

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3763

Appeal MA16-542

Toronto Transit Commission

April 30, 2019

Summary: The appellant submitted a five-part access request under the *Municipal Freedom of Information and Protection of Privacy Act (the Act)* to the Toronto Transit Commission (TTC) for records relating to its Wheel-Trans program. The TTC issued a decision in which it refused to give the appellant access to the requested records because it was of the opinion that his five-part request was frivolous or vexatious under section 4(1)(b) of the *Act* and section 5.1 of Regulation 823. The appellant appealed the TTC's decision to the Information and Privacy Commissioner of Ontario. In this order, the adjudicator upholds the TTC's decision and dismisses the appeal. As a remedy, he orders that the appellant may only submit a maximum of one access request every four months to the TTC for the next three years, and that any access request that he submits must be narrow and specific and only consist of one part.

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

Orders Considered: Orders M-850 and MO-1782.

OVERVIEW:

[1] The sole issue to be resolved in this appeal is whether a five-part access request for records relating to Wheel-Trans that the appellant submitted to the Toronto Transit Commission (TTC) under the *Municipal Freedom of Information and Protection of Privacy Act (the Act)* is frivolous or vexatious for the purposes of section 4(1)(b) of the *Act* and section 5.1 of Regulation 823.

[2] Wheel-Trans is a service operated by the TTC that provides door-to-door transit

for persons with disabilities. It appears that the TTC denied the appellant's application and subsequent appeal for permanent Wheel-Trans service, and he then filed an application with the Human Rights Tribunal of Ontario (HRTO), alleging that the TTC discriminated against him in various ways on the basis of disability, contrary to the *Ontario Human Rights Code* (the *Code*). The appellant has also filed a number of access requests under the Act to the TTC for records relating to Wheel-Trans, including the one that is the subject of this appeal.

[3] The five-part access request that he submitted to the TTC states, in part¹:

16-44

1. (a) Please send me, for the years 2011 to present, the number of total Wheel-Trans applicants for each year, including "no-shows" to the in-person interview appointments as applicants, and the total number of successful applications for each year.

(b) Please send me, for the years 2011 to present, the number of total Wheel-Trans appeals for each year, including "no-shows" and the total number of successful appeals for each year.

(c) Please send me, for each year, for the years 2011 to present, both the number of Wheel-Trans applicants, and the percentage of total Wheel-Trans applicants who:

i. were "no-show" at the mandatory in-person assessment location for the initial in-person application interview

ii. booked a second in-person interview after being "no-show" to the first one.

iii. were "no-show" at the second in-person interview appointment

iv. were determined to be ineligible for Wheel-Trans based on a "no-show" at the first in-person interview location

iv. who were determined to be ineligible for Wheel-Trans based on a "no-show" at the second, re-scheduled, in-person appeal interview location, after being "no-show" at the first one

v. the same numbers and percentages but grouped seasonally by quarter

¹ The request numbers in bold were added by the TTC.

(d) Please send me, for each year, for the years 2011 to present, both the number of Wheel-Trans appeals and the percentage of total Wheel-Trans appellants who:

- i. were "no-show" at mandatory in-person assessment location for the initial in-person appeal interview
- ii. booked a second in-person appeal interview after being "no-show" to the first one
- iii. were "no-show" at the second in-person appeal interview appointment
- iv. who were determined to be ineligible for Wheel-Trans based on a "no-show" at the first in- person appeal interview location
- iv. who were determined to be ineligible for Wheel-Trans based on a "no-show" at the second, re-scheduled, in-person appeal interview location, after being "no-show" at the first one
- v. the same numbers and percentages but grouped seasonally by quarter

(e) Additionally, please provide the total applicant success rate, including appeals, for Wheel-Trans eligibility for the years 2011-2015, including all "no-shows" as applicants and appeals.

(f) Please also provide the same percentages by contractor (e.g. Comtech, Medisys, etc.) and by eligibility interview stage/type for every type of eligibility assessment for each type of applicant and each type of appeal, i.e.:

- i. initial eligibility applications
- ii. "temporary" eligibility appeals for "Permanent" eligibility
- iii. "questionable rider" appeals
- iv. second order appeals interview after being "no-show" to the first appointment

(a) for both initial assessments and

(b) all appeals as distinguished above in (ii) and (iii)

(g) Please provide the number of applicants who requested transportation assistance from Wheel-Trans to attend the mandatory in-person

assessments, including "no-shows" and appeals for each year from 2011 to present.

.....

