

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-3156

Appeal MA14-25

Toronto Community Housing Corporation

January 29, 2015

**Summary:** The appellant made a series of requests to TCHC over a three year period. TCHC responded to the appellant's most recent request by declining to process it, arguing that the request was frivolous or vexatious under section 4(1)(b) of the *Act*. In this order, TCHC's decision was upheld on the basis that the evidence tendered establishes a pattern of conduct on the part of the appellant that amounts to an abuse of the right of access and would interfere with TCHC's operations. As a result, the request is found to be frivolous and vexatious. The order provides that the appellant's right of access will be limited to one active appeal or request at a time.

**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:** M-850

### OVERVIEW:

[1] The Toronto Community Housing Corporation (TCHC) received a multipart request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information related to the requester's TCHC file and various decisions made with regard to her rent. As the request is six pages long, I will not reproduce it. In summary, the requester seeks access to the following information:

- Documents relating to her annual review date
- Regulations related to how and when her rent is calculated
- Documents relating to the collection of rent arrears
- Documents related to TCHC's decision with respect to market rent determination
- Documents relating to her request for an accommodation letter

[2] After reviewing the request, TCHC issued a decision to the requester, advising that it declined to process her request on the grounds that it was frivolous and vexatious, within the meaning of section 4(1)(b) of the *Act*. In its decision, TCHC also referred to section 20.1(1)(a) of the *Act* and section 5.1 of Regulation 823 and advised the appellant that her request is part of a pattern of conduct that amounts to an abuse of the right of access.

[3] The requester, now the appellant, appealed TCHC's decision.

[4] As mediation did not resolve this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[5] I began my inquiry by inviting TCHC to submit representations in response to the issues raised in this Notice of Inquiry. TCHC submitted representations. I then invited the appellant to make representations in response to the Notice of Inquiry and TCHC's representations, which were shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction 7*. The appellant also submitted representations.

[6] In the discussion that follows, I uphold TCHC's decision that the request is frivolous and vexatious and have set out a remedy which will enable the appellant to continue to pursue information under the *Act*, while limiting her requests to a manageable level.

## **DISCUSSION:**

### **Is the appellant's request frivolous or vexatious?**

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

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

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

[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. The 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.<sup>1</sup>

[10] The institution bears the burden of proof to substantiate its decision to declare a request to be frivolous or vexatious.<sup>2</sup>

[11] TCHC provided lengthy representations and copies of the appellant's previous requests and related correspondence in support of its position that the appellant's request is frivolous and vexatious. TCHC states that it did not exercise its discretion lightly in classifying the appellant's latest request as frivolous and vexatious. TCHC states that this decision was made after reviewing the requested items in conjunction with all the previous requests, determining that the appellant has "misused" the Freedom of Information (FOI) process and unnecessarily tying up enormous TCHC resources in the process.

[12] As background, TCHC advises that the appellant is a resident of TCHC and a recipient of its rent-geared-to-income (RGI) subsidy. TCHC states that the appellant has engaged in an ongoing dispute with TCHC regarding how and/or when her rent is calculated for a number of years. TCHC states that the appellant has raised this issue through various channels including:

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<sup>1</sup> Order M-850.

<sup>2</sup> *Ibid.*

- (a) complaints to various staff within TCHC through hundreds of emails, all the way up to the President & CEO's office;
- (b) complaints to the City of Toronto's Shelter, Support and Housing Administration;
- (c) complaint to the City of Toronto's Ombudsman;
- (d) at the Landlord Tenant Board;
- (e) the Division Court; and
- (f) the Human Rights Tribunal of Ontario.

[13] TCHC submits that, in addition to the above forums, the appellant has used the freedom of information (FOI) process as a mechanism to dispute her rent calculation through requests under the *Act* to TCHC and the City of Toronto.

[14] In her detailed and voluminous representations, the appellant goes to great lengths to demonstrate the "questionable credibility" of TCHC's representations. The appellant provided me with a large volume of evidence, including correspondence and official reports from the City of Toronto's Ombudsman that she claims relate to the main dispute between herself and TCHC over her rent. The appellant considers the definitions of "frivolous" and "vexatious" and submits that the "common sense" definitions of these words demonstrate that her request is neither "frivolous" nor "vexatious".

***Grounds for a frivolous or vexatious claim***

[15] *Pattern of Conduct that Amounts to an Abuse of the Right of Access*

[16] 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.<sup>3</sup> In determining whether or not the "pattern of conduct" exists, the focus should be on the cumulative nature and effect of a requester's behavior.

