**Information and Privacy Commissioner,
Ontario, Canada**

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

ORDER MO-4241

Appeals MA21-00250, MA21-00255, MA21-00256, MA21-00257, MA21-00258, MA21-00259, MA21-00260, MA21-00261

Town of Oakville

August 19, 2022

Summary: At issue in these appeals is whether the appellant’s requests to the Town of Oakville (the town) are frivolous or vexatious under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*). In this order, the adjudicator finds that the town has established that the requests are frivolous or vexatious under section 4(1)(b) of *MFIPPA*. He upholds the town’s decisions and imposes conditions on current and future requests submitted by the appellant to the town, as well as conditions on appeals of the town’s decisions.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, as amended, sections 4(1)(b) and 51(1); Regulation 823, section 5.1(a).

Orders Considered: Orders M-618, M-850, MO-1841, MO-3154, MO-3293 and PO-3156.

BACKGROUND:

[1] The Town of Oakville (the town) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to information relating to the Saw-Whet Subdivision Development Proposal Review and Approval process, situated on or in proximity to the golf course lands, on Bronte Road within the town. The town submits that the appellant, in concert with a law clerk at another law firm acting for the plaintiffs in a class action, has submitted numerous requests since 2019 relating to flooding, development and other topics that are raised in the class action. As will be elaborated on below, the town took the position that the

requests of the appellant and the law clerk are frivolous or vexatious under 4(1)(b) of the *Act*, and denied the requests on that basis.

[2] The appellant made both of the requests at issue in these appeals. The first request is a seven-part request that was also sent to staff of the Conservation Halton (CH) and the Town of Halton (Halton)[1]. The town divided the request into seven separate requests bearing separate town request file numbers which are set out below in conjunction with the IPC appeal numbers that have been assigned to them.

[3] The first (seven-part) request was for access to:

> Appeal MA21-00256/Request file number 2021-0029
>
> 1. All E-Mails, correspondence and discussions from 2012 to date, pertaining to Saw-Whet passing between (i.e. sent by, received by, or copied to):
>
> > (i) [Named individual] of Conservation Halton ("CH") and any member of the CH Board of Directors, whether acting as a local or regional council member, or otherwise;
> >
> > (ii) [Named individual] of CH and any member of the CH Board of Directors, whether acting as a local or regional council member, or otherwise;
> >
> > (iii) [Named individual] of CH and any member of the CH Board of Directors, whether acting as a local or regional council member, or otherwise;
> >
> > (iv) representatives, agents or owners of Bronte Green Corporation or SGL Planning & Design and CH representatives and Town of Oakville representatives;
> >
> > (v) [Named individual], Chair of Halton Region and any person or individual referred to in (i) to (iv), above.
>
> Appeal MA21-00255/Request file number 2021-0030
>
> 2. All Flood Plain models from 2012 to date used in the delineation of the flood line, SWF reports, maps, storm run-offs, regulatory flood plain and flood hazards, including upstream and downstream impacts or analysis submitted by or behalf of Bronte Green Corporation, by SGL Planning &

[1] At the end of the seven-part request the appellant advised that identical requests would be made to each of CH, Halton and the town. The appellant indicated that each is tasked to process the complete request "without delay or obfuscation", other than for records exclusively in the possession of the other named institutions.

Design and used internally by CH, Halton and Town of Oakville staff in all aspects of Saw-Whet decision-making, approval, commentary, communications and review processes, pertaining to:

(i) the proposed Saw-Whet subdivision development application as submitted, revised and updated; and

(ii) the 2016 Conditions of Draft Approval (OMB Matter Town File Number: 24T-14004/1530), to the satisfaction of CH (or Town of Oakville staff).

Appeal MA21-00257/Request file number 2021-0031

3. Pre and Post development storm water run-off figures, data, analysis and values, expressed as a percentage or otherwise (both with and without SWF controls) for Saw-Whet submitted by, or on behalf of Bronte Green Corporation, from 2012 to date for each of the approximate proposed (i) 849 residences (ii) 875 residences, and (iii) 1,181 residences or more, for that site. Include CH, Halton (and Town of Oakville) analysis or determinations of such figures, data and values.

