sought records related to the club, such as membership lists, financial statements, audits, meeting minutes, invoices for various items or services, salary information, correspondence with PF & R staff, and "written warning(s)" issued to the club, with various timeframes specified from 2006 to the date of the last request. The city notes that with regard to many of the records sought, the response was that because the club operates at "arm's length" from the city, the city did not have such records. The city's outline of the appellant's requests shows that the list of city staff and elected officials identified broadened with successive requests. The city's description also demonstrates that the city had started advising the appellant that no new records existed that were responsive to the latter two requests.[4] The city also notes that the appellant's subsequent contacts with the city escalated because he was concerned about the purported complicity of city staff in the alleged fraudulent activity at the club.

[4] As noted in the introduction to this order, the city's response to the appellant's December 2013 request is currently under appeal to this office as a "reasonable search" appeal (MA14-45).

[14] Regarding the purpose of the appellant's request, the city points out that he is seeking access to information about matters – the operations of the club - over which the city has no responsibility:

> It is evident from various communications with the [appellant] that the intent of his access requests is to obtain proof of the wrongdoing which he asserts is taking place at [the club]. … The city's role with respect to the dealings of the tennis club relate solely to supplying a permit and ensuring compliance with said permit. Thus, as has been explained to the [appellant] on numerous occasions, the city does not have any authority or involvement with respect to the club's operations.

[15] In support of its position about the appellant's purpose being related to matters outside the scope of its authority, the city provides an excerpt from an email sent by the appellant to two PF & R directors on February 23, 2014, in which he requests that the city order a forensic audit and arrange for other actions related to governance of the club. The city also provides emails from the appellant calling for employment-related consequences for identified city staff based on his view that they have failed to assist him or take action he considers required or appropriate in relation to the club.

[16] The city admits that the request leading to this appeal has a different timeframe from past requests. According to the city, however, the request seeks virtually all communications from certain city staff respecting the club for December 15, 2013 to March 13, 2014, which is the same as previous requests, except for the time period. The city observes that the appellant claims that the alleged fraud at the club has been occurring since 2006. The city submits, therefore, that:

> … all relevant information within the city's possession has already been provided to the requester with respect to [the club]. The more recent timeframe [of this request] does not change the fact that the city would not have been involved in the matters of which the [appellant] asserts the city should be aware, yet the [appellant] continues to use the Freedom of Information process for the purpose of revisiting an issue which has been previously addressed; that the city has no involvement in the operations of the [club].

[17] Additionally, the city submits that the timing of the requests is a factor because the information is only now being sought as part of an ongoing dispute between the appellant and the club's executive, a dispute in which the appellant is trying to involve the city.

[18] Respecting "bad faith" on the part of the appellant, the city alleges that the appellant has an ongoing dispute with the club and has indicated, "both verbally and in writing that he is seeking information to destroy [the club]." The city argues that other

statements made by the appellant in his emails requesting the city to take certain actions respecting, or against, the club demonstrate that he is motivated by some other objective that is not only to obtain access.

[19] The appellant disputes the city's characterization of his request and suggests that his motivation in seeking access is as a "whistleblower." During the earlier stages of this appeal, the appellant explained that he is trying to obtain access to records he believes the city should hold regarding, among other things, fraud that he alleges has been perpetrated by members (past and present) of the club's executive.

[20] In his representations, the appellant asserts that outside parties sent email communications to the city regarding the alleged fraudulent activity within the club during the December 15, 2013 to March 13, 2014 timeframe specified in this particular request. He submits that he has not obtained access to these records through his prior requests. He refers, in particular, to having "received in the mail from anonymous sources that works for the City, additional documentation that **was not provided to me** through FOI, Exhibit "N" and "N1 [emphasis in original]." According to the appellant, this happened in February and November 2013. In the main, however, the representations provided by the appellant do not directly address the issue of whether this access request is "frivolous or vexatious."

Analysis and findings

Section 5.1(a) - pattern of conduct that amounts to an abuse of the right of access

[21] Section 5.1(a) of Regulation 823 provides that a request is frivolous or vexatious if, among other things, it is part of a "pattern of conduct that amounts to an abuse of the right of access." Past orders of this office have explored the meaning of this phrase. In Order M-850, former Assistant Commissioner Tom Mitchinson stated the following about the meaning of "pattern of conduct":

> [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).