[17] 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

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<sup>3</sup> Order M-850.

considered to be relevant in determining whether a pattern of conduct amounts to an "abuse of the right of access":

- *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?
- *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?
- *Timing of the requests:* is the timing of the requests connected to the occurrence of some other related event, such as court proceedings?<sup>4</sup>

[18] The institution's conduct may also be a relevant consideration weighing against a "frivolous" or "vexatious" finding. However, misconduct on the part of the institution does not necessarily negate a "frivolous" or "vexatious" finding.<sup>5</sup>

[19] 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.<sup>6</sup>

[20] The focus should be on the cumulative nature and effect of a requester's behavior. In many cases, ascertaining a requester's purpose for making a request requires the drawing of inferences from his or her behavior because a requester seldom admits to a purpose other than access.<sup>7</sup>

[21] In support of its contention that the appellant's access to information request history demonstrates a pattern of conduct that amounts to an abuse of the right of access, TCHC provided copies of the appellant's previous FOI requests, decision letters and related IPC mediation reports and decisions. TCHC states that from March 2010 to November 2013, "the appellant has made seventeen FOI requests with an additional ten requests that were merged with other requests or information was provided outside the FOI process". TCHC states that the appellant has identified 304 separate items in the requests she has filed with it and that she seeks access to 61 separate items in the request that is the subject of this appeal.

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<sup>4</sup> Orders M-618, M-850 and MO-1782.

<sup>5</sup> Order MO-1782.

<sup>6</sup> *Ibid.*

<sup>7</sup> Order MO-1782.

[22] As indicated above, TCHC states that the appellant has used various forums to challenge how and when her RGI rent calculation should be done. One of these involves the appellant's previous sixteen FOI requests. TCHC provides a summary of the sample of the appellant's previous requests to show their repetitive nature. For example, the appellant sought documents relating to the calculation of her rent in the requests filed on the following dates: March 16, 2010; November 12, 2010; January 20, 2011; March 10, 2011; June 15, 2011; September 22, 2011. Subsequently, the appellant requested access to the previous rent calculation decision letters and documents related to her request to investigate staff on their rent calculation decisions on December 12, 2013.

[23] With regard to the appellant's request for an accommodation letter, TCHC advises that the appellant is a cancer survivor and asked TCHC to issue a memorandum to staff to accommodate her needs. While not obligated to do so, TCHC states that it issued an accommodation memorandum (the memo) to its staff on October 24, 2012. However, TCHC submits that the appellant is not satisfied with the accommodations specified in the memo and is using the FOI process to get more accommodations. For example, in her December 21, 2012 request, the appellant requested a memorandum of accommodation and on September 11, 2013, the appellant requested an explanation for why a memorandum was not issued. TCHC submits that these examples demonstrate that the purpose of the requests does not seem to be to obtain access to existing records, but instead to try to get the institution to issue a new accommodation memo and causing the institution to create a new record in the process.

[24] In support of its submission that the appellant's repetitive requests are part of a pattern of conduct that amounts to an abuse of the right of access, TCHC refers to Order M-850 in which former Assistant Commissioner Tom Mitchinson found that "situations where a process is used more than once, for the purpose of revisiting an issue which has been previously addressed" are examples of the type of conduct that would amount to an "abuse of the right of access". Referring to the evidence provided above, TCHC submits that the appellant has revisited the issues of RGI calculations and the accommodation letter many times. TCHC submits that it has patiently and consistently responded to her requests for access and has informed her of those situations when it had already provided a response in a previous request.

[25] TCHC submits that processing the appellant's current request would similarly require it to respond to issues already addressed. TCHC submits that revisiting such issues through the FOI process is unreasonable and amounts to an abuse of the right of access.

[26] The appellant counters TCHC's evidence, submitting that in 2013, she submitted only two FOI requests to TCHC. She submits that two FOI requests cannot be considered excessive "by any standard". The appellant submits that she submitted

twelve requests to TCHC between 2010 and 2012. She submits that twelve requests cannot be considered excessive and that TCHC inflated the number of FOI requests from twelve to seventeen. The appellant also submits takes issue with TCHC's claim that her current request includes 61 items. The appellant submits that she has only requested 52 items and that TCHC inappropriately counted her headings as separate items. The appellant provided a chart of her twelve FOI requests to TCHC tallying the items she has requested access to and indicates that she has only requested 239 separate items.

[27] Further, the appellant submits that she made her requests after the "wrong decisions of TCHC" in "intentionally miscalculating" her rent. The appellant also takes issue with TCHC referring to previous orders of this office and submits that her case "should be distinguished and tried as a 'case of first impression'" as her case is not similar to those referred to by TCHC.