Appeal MA21-00258/Request file number 2021-0032

4. The co-efficient factor(s) proposed, used, requested by and accepted by:

(i) CH

(ii) Town of Oakville

(iii) Halton and

(iv) Bronte Green in Saw-Whet flood hazard, storm run-off and flood plain model and mapping calculations, values and reports from 2012 to date, including upstream and downstream flood impacts or analysis.

Appeal MA21-00259/Request file number 2021-0033

5. All hydrologic and hydraulic models, maps, data, parameters, variables, analysis, values and reports from 2012 to date, including HEC-RAS, that were submitted, studied, reviewed, approved, rejected, analyzed, revised as considered by CH, Halton and Town of Oakville, pertaining to (i) Saw-Whet, and (ii) related reaches of 14 Mile Creek, both upstream and downstream of Saw-Whet, including potential or known spills.

Appeal MA21-00250/Request file number 2021-0034

6. All documents, reports, maps & technical analysis submitted by or behalf of the owner Bronte Green Corporation, by SGL Planning & Design, including that used internally by CH, Halton and Town of Oakville in decision-making, approval, commentary, and review processes, pertaining to each of:

(i) The FSR, SWF, ASP, EA, sub-watershed reports, submissions and analysis for Saw-Whet, as originally submitted, revised and updated for the period 2012 to date.

Appeal MA21-00260/Request file number 2021-0035

7. Each of the documents, reports, certifications, things, approvals, requirements and comments for Saw-Whet from 2016 to date pertaining to each of:

(i) under items #30, #31, #32, #49, #72, #119 as set out in the OMB related 2016 Conditions of Draft Approval, to the satisfaction of CH, Halton and Oakville, and

(ii) under any other items as set out in the OMB related 2016 Conditions of Draft Approval;

(iii) under any of the settlement terms or conditions, as varied or required by CH, Halton, Bronte Green Corporation and Oakville, relating to Saw-Whet.

[4] The other request at issue (assigned town request file number 2021-0037 and IPC appeal file number MA21-00261) is for access to a "Sheldon Creek Water Management Study (McLaren Plan Search 1983 or 1984, as updated)."[2]

[5] The town issued eight decisions[3] for both of the requests taking the position that they were frivolous or vexatious under section 4(1)(b) of the *Act* (frivolous or vexatious), and refusing the requests on that basis. In that regard, separate decision letters issued by the town with respect to each of the requests provided as follows:

The Corporation of the Town of Oakville ("Town") will not be responding to the above request on the basis of Sections 4(1)(b) and 20.1 of *MFIPPA*

---

[2] It appears that the appellant may already have the record responsive to this request, but I am not sure of the circumstances under which he obtained it. In any event, this makes no difference to my conclusion below that the requests at issue in these appeals are frivolous or vexatious.

[3] The town had also sent correspondence to the appellant seeking clarification from him regarding the terms used and the nature of the information sought in the requests at issue in Appeals MA21-00250 (item 6 of the multi-part request) and MA21-00256 (item 1 of the multi-part request).

> and Section 5.1 of Regulation 823 to *MFIPPA*, as the Town considers this request to be frivolous and vexatious. This request is part of a pattern of conduct which amounts to an abuse of the right of access, interferes with the operations of the Town, and has been made in bad faith and for a purpose other than to obtain access.
>
> You have placed 18 requests with 58 parts[4] since August 26, 2020, commencing shortly after your office initiated a class action against the Town which appears related to these requests. While the Town has made all efforts to respond in good faith to your requests thus far, the volume and breadth of your repeated requests has unreasonably burdened various Town departments and placed considerable strain on the Town's limited resources for responding to access to information requests. We note that your requests have comprised a significant proportion of the overall number of access to information requests received by the Town during the relevant time period.

[6] The appellant appealed the decisions to the Information and Privacy Commissioner of Ontario (the IPC).

[7] I decided to adjudicate the appellant's eight appeals together and they will all be addressed in this order. The law clerk's requests and appeals will be adjudicated separately and be the subject of a separate order.