[22] Additionally, the cumulative nature and effect of the requester's behaviour may also usefully guide the determination of the existence of a "pattern of conduct."[5]

[23] In Order M-850, former Assistant Commissioner Tom Mitchinson reviewed the common law for assistance in formulating an appropriate interpretation of the term "abuse of the right of access." The former Assistant Commissioner wrote:

---

[5] Order MO-2390.

In *Foy v. Foy* (No. 2) (1979), 26 O.R. (2d) 220, 102 D.L.R. (3d) 342 (C.A.), Howland C.J.O. makes the following comments on the *Vexatious Proceedings Act* (now incorporated into the *Courts of Justice Act*):

> The word "vexatious" has not been clearly defined. Under the Act the legal proceedings must be vexatious and must have been instituted without reasonable ground. In many of the reported decisions legal proceedings have been held to be vexatious because they were instituted without any reasonable ground. As a result the proceedings were found to constitute an abuse of the process of the Court. An example of such proceedings is the bringing of one or more actions to determine an issue which has already been determined by a Court of competent jurisdiction.

The court appears to be saying that proceedings instituted without any reasonable grounds are an abuse of process. In the context of the Act, this might apply to a request for information of a trivial or contemptibility [sic] unimportant nature.

In a similar vein, the Court in *Donmor Industries Ltd. v. Kremlin Canada Inc.* (1991), 6 O.R. (3d) 501 (Ont. Gen. Div.) struck out a statement of claim because it involved re-litigating matters that had been the subject of a previous, unsuccessful action between the same parties. The Court decided to rely on "abuse of process" rather than the doctrine of res judicata, stating:

> I think the stronger position is to hold that these plaintiffs are abusing the court process in attempting to put forward again issues which were either raised in the first action or which were known to them and left unraised at the time of the first action. To allow them to do so is to permit a duplication of proceedings with the inherent danger of conflicting findings of fact on identical issues.

From this case, and *Foy v. Foy* (No. 2), above, it appears that another way of abusing the process of the court is to bring one or more actions to determine matters previously dealt with. Based on my review of the case law in this area, a number of duplicative and repetitive actions is the most common basis for courts to find that their processes have been abused.

The courts have also looked at the motives of a litigant in determining whether an action represents an abuse of process. …

[24] In the context of the *Act*, the concept of "abuse of the right of access" has been associated with a high volume of requests, taken together with other factors. Certain factors that are particular to the case under consideration may be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.[6] Generally, however, Order M-850 and subsequent orders have settled on the following main factors to consider in determining whether the established pattern of conduct constitutes "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.[7]

[25] I agree with this framework, and I have adopted it in my analysis of the application of section 5.1(a) of Regulation 823 in the appeal before me.

[26] Regarding the city's position about the appellant's eight requests (including the two submitted by his spouse), I note that for the most part, each request is separate and distinct from the others and involves different records, even if they all relate to matters transpiring at the same club. Nevertheless, I accept that they are related and similar requests, particularly given the fact that several of the appellant's later requests seek the same, or nearly the same, information as a previous request, albeit for different time periods. I conclude that the appellant's requests amount to "recurring incidents of related or similar requests on the part of the requester" as contemplated by past orders of this office, including Order M-850.

[27] I am also satisfied that the cumulative nature and effect of the appellant's other contacts with the city and its staff relating to his concerns about the club are also suggestive of a "pattern of conduct." On the basis of the evidence before me, therefore, I find that a "pattern of conduct" within the meaning of the term in section 5.1(a) of

[6] Order MO-1782.
[7] Orders M-618, M-850, MO-1782, MO-2289, MO-2390, MO-2436 and PO-3121.

Regulation 823 has been established. The question remains whether the request in this appeal constitutes an abuse of the right of access. To make this determination, I turn to the factors outlined above.

[28] Beginning with the number of requests, I have considered whether eight requests, over a 16-month period, is excessive by reasonable standards.[8] In my view, it is not. Some of these requests were the subject of appeals to this office; most were not. Past findings that affirmed a "pattern of conduct" showing an "excessive number of requests" for the purpose of section 5.1(a) have typically been based on a volume of requests that numbered in the dozens, hundreds or even thousands.[9] In the circumstances of this appeal, I am not persuaded that eight requests for information relating to club activities over 16 months is excessive by reasonable standards. Accordingly, I find that this factor does not support a finding of abuse of process.