[28] The appellant submits that she seeks access to information that will explain TCHC's decisions and that the requests were only made after the "wrong decisions" of TCHC. The appellant further submits that each request is focused on a particular decision of TCHC and all of the circumstances that led to the "wrong decision". In addition, the appellant submits that each document requested is "meaningful" and are relevant to TCHC's decisions.

[29] Finally, the appellant submits that her request is not identical to the previous requests. The appellant submits that the "possible similarity of requests is caused by the repeated/similar mistaken decisions" of the institution.

[30] Based on my review of the actual requests made by the appellant, I conclude that they are excessive by reasonable standards. While I appreciate the appellant's intention is to determine whether TCHC's decisions are legitimate or not, I find this does not negate the fact that her requests are excessive and form part of a pattern of conduct that amounts to an abuse of the right of access. The appellant's latest request is nearly six pages long with 61 discrete parts. Further, this is not the first request that is extremely lengthy and complicated; for example, her requests dated March 10, 2011 and December 21, 2012 each include over 30 discrete items. Even if I were to accept the appellant's calculations, I find that twelve requests for 239 discrete items, for which there may be multiple responsive records (e.g. reasons for changing the annual rent review date), to be excessive. Further, while I accept that the appellant filed two requests with TCHC in 2013, both of these requests are extremely complicated and include numerous items. Based on my review of the appellant's previous requests and the current request, I agree with TCHC that they are excessive.

[31] In addition, I agree with TCHC's submission that the appellant's requests are similar in nature and unusually detailed. As noted above, the appellant's current request contains over 50 discrete items, two of which read as follows:

C3. Reasoning, Explanations of the reviewer why he considers Changing of Annual Rent Review Date correct, in spite of the fact that this decision contradicts that RGI Guide, Ch 7, p8. It states that the Annual Rent Review can be done only **"on the day that a household took occupancy of a unit"**. In my case it is April 01.

C4. Regulations to support C3 reasoning.

[32] This is only one example of many very specific and highly detailed items requested by the appellant. In addition, I note that the appellant seeks access to regulations that relate to specific decisions, such as C4 above and TCHC's decision "not to follow the RGI Guide and discontinue new Fluctuating period" and "to issue the [Annual Rent Review] Decision Letter 5 months prior to the start of new RGI Year". The appellant also sought access to regulations relating to specific decisions in her previous requests to TCHC and I find that this manner of requesting regulations related to particular decisions to be repetitive and leads to requests that are unusually detailed and excessive. Based on my review of the appellant's request, I agree with TCHC that the appellant appears to be using the FOI process to question and dispute every decision related to her rent calculation and to encourage it to issue a new accommodation memorandum for her. The appellant appears to be extraordinarily focused on the minutiae of her relationship with TCHC. While I agree with the appellant that two requests filed in 2013 to be reasonable, I conclude that the number of items sought within each request is excessive and I find that her requests are unusually detailed.

[33] The appellant's requests are also often repetitive in nature and generally involve her rent, TCHC's decisions with regard to her rent and her accommodation request. As noted by TCHC, in Order M-850, former Assistant Commissioner Mitchinson stated that "situations where a process is used more than once, for the purpose of revisiting an issue which has been previously addressed" are examples of the type of conduct that would amount to an "abuse of the right of access". I adopt the former Assistant Commissioner's analysis for the purpose of this appeal. It is clear, from a review of the appellant's previous requests and the evidence provided by both parties, that the appellant has requested similar information a number of times.

[34] I note that the appellant submits that her case "should be distinguished and tried as a case of first impression" as her case is not similar to those referred to that considered in Order M-850. While I agree that the fact situation of this appeal is not similar to that considered in Order M-850, I find that Assistant Commissioner's general finding that a situation "where a process is used more than once, for the purpose of revisiting an issue which has been previously addressed" can be an example of the type of conduct that would amount to an "abuse of the right of access" is applicable to the circumstances of this appeal. Based on my review of the appellant's requests, I find that her current request is repetitive and concerns issues already addressed by



TCHC, namely, her rent calculation, annual rent review and her request for an accommodation letter.

[35] Therefore, I find that, taking into account the excessive number of requests and items requested and the repetitive and unusually detailed nature of the requests, TCHC has established that there exists a pattern of conduct that amounts to an abuse of the right of access.