[8] During my inquiry into these appeals, I sought and received representations from the town and the appellant. The town included in its representations an affidavit of its Corporate Records and Freedom of Information Coordinator in support of its position. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[9] In this order, I find that the town has established that the appellant's requests are frivolous or vexatious under section 4(1)(b) of *MFIPPA*. I uphold the town's denial of access on the basis of section 4(1)(b) of the *Act* and I also find that this is a suitable situation to impose conditions on current and future requests submitted by the appellant to the town, as well as conditions on any appeals from the town's decisions.

DISCUSSION:

Are the requests frivolous or vexatious under *MFIPPA?*

[10] The frivolous or vexatious provisions in *MFIPPA* provide institutions with a summary mechanism to deal with frivolous or vexatious requests. This power can have serious implications to a requester's ability to obtain information under *MFIPPA*, and

---

[4] The amount of requests and the number of parts varied in each decision letter, but the rest of the text was the same.

therefore it should not be exercised lightly.[5] Orders under *MFIPPA* and its provincial equivalent, the *Freedom of Information and Protection of Privacy Act* (*FIPPA*), have also stated that an institution has the burden of proof to substantiate its decision that a request is frivolous or vexatious.[6]

Grounds for a frivolous or vexatious claim under *MFIPPA*

[11] Section 4(1)(b) of *MFIPPA* 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.

[12] Section 5.1 of Regulation 823 under the *Act* elaborates on the meaning of the phrase "frivolous or 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.

[13] In other words, under *MFIPPA*, the head of an institution is required to conclude that a request for access 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, or
  - would interfere with the operations of the institution, or
- it is made in bad faith, or
- it is made for a purpose other than to obtain access.

[14] The town claims that the appellant's requests are frivolous or vexatious under

---

[5] Order M-850.
[6] See, for example, Order M-850.

MFIPPA because they are part of a pattern of conduct that amounts to an abuse of the right of access and that processing the requests would interfere with the town's operations. The town's representations also suggest that it believes that the appellant's purpose for making the requests is other than to obtain access and that they may have been submitted in bad faith.

[15] In the discussion that follows, I explain why I have concluded that the appellant's access requests are part of a pattern of conduct that amounts to an abuse of the right of access. For that reason, his access requests are frivolous or vexatious. It is therefore not necessary for me to consider the other reasons the town argues that the requests are frivolous or vexatious.

The town's representations

[16] The town is of the view that the requests at issue are related to an ongoing proposed class action against it. This class action[7] alleges that the town (and associated defendants including the town's mayor) improperly granted development approvals which increased flooding or flood risks for members of the class within the town. The town points out that the appellant is one of the lawyers acting for the class. The town submits that the high volume of requests has overburdened the town and that the number of requests, even if only the ones made by the appellant are considered, has been excessive by reasonable standards.

[17] The town submits that the appellant, in concert with a law clerk at another law firm acting for the class, has submitted numerous requests since 2019 relating to flooding, development and other topics that are raised in the class action. In support of this submission, the town provided a chart as an exhibit to the affidavit of its Corporate Records and Freedom of Information Coordinator setting out the various requests it received from these individuals. The town explains that since 2019, the appellant has submitted 27 requests totalling 93 parts. Of these, 25 requests totalling 88 parts pertain to flooding, development, or other topics raised in the class action. The town adds that over the same time period, the law clerk has submitted 55 requests with 260 parts, all of which pertain to flooding, development, or other topics raised in the class action. The town states that since July 2019, the appellant and the law clerk have together collectively submitted 82 requests totalling 348 parts which pertain to topics raised in the class action. The town adds that it has responded in good faith to 69 of the 82 requests.

[18] The town submits that the circumstances in this appeal are similar to those at issue in Order MO-1841, in which many of the requests made to the Regional Municipality of Peel by a requester[8] were "broad, asking for 'all' records covering a number of transactions or issues", with one record covering a period of twenty years

[7] The town attached a copy of the statement of claim as an exhibit to the affidavit of its Corporate Records and Freedom of Information Coordinator.
[8] Not the appellant.

and others covering the "email accounts for the entire staff of the Region". In that order, the adjudicator held the requests to constitute a pattern of conduct amounting to an abuse of the right of access. The town also relies on Order MO-3292, in which the adjudicator held that the requests submitted were "very broad in their scope and nature" as the requester had sought "all" records in electronic and paper format relating to multiple individuals and involving multiple search terms, over relatively expansive time periods. The adjudicator upheld the institution's denial of access.

