

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3430

Appeal MA16-549

City of Greater Sudbury

April 27, 2017

Summary: In Order MO-2703, the adjudicator found that a number of requests made by the appellant were frivolous or vexatious and he dismissed the resulting appeals, imposing a one-transaction limit on requests by the appellant for a period of one year from the date of the order. After one year has elapsed, Order MO-2703 stipulates that the appellant and the city may apply to request that the one-transaction limit be varied. The appellant submitted the request that led to this appeal and the city refused to process it because the appellant has another active matter. In this order, the adjudicator decides not to vary the one-transaction limit imposed in Order MO-2703, and upholds the city's decision not to process the request. The appeal is dismissed.

Orders and Investigation Reports Considered: MO-2703.

BACKGROUND:

[1] The appellant submitted a request to the City of Greater Sudbury (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to Building Services and methods, procedures and policies during a specified time period.

[2] The city issued a decision referring to Order MO-2703 (which had been issued in several previous appeals filed by the appellant). In that order, the adjudicator found that the appellant had made frivolous or vexatious requests. Order Provision 2(a) imposed 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. . . .”

[3] The city’s access decision refers to this one-transaction limit, stating that as another request (the subject of Appeal MA15-631) is still open, the city refuses to process the request.

[4] The appellant appealed the city’s refusal to process the request. In her appeal notice, the appellant disputes that she is only allowed one active access request or appeal with the city at a time; she states that “I was supposed to be allowed 1 per quarter.”

[5] Following receipt of the appeal, the Registrar of this office (the IPC) wrote to the appellant and stated her preliminary view that the appeal should be dismissed because the appellant already had another active matter, namely Appeal MA15-631. The appellant responded by email, stating that she would like to have the one-request limit “scrapped.”

[6] The appeal was assigned to a mediator under section 40 of the *Act*. During mediation, the mediator did not obtain consent from the city to vary the one-transaction limit imposed by Order MO-2703.

[7] The appeal was not resolved at mediation, and has now moved on to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[8] The appellant did not follow the procedure set out in Order MO-2703 to vary the one-transaction limit. She did not submit a request to this office to vary the relevant order provision as stipulated in Order MO-2703. Instead, she submitted an access request to the city which, predictably, the city refused to process.

[9] In effect, the appellant sought to vary the one-transaction limit by submitting the request. She has reiterated her desire to vary the one-transaction limit by asking that it be “scrapped.”

[10] Accordingly, the sole issue in this appeal is whether the terms of Order MO-2703 should be varied, and if so, how. As it is the appellant who seeks to vary the terms of Order MO-2703, I began the inquiry by inviting her to provide representations, which she did in the form of four emails.

[11] In her representations, the appellant states that her representations are not to be shared without her consent. In the circumstances of this appeal, it was not necessary to invite the city to provide representations, and I did not share the appellant’s representations with the city. Under the circumstances, although I do not necessarily accept that the appellant’s representations meet the confidentiality criteria in *Practice Direction 7* issued by this office, I will not refer to the appellant’s representations in any detail in this order.

DISCUSSION:

Should the terms of Order MO-2703 be varied?

[12] Provision 2(a) of Order MO-2703 contains the provision that the appellant wishes to have varied. Order Provision 2 states:

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.

[13] Order provision 3 contemplates a variation to order provision 2(a) no earlier than one year after the order is issued. Order Provision 3 states:

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.

[14] As Order MO-2703 was issued over a year ago, the appellant is entitled to request a variation at this time. The issue I must decide is whether, in the circumstances, it would be reasonable to vary this order provision. In my view, as the appellant seeks to vary the order provisions, she bears the onus of demonstrating that it would be reasonable to do so.

[15] In the Notice of Inquiry I sent to the appellant, I invited her to respond to the following questions that specifically address the issue I must decide in this order:

1. If Order Provision 2(a) of Order MO-2703 is to be amended, how should it be changed?
2. What would the revised Order Provision 2(a) say?

3. Why is the proposed change reasonable under the circumstances?

[16] As already noted, the appellant stated, in her appeal letter, that "I was supposed to be allowed 1 per quarter." The appellant has provided no basis for this assertion, and no further argument to support it. It is also apparent that this approach is inconsistent with the relevant provisions of Order MO-2703 (reproduced above). Those provisions clearly specify a one-transaction limit. The context in which Order Provision 2(a) appears¹ makes it clear that the one-transaction limit includes requests and any resulting appeals.

[17] Clearly, the appellant seeks to vary the one-transaction limit imposed on her by Order MO-2703. In her email to the Registrar, she says she wants it "scrapped." In effect, granting this relief would entirely reverse the outcome in Order MO-2703, in which six of her requests were found to be frivolous or vexatious. This finding, and the consequent limits on the appellant's right to make access requests, were not arrived at lightly and should not lightly be reversed.

[18] The appellant's representations are primarily concerned with a matter relating to her property. But her request is for methods, procedures and policies which relate only indirectly, if at all, to the matter relating to her property. The only outcome of an order in the appellant's favour in this case would be a requirement for the city to process her request for access to methods, policies and procedures. Such a ruling would *not* resolve the matter relating to her property.

[19] Moreover, the appellant is not precluded from submitting an access request for methods, procedures and policies in the future. If the appellant decides to continue pursuing access to these materials, she can request them once her current matter with the city (Appeal MA15-631) is concluded.

[20] Under the circumstances, I find that the appellant has failed to demonstrate that it would be reasonable to vary the one-transaction limit in Order MO-2703 at this time.

[21] This is sufficient to dispose of the appeal. However, I note that in Order MO-2703, Adjudicator Donald Hale upheld the city's claim that six of the appellant's requests were frivolous or vexatious, in part on the basis that the requests were made for a purpose other than to obtain access. He stated:

. . . [T]he 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

¹ See, in particular, Order MO-2703, Provision 2(b).

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.²

. . . 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.

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.³

[22] The appellant's representations in this appeal suggest that the approach described here by Adjudicator Hale has not changed. For this reason, as well, I find that the appellant has failed to demonstrate that the one-transaction limit in Order MO-2703 should be varied.

[23] Notwithstanding this ruling, the appellant may, at any time, request that the one-transaction limit be varied. This is the course of action permitted by Order MO-

² Order MO-2703, para. 35.

³ Order MO-2703, paras. 37 and 38.

2703. If she decides to do so, it would be helpful for her to address the questions I put to her in the Notice of Inquiry, which are also set out above.

ORDER:

I uphold the City's decision not to process the request, and I dismiss the appeal.

Original Signed by: _____

John Higgins
Adjudicator

_____ April 27, 2017