[29] Next, on review of the nature and scope of the appellant's requests, I conclude that the requests are not excessively broad and varied in scope or unusually detailed, nor are they identical to previous requests. As I noted above, the requests all seek information relating to the operation of the club in some way: membership lists, financial statements, audits, meeting minutes, invoices for various items or services, salary information, correspondence with PF & R staff, and "written warning(s)" issued to the club, with various timeframes specified from 2006 to the date of the last request. In my view, the scope of the appellant's requests is quite precise in that they are limited to certain individuals, time periods and subject matter. Even acknowledging that the focus of the appellant's requests appears to have shifted to seeking records related to the possible involvement of city staff in not addressing matters about the club's operation as he believes they should, the requests remain clearly worded. Based on my consideration of the appellant's requests overall, I am unable to conclude that they are excessively broad or varied in nature or excessively detailed or comprehensive. Therefore, I find that the nature and scope of the appellant's requests is not a factor that would support a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

[30] Regarding the timing of the appellant's requests, the city argues that this factor is relevant to a finding in this appeal because he is only now seeking the information as part of his ongoing dispute with the club's executive, even though the alleged fraudulent activities at the club date back to 2006. In reviewing this factor, I have considered the appellant's ongoing concerns with the club and whether the timing of the requests is connected to that dispute. Although there is no evidence before me of any other related event of a concrete nature, such as court proceedings, I conclude that the timing of the appellant's requests is connected in some way with his parting of ways

[8] I accept that the two requests submitted by the appellant's spouse also form part of the pattern of conduct.
[9] See, for example, Orders M-850, MO-1782 and MO-2436.

with the club. Accordingly, I find that this factor is moderately relevant to my determination in the present appeals.

[31] I have also considered the purpose of the appellant's requests and, specifically, whether the requests are intended to accomplish some objective other than to gain access without reasonable or legitimate grounds. Are they made for "nuisance" value, or is the requester's aim to harass the city or to break or burden the system.[10] In many cases, ascertaining a requester's purpose requires the drawing of inferences from his or her behaviour because a requester seldom admits to a purpose other than access.[11] The city seeks to impugn the legitimacy of the appellant's purpose by arguing that he is using the access process to obtain proof of alleged wrongdoing at the club, something the city has limited or no authority over. However, the fact that the appellant may be mistaken about the city's authority or its ability to address his concerns about the club is not determinative of this issue. What matters is the appellant's intention, which I am satisfied is to seek access to information about the club's operations for a legitimate fact-finding purpose. His honest, but mistaken, belief in what the city can do to assist him in this regard does not render his purpose unreasonable or illegitimate. In the circumstances, therefore, I am not satisfied that the appellant is exercising his access rights for "nuisance" value or to harass the city. Accordingly, I find that this factor does not support a finding that the appellant's pattern of conduct amounts to an abuse of process.

[32] As stated previously, certain factors that are particular to the case under consideration may also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access. Past orders have considered whether a requester's informal communications with an institution's FOI staff during the processing of the request are a relevant factor. In my view, the city's inclusion of emails from the appellant to FOI and PF & R staff with its representations implicitly raises the relevance of this particular factor in the current appeal.

[33] In Order PO-3121, Adjudicator Stephanie Haly considered affidavit evidence provided by the University of Ottawa's FOI Coordinator about numerous informal contacts "both inside and outside the formal request mechanism provided for in the *Act*" by a rather prolific requester. In that appeal, Adjudicator Haly concluded that the appellant's informal communications with the university's FOI staff was a valid factor to consider. The appellant's communications in Order PO-3121 included "deadlines and ultimatums that the appellant demand[ed] that the university respect…" In this appeal, the appellant makes some similar demands of city staff. However, in Order PO-3121, the institution also submitted that the requester's actions were having a "severe, negative impact on the operations of its Access to Information and Privacy Office," due to the volume of his requests and the number of them that led to complicated appeals

[10] Orders M-618, M-850, MO-1782, MO-2289, MO-2390, MO-2436 and PO-3121.
[11] Orders MO-1782, MO-1810 and MO-2289.

with this office.[12] This submission alludes to the notion of interference with the operations of the institution, which is not alleged by the city in the present appeal. Moreover, while the appellant's informal communications with the city may be concerning in their tone, I find that this factor is not relevant in establishing an abuse of process under section 5.1(a).