[19] In his affidavit, the town's Corporate Records and Freedom of Information Coordinator provides the following examples of the town's conduct to support the town's assertion that prior to its decision to rely on *MFIPPA's* frivolous and vexatious provisions, it responded in good faith to the vast majority of requests submitted by the appellant and the law clerk:

a. requesting clarification from the appellant and the law clerk and providing Notice of Extension letters where necessary;

b. issuing fee estimates for requests estimated to result in fees of $100.00 or more;

c. engaging the third-party notice framework as needed;

d. issuing decision letters including fees to be paid for the release of responsive records where the estimated fee was less than $100.00;

e. releasing all non-exempt records and releasing responsive records with exempted information severed where possible; and,

f. communicating to the appellant and the law clerk via email and by telephone to answer questions about active requests, fees, etc.

[20] The town also relies on Order M-618, where in drawing the conclusion that two requesters had been found to be acting in concert to overburden various police services, the adjudicator considered, among other factors, the requesters' "similar modus operandi", the fact that they formally worked together, the association of the two individuals in the media and the similarity of their requests. In its representations in the appeals before me, the town listed a number of factors, including the following, that it submits support the inference that the appellant and the law clerk are acting in concert:

- The requests submitted by the appellant and the law clerk have sought similar or overlapping information, have used nearly identical wording, are broad and/or unusually detailed in scope, and are at times duplicative in the records they seek.

- The appellant and the clerk know each other and are linked on social media.

[21] Addressing more specifically how the collective requests form part of a pattern of

conduct that amounts to an abuse of the right of access, the town provides the following examples:

- There are 59 requests totalling 259 parts seek records spanning back a long period of time, such as emails from 2000, 2004 or 2006 to present;

- There are 15 requests totalling 242 parts that are very broad yet detailed in their wording with respect to the types of records sought, for instance, requesting "all records, E-mails or writings etc." from a specified year to date which "are relating to - or passing between" numerous named persons, entities and their representatives;

- 12 of the requests totalling 239 parts seek "any Email (including "sent, "inbox", "forward", "delete" and "reply")" or "all E-mails, correspondence and discussions" passing between numerous named individuals, entities or persons over a specified time period, with some requests further specifying the types of searches which must be conducted by the town;

- Several requests are duplicative or repetitive with respect to the information sought, or request information which could have already been disclosed had the fees for the release of records responsive to 36 of the processed requests been paid.

[22] In his affidavit, the town's Corporate Records and Freedom of Information Coordinator provides the following examples of duplication and overlap of the requests, one of which includes one of the requests at issue in these appeals[9]:

a. Request No. 2019-0067 brought by the appellant seeks various records relating to the Bronte Green Property Development Proposal which would also have been captured by Request No. 2019-0078, brought by the appellant and overlaps with the information requested in Request No. 2019- 0083 by the law clerk;

b. Request No. 2020-0070, brought by the law clerk, seeks emails between [the Mayor, an individual and Oakville Green] which appear to be captured in Request No. 2020-0073 brought by the appellant; and,

c. Request No. 2020-0160, brought by the law clerk, seeks the Sheldon Creek Water Management Study which was also requested in Request No. 2021-0037 by the appellant.

[23] In addition to responding to the requests that the town processed, the town states that its staff have engaged in frequent communications with the appellant, including during in-person visits at Town Hall, and through various phone calls and email correspondence. The town adds that hundreds of hours have been spent

---

[9] Being the request at issue in appeal MA21-00261.

searching for, reviewing, and severing records responsive to the processed requests, all while the town still has to respond to requests submitted by other requesters. Relying on Order MO- 3156, it submits that to allocate so much of its resources to respond to the appellant and the law clerk is unreasonable.