*Pattern of conduct that would interfere with the operations of the institution*

[36] A pattern of conduct that would “interfere with the operations of an institution” is one that would obstruct or hinder the range of effectiveness of the institution’s activities.<sup>8</sup> Interference is a relative concept that must be judged on the basis of the different circumstances a particular institution faces. For example, it may take less of a pattern of conduct to interfere with the operations of a small municipality than with the operations of a large provincial government ministry and the evidentiary onus on the institution would vary accordingly.<sup>9</sup>

[37] TCHC submits that it has been patient and accommodating with the appellant in responding to her previous sixteen requests. TCHC submits that since 2010, its staff has spent hundreds of hours responding to the appellant’s many lengthy and detailed requests, despite repetition in the items requested. Moreover, TCHC submits that hundreds of hours have been spent responding to the same issues with the appellant through other forums. TCHC states that it has already provided the appellant with many documents relating to her RGI calculations, rent review and accommodation letter that are also responsive to her current request. Therefore, TCHC submits that processing the appellant’s request and addressing the same issues once again would amount to an unreasonable use of resources and would hinder the effectiveness of its operations.

[38] The appellant submits that TCHC’s submission that her request would interfere with the operation of the institution is a “gross exaggeration”. The appellant states that she only made two FOI requests to TCHC in 2012 and that the current request was instigated by TCHC’s decision to change the Annual Review rent date. The appellant submits that she would not need to file these requests “if TCHC staff supported their decision[s] with regulations and provided requested documents directly”. The appellant also questions TCHC’s calculations for the time taken to locate records responsive to her requests. She submits that all of the requested documents should be in her file “as a base for questionable decisions”. The appellant submits that it is TCHC’s “mistake not to keep all the documents in my file [and] I cannot be blamed for the imaginary search all around TCHC”.

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<sup>8</sup> Order M-850.

<sup>9</sup> Order M-850.

[39] Upon review of TCHC's previous decisions, I agree with TCHC that it has been very accommodating to the appellant and her requests for access. In each decision, TCHC responded to every requested item in the appellant's multipart requests, often providing the appellant with a table itemizing each item requested, indicating whether responsive records were located and a description of the responsive record (if any) and its access decision for them. In addition, I note that TCHC provided me with copies of additional email correspondence between itself and the appellant, in which it would assist the appellant in clarifying her request or including additional items within the scope of the request.

[40] Based on my review of this voluminous correspondence and the meticulous and detailed manner in which TCHC responded to the appellant's requests, I find that TCHC has provided me with sufficient evidence to demonstrate that its staff has spent hundreds of hours responding to the appellant's many lengthy and detailed requests, despite repetition in the items requested. Moreover, given the evidence before me, I find that it will likely take TCHC an inordinate amount of time and resources to respond fully to the appellant's latest request.

[41] Therefore, I find that the requests filed by the appellant have placed an unreasonable burden on TCHC's resources, particularly considering the appellant's requests, which encompass a large number of records. I find that TCHC is required to provide access to information services to many individuals and to have to allocate so much of its resources to respond to the requests submitted by one individual is unreasonable.

### ***Conclusion***

[42] I have reviewed all of the evidence tendered by TCHC and the appellant, as well as the appellant's requests. Based on that review, I find that TCHC has demonstrated with sufficient detail that the appellant's request is a part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with its operations. Accordingly, on this basis I find that TCHC has established that the appellant's request is frivolous or vexatious in nature, as contemplated by section 4(1)(b) and section 5.1(a) of Regulation 823.

[43] 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 request was made in bad faith or for a purpose other than to obtain access.

### ***Remedy***

[44] Where a request is found to be frivolous or vexatious, this office will uphold the institution's decision. In addition, this office may impose conditions such as limiting

the number of active requests and appeals the appellant may have in relation to the particular institution.<sup>10</sup>

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

[46] In addition, in order to deal with the broader issues of the appellant's conduct, I have decided to limit the number of her active access to information matters with TCHC 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. Furthermore, as the appellant has demonstrated a pattern of submitting unusually detailed and multipart requests, I find it necessary to limit the number of "items" (as she has described the sections of her requests) to five. I find that this number of items, which will include all sections and subsections of her requests, to allow her to identify the records sought with some specificity, but will limit the appellant's tendency to seek a multitude of information in a single request. 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 TCHC's decision under section 4(1)(b) of the *Act* that the appellant's request is frivolous or vexatious. As a result, this appeal is dismissed, without prejudice to the appellant's right to request the information at issue in the request 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 TCHC 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 her requests and/or appeals that exist at any given time to proceed to completion, the appellant shall notify both this office and TCHC and advise as to which matter she wishes to proceed.

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<sup>10</sup> Order MO-1782.

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 her behalf or under her direction.
4. At the conclusion of one year from the date of this order, the appellant or TCHC 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. I impose the following additional conditions on the manner in which the appellant's future access requests are to be formulated:
  - the appellant is to limit the number of records or items requested to five (5) for each request
  - the limit of five items for each request includes all sections and sub-sections for each request
6. 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: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ January 29, 2015