16-45

2. Please send copies of reports of all unsuccessful Medisys appeals for the years 2011-2016, with personally identifying information redacted.

.....

16-46

3. Please send a list, covering the years 2011 to present, of all in-person interview location address, including the room/suite number of the rooms in which the said in-person interviews were scheduled to take place, and the dates over the course of which each room was used.

16-47

4. Please send a complete list of all the Toronto Transit Commission's payments to external organizations, including payment made by any and all of the TTC's subsidiary organizations, and including both amounts of the payments, and the names of the recipients of the amounts, from 2011 to present.

16-48

5. In the Medisys contract terms, "Scope of Work" section 2.11, it is stated:

The Company will perform monthly scheduled audits on their staff related to the quality and completeness of the interview forms for the first twelve (12) months of the contract, and quarterly audits for the remainder of the contract term. The results of these audits must be emailed to the attention of the Supervisor - Customer Service. [emphasis added]

Therefore, please provide complete copies of all the audit results sent to the TTC for the period 2011-2016, including any other documentation attached to, or relating to, the audits, but excluding any personally identifying information of individual applicants.

[4] In response to this five-part access request for records, the TTC sent a decision letter to the appellant which stated, in part:

Below is a non-exhaustive list of access requests, IPC appeals, and a privacy complaint that the [TTC] has received from you.

[The TTC lists requests 16-44 through 16-48, and 7 other requests/complaints.]

The TTC submits that these access requests, appeals and complaints amount to a pattern of conduct that constitutes an abuse of the right of access and undue interference with the operations of the TTC, in particular, the TTC's Wheel-Trans department. Moreover, the TTC submits that they are made in bad faith or for a purpose other than to obtain access...

. . . .

In addition, your access requests dated June 27, 2016, No.2, is the same, if not similar, as your access request dated May 25, 2016, No.4. It has also come to our attention that you have already appealed our interim decision letter dated June 10, 2016, Item No. 4, with respect to your access request dated May 25, 2016, No. 4, Request Number 16-39 / IPC Appeal No. MA16-354).

When corresponding with you via email on July 11, 2016, I advised you that your access request for Request Number 16-47 was too broad and I requested that you let me know which department you seek this information from and/or the matter in which it relates. You responded:

Please explain why you think the request is "too broad". The request related to organizations rather than individuals – are there really that many organizations that TTC makes payments to? It seems like this information should already be tracked by TTC, and therefore readily accessible to fulfill the request.

Your tone and accusation that, "...there appears to be something wrong with [TTC'S] archiving and recordkeeping procedures," and that "...information should already be tracked by TTC, and therefore readily accessible to fulfill the request," demonstrate that you are attempting to interfere with the operations of the TTC.

Please be advised that your access requests dated July 27, 2016, will not be processed by this office...

[5] The appellant appealed the TTC's decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the TTC confirmed that it was refusing to give the appellant access to the requested records because it was of the

opinion that the five-part request was frivolous or vexatious under section 4(1)(b) of the *Act* and section 5.1 of Regulation 823.

[6] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. The adjudicator assigned to this appeal solicited and received representations from the parties on whether the request for access is frivolous or vexatious. She also put four other appeals from the appellant on hold, pending the disposition of this appeal.² This appeal was then transferred to me to complete the inquiry.

[7] In this order, I uphold the TTC's decision that the appellant's five-part access request is frivolous or vexatious under section 4(1)(b) of the *Act* and section 5.1(a) of Regulation 823. As a remedy, I order that the appellant may only submit a maximum of one access request every four months to the TTC for the next three years. In addition, I order that any access request that he submits to the TTC must be narrow and specific and only consist of one part.

DISCUSSION:

Is the request for access frivolous or vexatious?

General principles

[8] 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.

[9] 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

² Appeals MA16-354, MA16-740, MA17-82 and MA17-269.

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.

[10] In other words, the head of an institution is required to conclude that a request for access to a record or personal information is frivolous or vexatious if he or she is of the opinion on reasonable grounds that it fits into one or more of the following categories:

- it is part of a pattern of conduct that amounts to an abuse of the right of access;
- it is part of a pattern of conduct that would interfere with the operations of the institution;
- it is made in bad faith; or
- it is made for a purpose other than to obtain access.

[11] 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.³

[12] An institution has the burden of proof to substantiate its decision to declare a request to be frivolous or vexatious.⁴

Pattern of conduct that amounts to an abuse of the right of access

[13] I will start by assessing whether the appellant's five-part request is part of a pattern of conduct that amounts to an abuse of the right of access, as stipulated in section 5.1(a) of Regulation 823.