[24] With respect to the increasing volume of access requests that the town has received from the appellant and the law clerk, in his affidavit, the town's Corporate Records and Freedom of Information Coordinator explains that:

> In 2019, the town received 140 [access to information] requests overall, 11 of which were from [the appellant and the law clerk]. In 2020, the town received 170 [access to information] requests overall, 60 of which were from [the appellant and the law clerk]. Thus far into 2021 [June], the town has received 68 [access to information] requests overall, 11 of which are from [the appellant and the law clerk].
>
> In 2019, 7.9% of requests received by the town were submitted by [the appellant and the law clerk]. In 2020, that percentage grew to 35.3%. In 2021 [June] thus far, 16.2% of requests received by the town have been from [the appellant and the law clerk]. I note that these percentage calculations are based on the number of requests rather than the number of parts, and that many of the requests submitted by [the appellant and the law clerk] include many parts.

[25] The town relies on the IPC's decision in Order MO-3154, in which it was held that six broad requests submitted over a 16-month period, involving thousands of records, placed a considerable burden on the Municipality of South Huron's staff and that the three requests at issue in that appeal were frivolous or vexatious.

[26] The town explains that it has limited staffing resources available for responding to access to information requests:

> … The town has one Corporate Records and Freedom of Information Coordinator responsible for overseeing the [access to information] request response process, which includes communicating with town departments in conducting searches for responsive records, instructing IT staff on conducting email searches, reviewing and severing all responsive records, and communicating with requesters as needed. The town submits that limited administrative assistance is available to the Corporate Records and Freedom of Information Coordinator from one town staff member, for scanning or photocopying records.

[27] In his affidavit, the town's Corporate Records and Freedom of Information Coordinator confirms that he is only able to ask one town staff member for additional assistance, which can be only of a purely administrative nature, such as scanning and

photocopying records and not for the purposes of performing document review, deciding whether exemptions apply, or severing records, all of which he does himself. He admits that he is able to consult his predecessor in the position but that it is technically not part of her new full-time role with the town.

[28] The town submits that its operations have already been interfered with as a result of the high-volume requests submitted by the appellant and the law clerk from 2019 to present which pertain to flooding, development, and other topics raised in the Class Action, as follows:

a. Searches conducted in respect of the processed requests resulted in over 20,000 responsive records that required review and severance before they could be disclosed to the appellant and the law clerk;

b. The town's Freedom of Information staff were overwhelmed with the high volume of requests received, particularly in 2020, requiring the hiring of external reviewers to assist with the review and severance of responsive records;

c. Town staff and external reviewers have spent a minimum of 252 hours in searching for, reviewing and severing records responsive to the processed requests;

d. In addition to time spent by town staff in searching for, reviewing and severing the responsive records, staff members have also spent time engaging in various communications with the appellant, thereby reducing the amount of time available for them to perform their other job duties. For instance, town staff have spoken with the appellant at Town Hall, have answered his phone calls, and have exchanged email correspondence with him; and,

e. Town staff other than the Corporate Records and Freedom of Information Coordinator, including the town's IT staff and representatives from various town departments, have also been disrupted each time search requests were sent out in relation to the requests brought by the appellant and the law clerk.

[29] The town adds that despite the time and resources it expended in preparing records responsive to the processed requests, the appellant and the law clerk have not yet paid for or indicated an intention to pay for the release of responsive records in respect of 36 of the 69 requests that the town processed. Furthermore, they have continued to submit additional requests to the town despite not having paid the outstanding balance for the release of several sets of responsive records relating to prior requests.

The appellant's representations

[30] The appellant asserts that the town has provided no evidence to support the denial of access to the records sought and has failed to establish that the requests are

frivolous or vexatious.

[31] The appellant submits that in order to address the appeals, it is important to examine the actual facts:

> … For example, the [first multi-part] records request is for specific "Saw-Whet" development records that Oakville retains as the approval authority for the Bronte Green development application file, it both possesses and holds. Oakville summarily uses its "discretion" to thwart access to records - it hasn't denied holding. Going back to basics, this is a single records request, comprised of separate elements to make it easily locatable and retrievable. All the records sought should be in one location, or "file" on the Bronte Green development application. Whether or not Oakville is the subject of a proposed class-action lawsuit alleging decades of negligence or other causes of action - is entirely irrelevant to locating, retrieving and reviewing a single development file, out of the thousands of development files archived or retained by Oakville. Oakville also fails to indicate whether it has released all, or part, of the sought records to other requesters, or on what basis it would refuse to do so. Rather, Oakville argues as to why the records shouldn't be released based on supposed motives of the requestor -- not how easily they can be located, reviewed and released by Oakville, but for its fettered decision-making process.