[34] As part of its submissions in this appeal, the city has also asserted that "all relevant information within the city's possession has already been provided to the requester." I do not accept this submission as a relevant additional factor in deciding whether the appellant's pattern of conduct amounts to an abuse of the right of access. If the city wishes, in fact, to take that position, the proper answer to the appellant is to advise him that no further responsive records exist.

[35] In conclusion, although there may be some relevance to the timing of the appellant's requests to this determination, I conclude that the evidence ultimately does not establish that the appellant's pattern of conduct constitutes an abuse of the right of access under section 5.1(a) of Regulation 823.

[36] As suggested above, the city has not argued that the appellant's request would "interfere with the operations of the institution," and I will not review this part of section 5.1(a) of Regulation 823. However, I will now review the city's alternate position under section 5.1(b) of Regulation 823 that the request is "made in bad faith or for a purpose other than to obtain access."

Section 5.1(b) - bad faith or for a purpose other than to obtain access

[37] Under the "bad faith" portion of section 5.1(b), a request will qualify as "frivolous" or "vexatious" if the head of the institution is of the opinion, on reasonable grounds, that the request is made in bad faith. Furthermore, where a request is made in bad faith, the institution need not demonstrate a "pattern of conduct."[13] In Order M-850, former Assistant Commissioner Tom Mitchinson defined "bad faith" 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. ... "[B]ad 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.

[12] In that case, the requester had submitted 24 requests and all but three of them resulted in appeals to this office.
[13] Order M-850.

[38] Applying this definition of bad faith, I find that the evidence before me does not support a finding of bad faith on the part of the appellant. As I stated above, the fact that the appellant may be mistaken as to what actions or remedies he might reasonably expect from the city in response to his concerns about the club does not assist the city in establishing bad faith on the appellant's part. While city staff may be frustrated with the appellant's contact with their office and his failure to accept that "the club operates at 'arm's length' from the city," there is no evidence before me to demonstrate that the appellant is motivated by some dishonest purpose. I am satisfied that the appellant has a genuine desire to seek the information he has requested and that he is not acting with some dishonest or illegitimate purpose or goal.

[39] Additionally, I am not persuaded that the appellant has a purpose in submitting his access requests other than to obtain access. I have specifically considered this point in the context of the discussion above respecting the appellant's ongoing dispute with the club, which appears to have led to a dispute of sorts with the city and its staff. Past orders have reviewed whether a requester's objective of obtaining information for use in litigation with the institution or to further a dispute between the requester and the institution was a purpose other than to obtain access.[14] In Order MO-1924, former Senior Adjudicator John Higgins wrote:

> 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 about themselves". In order to qualify as a "purpose other than to obtain access", in my view, the **requester would**

[14] Order MO-1924, as also reviewed in Orders MO-2390 and PO-3121.

> **need to have an improper objective above and beyond a collateral intention to use the information in some legitimate manner** [emphasis added].

[40] I agree with the approach of the former Senior Adjudicator and have applied it to the circumstances of the present appeal. The appellant has explained the purpose behind his request, and I am satisfied that his interest in the information requested is genuine. Additionally, I am satisfied that there is nothing improper about his objective in seeking access to this particular information about the club and PF & R staff communications related to it. As I concluded above under my discussion of the appellant's purpose in relation to section 5.1(a) of the regulation, the fact that the appellant may have an honest, but mistaken, belief in what the city can do to assist him in this regard does not render his purpose illegitimate. For many of the same reasons I relied upon in that analysis, I find that the appellant's request is not for a purpose other than to obtain access, as that phrase is contemplated under section 5.1(b) of Regulation 823.

[41] As I have concluded that the city has failed to establish that the appellant made this request in bad faith or for a purpose other than to obtain access, I find that the requirements of section 5.1(b) of Regulation 823 are not met.

[42] In summary, I conclude that the city has not met the evidentiary threshold for establishing that the appellant's request is frivolous or vexatious under section 5.1 of Regulation 823. Therefore, I find that section 4(1) of the *Act* does not apply to the request that resulted in this appeal and that the city must process it in accordance with the *Act.*

ORDER:

1. I do not uphold the city's decision that the appellant's request in Appeal MA14-187 is frivolous or vexatious.

2. I order the city to provide the appellant with a decision respecting access to the requested records, as contemplated by section 19 of the *Act*, treating the date of this order as the date of the request and without recourse to a time extension under section 20 of the *Act*.

Original Signed By: October 7, 2014
Daphne Loukidelis
Adjudicator