[14] The IPC has found in previous orders that the following factors may 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?

³ Order M-850.

⁴ *Ibid.*

- *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?⁵

[15] 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.⁶

[16] The focus should be on the cumulative nature and effect of a requester's behaviour. 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.⁷

[17] The institution's conduct also may 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.⁸

Summary of the parties' representations

[18] Both the TTC and the appellant provided extensive representations on whether the five-part request is part of a pattern of conduct that amounts to an abuse of the right of access. I have reviewed these representations in their entirety and will summarize them here.

[19] The TTC states that the cumulative nature and effect of the appellant's access requests provide reasonable grounds to conclude that his five-part request is part of a pattern of conduct that amounts to an abuse of the right of access. It submits that this conclusion is based on the appellant's numerous access requests, the nature of these requests, the timing of the requests, the inferred purpose of these requests, and the

⁵ Orders M-618, M-850 and MO-1782.

⁶ Order MO-1782.

⁷ *Ibid.*

⁸ *Ibid.*

fact that these requests have all been directed at the TTC's Wheel-Trans department.

[20] The appellant disputes that his access request is part of a pattern of conduct that amounts to an abuse of the right of access. He submits that the number of access requests that he has submitted is not excessive and that although some of his access requests have been broad in scope, they were necessary because of the TTC's failure to respond properly to his previous access requests.

Number of requests

[21] The TTC states that in addition to his five-part request, the appellant has made at least 14 other access requests to the TTC over the last three years. All of these requests have been for records relating to the appellant's appeal to the TTC regarding his eligibility for Wheel-Trans. The TTC submits that the number of access requests made by the appellant are "excessive by reasonable standards."

[22] The appellant states that based on his review of IPC orders, the number of requests alone is seldom a sufficient reason by itself for concluding that an access request is frivolous or vexatious. He submits that there must usually be a very high quantity of requests, combined with other substantive evidence of an attempt to harass an institution or burden the system, to reach such a conclusion.

[23] By way of example, he cites Order M-618, in which the appellants had made hundreds of requests on issues such as "washroom cleaning records," and "UFO sightings," and had publicly stated that they were making the requests to burden the system. He notes that even in such an extreme case, Commissioner Tom Wright wrote on page 15 of that decision, " ... I am not prepared to say that this fact of volume alone would necessarily amount to an abuse of process."

[24] With respect to the number of access requests that he has filed with the TTC, the appellant states that he has made 19 separate access requests made over a three-year period. He submits that most of these requests were limited in nature, and the TTC responded with records of a few pages or less (some with answers of two sentences or less).

Nature and scope of the requests

[25] The TTC submits that the appellant's five-part request for records is "excessively broad." In particular, he is asking for a large number of records that cover a lengthy period of time. It further submits that his broad access requests targets its Wheel-Trans department.

[26] It further states that the broad requests made by the appellant are not limited to those that are the subject of this appeal and points to the wording of two other access requests that are the subject of other appeals before me that are currently on hold, pending the disposition of this appeal.

[27] The appellant concedes that "a few" of his access requests are broad but submits there is a reasonable basis for this. In particular, he asserts that because the TTC will take every opportunity to withhold information or provide misleading information in response to his requests, he attempts to "cover all the bases." To support his position, he cites some of his previous access requests, including the two cited by the TTC and provides evidence (including previous correspondence between himself and the TTC) that professes to show that the TTC did not provide him with accurate and complete information and failed to work with him to narrow his access requests.

[28] In reply, the TTC submits that it disagrees with the appellant's assertion that the TTC has not worked with him to narrow his requests. By way of example, it cites part 4 of his five-part request (number 16-47), which states:

Please send me a list of all the Toronto Transit Commission's payments to external organizations, including payments made by any and all of the TTC's subsidiary organizations, and including both amounts of the payment and the names of the recipients of the amounts from 2011 to present.

[29] The TTC states that it is a very large organization and makes payments to thousands of organizations relating to its operations. It claims that when it asked the appellant to narrow the scope of his request, he instead challenged the TTC's position and asked, "Are there really that many organizations the TTC makes payments to?" The TTC submits that it made further attempts to help the requester narrow his request by asking him narrow it by department or by a specific matter, but he refused to do so.

[30] In response, the appellant provided a copy of the email correspondence between himself and the TTC about this part of his request. In an email to the TTC, he stated:

. . . Please explain why you think the request is "too broad".

The request relates to organizations rather than individuals – are there really that many organizations that TTC makes payments to? It seems like this information should already be tracked by TTC, and therefore readily accessible.