[32] The appellant submits that:

> … Oakville is attempting to conflate the freedom of information process with the civil litigation process to protect its litigation interests and itself against the allegations made in the pleadings and evidence filed to date. In essence, Oakville argues it doesn't have to release [responsive] records which might be relevant or disclosable in legal proceedings. …

[33] The appellant submits that based on section 51(1) of *MFIPPA*, that argument must fail.

[34] Section 51(1) provides that:

> This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

[35] The appellant further submits that all of his requests under appeal are not overly broad, but are limited and specific. For example, the appellant submits that his request for access to records relating to various "builders" and "developers" and elected Oakville officials, are specific to the named builder and the elected official, for a

specified period (e.g. 2012 to date)[10]:

> With respect to that appeal, it is known for example, that principals, related individuals or employees of these "builders" made political donations to the election campaigns of those Oakville officials - listed in the [access to information request]. The Form 4 of the Mayor of Oakville is attached for 2018. How could it be bad faith or frivolous or vexatious to gain access to any E-Mail or other records existing between the "builder" and the Oakville officials named, including the Mayor who received money from those or related persons. The issue of transparency and accountability looms given Oakville was the municipal authority that approved of this "Saw-Whet" development, albeit by way of a publicly announced consensual settlement. The public has a right to access those records and to ensure that any decision-making wasn't fettered, or the citizens' interests were subjugated to development interests. The above is premised upon some part of these appeals involving "builder" E-Mails and Oakville officials. If that isn't the case, the submission doesn't apply.
>
> It is submitted the exercise of discretion by Oakville was improper, not made in full appreciation of the facts of the case, or upon proper application of the applicable principles of law. Rather, this discretionary power to deny access to the records must fail as it is improper and not a valid exercise of discretion, as it considered the legal interests of Oakville or its officials. Discretion cannot be exercised by consideration of ulterior motives or factors that include Oakville not wishing for internal E-Mails or records disclosing a course of conduct or dealing with any of the builder entities, that may portray a different state of affairs than has been unilaterally publicly announced. If Oakville's view were to prevail - it would retain the discretion to decide when, or if, [records subject to the *Act*] can ever be made available. It would be a subjective test, rather than objective. That is not what the Ontario legislature intended when it passed [access to information] legislation.

[36] The appellant submits that his requests relate to issues of transparency and the accountability of the town relating to its review, assessment and granting of development permission to the Saw-Whet development. The appellant submits that:

> … Oakville possesses no "immunity" from citizens seeking a right of access to records it holds. Oakville is attempting to unilaterally de-facto amend the [access to information] legislation and jurisprudence to suit the interests of its CEO and officials by substituting an improper subjectively determined "frivolous" and "vexatious" argument, devoid of any objective

[10] This was the subject of request 2020-0166, a request that is not one of the appeals listed in the background above, but that I have considered in making my determinations in this order.

> basis or facts. What is also clear is that [an access to information] records request is not a civil court production order or any civil discovery type process. Oakville has conflated these different processes, notwithstanding section [51(1)] of [*MFIPPA*]. The interest at stake is an individual right of access to records - collected and held by Oakville, ostensibly for purposes of carrying out its purposes which is flood prevention and protection of the public from flooding hazard risks, including the right to deny development that may in its opinion create or aggravate flood hazards. Those are exactly what the "Saw-Whet" related records sought in this case are. That is also what the records regarding the "builders" and the elected officials ultimately relate. Oakville is attempting to paint this records request as some type of illicit enterprise, when it is not. It is a request for records and information known to be held by Oakville that for other reasons it wishes to deny access - not found in either section 4(1)(b) of [*MFIPPA*] or under section 5.1 of Regulation 823 of the *Act*. Oakville is attempting to thwart that legislative right of access granted to all citizens to further its enterprise interests and its CEO's interests. Those interests are of no moment here.