[31] The TTC then responded as follows:

As much as I appreciate you assuming that such information should already be tracked by the TTC, and therefore readily accessible to fulfill the request, it is not.

Again, this request is too broad. Please let me know, which department you seek this information from and/or the matter in which it relates.

[32] The appellant submits that section 17(2) of the *Act* obliges institutions such as the TTC to assist requesters in narrowing their access requests. He questions why the TTC's financial department would not have spreadsheets that itemize the individual payments made by the TTC to specific recipients. He submits that if the TTC has exercised good bookkeeping, it should be able to explain to him what it means by "too broad" and how this would apply to his access request.

Purpose of the requests

[33] The TTC submits that the purpose of the appellant's series of access requests relating to its Wheel-Trans department is to accomplish some objective other than to gain access, namely to burden the system.

[34] The appellant states that based on his review of previous IPC orders, access requests cannot be used for purposes such as personal entertainment, harassment, retaliation, or sabotage of government operations. He disputes the TTC's claim that the purpose of his access requests, including the one at issue here, is to "burden the system."

[35] To support its position, the TTC points to a statement made by the appellant with respect to Request No. 16-44, in which he said:

In the Auditor General's 2012 report on Wheel-Trans, TTC management received a specific recommendation to "give consideration to the establishment of a policy to discourage repetitive late cancellations and "no-shows" for Wheel-Trans eligibility assessment or appeal appointments." It therefore seems to me that detailed documentation regarding past "no-show" rates, should be readily available to Wheel-Trans management, and to the public, if TTC management has met its commitments to the City in this regard.

[36] The TTC submits that this statement shows that the appellant did not make his access request for the purpose of gaining access. Instead, the appellant believes that the TTC is obligated to implement the quoted recommendation made by the Auditor General, and he is attempting to burden the TTC with access requests under the *Act* so that the recommendation is implemented in the manner that he sees fit.

[37] The appellant disputes the TTC's suggestion that his statement about an Auditor General recommendation to Wheel-Trans somehow constitutes evidence that he has been attempting to burden the TTC with access requests under the *Act* so that the recommendation is implemented in the manner that he sees fit. He claims that one of the main objectives of the Auditor General's report on Wheel-Trans was to improve the efficiency of the organization, and submits that the TTC's evidence demonstrates the opposite of what they are trying to portray.

[38] The TTC further submits that the appellant's intent to burden the TTC's system is

particularly evident from Request No. 16-48 (which is at issue in this appeal) and Request No. 17-10 (the subject of Appeal MA17-82). It states that because the appellant has received records from the TTC as a result of his previous access requests, he has used them to make further access requests to the TTC relating to its Wheel-Trans department.

[39] In particular, the TTC points to Request No. 16-48, which was made based on the contract disclosed in Request No. 14-18 and Request No. 17-10, which, in turn, was made based on the records disclosed in Request No. 16-39. It submits that it is reasonable to infer that the purpose of these "snowballing" requests was not to seek access to records, but rather to burden the Wheel-Trans department by inundating it with requests.

[40] The appellant disputes the TTC's claim that he has been making "snowballing requests." He submits that it is not his fault if the TTC conducts its operations in such an opaque, unhelpful and unreliable manner that a member of the public must make repeated formal requests to obtain information that is sufficient to properly frame subsequent access requests for additional information.

[41] The appellant submits that the reality is that the TTC's conduct has placed terrible burdens on his time and significant burdens on his meagre personal resources.

Timing of the requests

[42] The TTC states that the timing of the requests is a relevant factor to be considered in the determination of whether the appellant's requests fall into a pattern of conduct that amounts to an abuse of right of access. It claims that the timing of the appellant's requests coincides with an application made by the appellant to the HRTO, alleging discrimination on the part of the TTC and Wheel-Trans. In particular, it points to a passage from an interim decision issued by the HRTO with respect to the appellant's application, which states:

The only remedies sought by the applicant were public interest remedies that take the form of wide-ranging changes to the Wheel-Trans application process, the eligibility assessment process, and the Wheel-Trans eligibility standard.

[43] The TTC submits that this passage from the HRTO's interim decision further supports its belief that the purpose of the appellant's numerous requests is for a purpose other than to seek access to records.

[44] The appellant disputes the TTC's claim that the fact that he filed a human rights application with the HRTO that relates to the same subject matter of his access requests is evidence of an ulterior motive. He states that based on his review of IPC orders, there is nothing wrong with making access requests to an institution under the *Act* at the same time as conducting litigation against that same institution. He submits

that the exception is when the access requests are used as a form of retaliation for being served with litigation, which is not the case here. He points out that he filed an application with the HRTO against the TTC, which was based partly on information he had received through access requests which preceded this litigation.

Analysis and findings

[45] For the reasons that follow, I find that the TTC had reasonable grounds for being of the opinion that the appellant's five-part access request is part of a pattern of conduct that amounts to an abuse of the right of access and it was therefore required to conclude that his request was frivolous or vexatious, as stipulated in section 5.1(a) of Regulation 823.

[46] The first requirement of that provision is that the TTC must be of the opinion on reasonable grounds that the request is part of a "pattern of conduct." The IPC has found that a "pattern of conduct" requires recurring incidents of related or similar access requests on the part of the requester.⁹

[47] In determining whether a "pattern of conduct" exists, I have examined the access requests that the appellant has filed with the TTC. Over roughly a three-year period starting in 2014, the appellant filed 15 to 20 access requests with the TTC. He filed the five-part access request that is the subject of this appeal on June 27, 2016.

[48] Based on my review of the wording of these access requests and the responsive records that the TTC located, I am satisfied that they constitute recurring incidents of related or similar access requests on the part of the appellant. Most of these access requests are for records that relate either directly or indirectly to the eligibility criteria that the TTC uses for its Wheel-Trans program or the appeal process that is available to individuals who are denied Wheel-Trans service. In these circumstances, I find that the appellant's five-part request is part of a "pattern of conduct," as required by the first part of section 5.1(a) of Regulation 823.

[49] The second requirement of that provision is that the TTC must be 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." As noted above, previous IPC orders have found that a number of factors may be relevant in determining whether a pattern of conduct meets this threshold, including the number of access requests submitted by the requester, the nature and scope of the requests, the purpose of the requests and the timing of the requests.

[50] In my view, some of these factors are not relevant in the circumstances of this

⁹ *Supra* note 3.

appeal. For example, although the 15 to 20 access requests that the appellant submitted to the TTC over a three-year period is certainly more than the average person would submit, I find that this number falls short of one that could be considered to be “excessive by reasonable standards.”

[51] Similarly, with respect to the timing of the appellant’s access requests, I am not convinced by the TTC’s argument that the fact that his access requests coincided with an application that he made to the HRTO is evidence that his requests were made for a purpose other than to seek access to records. In my view, the appellant did not make a series of access requests to retaliate against the TTC for opposing his HRTO application. Rather, it seems evident that he sought records about the TTC’s Wheel-Trans program for the purposes of supporting his claim that TTC discriminated against him on the basis of disability.

[52] However, there are other factors that weigh significantly in favour of a finding that the appellant’s five-part access request is part of a pattern of conduct that amounts to an abuse of the right of access. A factor that is relevant here is the nature and scope of the appellant’s five-part access request and particularly whether it is excessively broad or unusually detailed. Although most of the appellant’s access requests are not excessively broad or unusually detailed, previous IPC orders have found that the focus should be on the cumulative nature and effect of a requester’s behavior.

[53] From 2014 to 2016, the appellant submitted a series of access requests that became progressively lengthier, broader and more complex, culminating with the five-part request that is the subject of this appeal. In my view, this five-part access request speaks for itself with respect to whether it is part of a pattern of conduct that amounts to an abuse of the right of access.

[54] The scope of this request for records is excessively broad and unusually detailed. For example, in part 1 of his request,¹⁰ the appellant is seeking records relating to applicants for Wheel-Trans services, particularly those who were “no-shows” for the in-person interview appointments. This part of his request seeks large amounts of numerical data covering a timespan of roughly five years and contains five sub-parts [(a) to (g)]. Sub-parts (c), (d) and (f) are then further divided into several additional sub-parts. The remaining four parts of his access request do not contain sub-parts but also seek records covering the same five-year time frame. In my view, the excessively broad and unusually detailed nature of his access request is a factor weighing in favour of finding that his request is part of a pattern of conduct that amounts to an abuse of the right of access.

¹⁰ TTC request number 16-44.

[55] I have also taken note of the appellant's conduct in response to the suggestion by the TTC that he narrow the scope of some parts of his five-part request. In part 4 of his five-part request¹¹, the appellant asked for the following:

. . . [A] list of all the Toronto Transit Commission's payments to external organizations, including payments made by any and all of the TTC's subsidiary organizations, and including both amounts of the payment and the names of the recipients of the amounts from 2011 to present.

[56] The TTC states that it is a very large organization and makes payments to thousands of organizations relating to its operations. It claims that when it asked the appellant to narrow the scope of his request, he instead challenged the TTC's position and asked, "Are there really that many organizations the TTC makes payments to?" The TTC submits that it made further attempts to help the requester narrow his request by asking him to narrow it by department or by a specific matter, but he refused to do so.

[57] I have reviewed the evidence submitted by the parties on this matter, including email exchanges, and they reveal a stubborn refusal by the appellant to narrow the scope of this part of his access request. The appellant could have agreed to limit the scope of part 4 of his access request to only those external organizations that receive payments from the TTC's Wheel-Trans department, but chose not to do so. In my view, his refusal to budge and to instead engage the TTC in debate about why it cannot readily produce such records constitutes vexatious behavior, and is evidence weighing in favour of finding that his five-part access request is part of a pattern of conduct that amounts to an abuse of the right of access.

[58] Another factor that has been considered in previous IPC orders is the purpose of an individual's access requests and specifically whether the requests are intended to accomplish some other objective other than to gain access to records. The TTC submits, in part, that the purpose of the appellant's series of access requests relating to its Wheel-Trans department is to burden the system with ongoing snowballing requests that are based on records that he received through previous access requests. The appellant submits that it is not his fault if the TTC conducts its operations in such an opaque, unhelpful and unreliable manner that a member of the public must make repeated formal requests to obtain information that is sufficient to properly frame subsequent access requests for additional information.

[59] I am not entirely convinced that the appellant is attempting to burden the system with his access requests, including the five-part request that is at issue here. In my view, he has an honest belief that the TTC discriminated against him based on disability and is attempting to hold the TTC accountable by scrutinizing records relating

¹¹ TTC request number 16-47.

to its Wheel-Trans program. In the circumstances of this appeal, however, I find that it is irrelevant whether the appellant intended to burden the system because the impact of his pattern of conduct, culminating with his excessively broad and unusually detailed five-part request, has produced the same outcome, namely an abuse of the right of access.

[60] In summary, I find that the TTC had reasonable grounds for being of the opinion that the appellant's five-part access request is part of a pattern of conduct that amounts to an abuse of the right of access and it was therefore required to conclude that his request was frivolous or vexatious, as stipulated in section 5.1(a) of Regulation 823.

Remedy

[61] Where a request is found to be frivolous or vexatious, the IPC may impose conditions such as limiting the number of active requests and appeals the appellant may have in relation to the particular institution.¹²

[62] The TTC states that if I find that the appellant's five-part request to be frivolous or vexatious, I should find that his access requests that are the subject of his other outstanding appeals with the IPC are also frivolous or vexatious. This is a reference to the four other appeals before me (MA16-354, MA16-740, MA17-82 and MA17-269), which are currently on hold, pending the outcome of this appeal.

[63] The appellant submits that regardless of the outcome of this appeal, I should immediately issue an order requiring the TTC to immediately disclose the records that he requested in his other four appeals which are on hold.

[64] In my view, these four other appeals should be assessed on their own merits and I intend to seek representations from the parties as to whether I should find that the access requests that led to those appeals are frivolous or vexatious, particularly given my findings in this order.

[65] With respect to the outcome of this order, the TTC asks that I limit the number of access requests that the appellant can make to the TTC's Wheel-Trans department, and that I also limit those requests to only records directly relating to the appellant.

[66] In my view, the remedy that I fashion to address my finding that the appellant's five-part access request is frivolous or vexatious should restrict his capacity to submit further requests that are similarly excessively broad and unusually detailed, but also maintain his right to seek access to records under the *Act*. I have decided that the pathway to produce this outcome is to order that the appellant only be permitted to

¹² Order MO-1782.

submit a maximum of one access request to the TTC every four months for the next three years. In addition, to prevent the appellant from submitting multi-part access requests that are similar to the frivolous or vexatious one that is the subject of this appeal, I will stipulate that any access requests that he submits to the TTC may only have one part.

ORDER:

1. I uphold the TTC's decision that the appellant's five-part access request is frivolous or vexatious under section 4(1)(b) of the *Act* and section 5.1(a) of Regulation 823. The appeal is dismissed.
2. As of the date of this order, the appellant may only submit a maximum of one access request every four months to the TTC for the next three years. In addition, any access request that he submits to the TTC must be narrow and specific and only consist of one part.

Original Signed by: _____
Colin Bhattacharjee
Adjudicator

_____ April 30, 2019