[37] The appellant submits that the requests at issue are simply seeking access to "Saw-Whet" related information that spans an 8-year period. The appellant asks:

> … How could that impair the functioning of Oakville or otherwise impose too great a burden? The short answer is it doesn't. The records sought are focused on a single development application file for Bronte Green at the former Saw-Whet golf course, which Oakville after first publicly announcing it was "fighting", then approved, along with its municipal partners. Oakville has issued (and approved) well over 10,000 development applications over the past 20 years. Those other record holdings are not within the scope of the [access to information] request - only a single specific Saw-Whet related record holding is being sought. Those are the facts. There is simply no reasonable basis for a finding of any "frivolous" or "vexatious" finding on these facts.

[38] The appellant submits that if the town is concerned with its ability to respond to the access to information requests, then the IPC could assist it by setting a "records search plan".

[39] The appellant submits that:

> … I have personally performed complex federal access to information searches involving such matters, that were in fact completed in under 20 days. Presumably, Oakville has "electronic" records as of 2012, which coupled with simple search terms (e.g. Saw-Whet flood model etc.), could simplify and provide even faster record locating. There is no credible basis

> to demonstrate that Oakville - or its lawyers - have raised any valid factual or legal grounds to deny the […] records sought. All the records sought are easily locatable and producible. In fact, the [first multi-part request listed in the background above] request has not been made before to Oakville, on the basis set out in the records request (which I substantively reproduce below). […]
>
> > 1. E-Mails from (and to) various staff - involving the "Saw- Whet" development proposal - from 2012.
> >
> > 2. Flood Plain Models from 2014 to date - submitted by the developer involving the "Saw-Whet" development proposal - from 2012.
> >
> > 3. Storm Run off calculations (pre and post) - submitted by the developer involving the "Saw-Whet" development proposal - from 2012.
> >
> > 4. Co-efficient Factor used in items #2 and #3 above - involving the "Saw-Whet" development proposal - from 2012.
> >
> > 5. Hydraulic & Hydrologic Models - involving the "Saw- Whet" development proposal - from 2012.
> >
> > 6. All documents or reports submitted by the developer involving the "Saw-Whet" development proposal - considered or used by CH in the approval process - from 2012.
> >
> > 7. All documents or reports submitted by the developer (or required by CH) involving the "Saw-Whet" settlement terms & conditions - from 2016.

[40] The appellant submits that the town has failed to provide sufficient evidence to demonstrate that the request for access to the "Saw-Whet" development application file sought or records of "builder" E-Mails to its elected officials is frivolous or vexatious. The appellant submits that he has provided sufficient detail to allow an experienced employee of Oakville to relatively easily locate the records sought. The appellant submits that there is no reasonable basis for concluding the access to information requests are frivolous or vexatious or made in bad faith. Rather, he says, "that is a pejorative label concocted by Oakville - so it doesn't have to make fact-based decisions."

[41] The appellant submits that the town has exceeded both its statutory authority and acted *ultra vires*. He submits that:

> … While Oakville and its directing minds may not relish the prospect of having to provide access to records that may inculpate either itself - or its

> municipal partners under the public or private law with respect to any aspect of the Saw-Whet development approval process or their internal dealings with "builders" who also receive development approvals - it has no legal basis for thwarting access to transparent and accountable government. What underlies the impugned discretionary decision-making were other factors and motives - that remain unstated by Oakville. The […] records sought should be located and released, without spurious frivolous and vexatious arguments to hide behind.

[42] Finally, the appellant adds that by answering some of his requests but claiming others to be frivolous and vexatious the town is acting inconsistently.

The town's reply representations

[43] The town submits that the appellant's representations only appear to address the six requests pertaining to Saw Whet development records from 2012 to present (Appeals MA21-00250, MA21-00255, MA21-00256, MA21-00257, MA21-00258 and MA21-00259, respectively). The town submits that the appellant's representations do not address the request at issue in Appeal MA21-00260. The town argues that, in any event, the appellant selectively referenced the appealed requests which are unrepresentative of the many detailed, multi-part requests submitted by the appellant and the law clerk.

[44] The town further submits that the appellant's representations are "notably silent on several key points":

a. the appellant does not deny that he has submitted to the town 27 access to information requests with 93 parts from 2019 to present, 25 of which, with 88 parts, pertain to topics raised in the class action;

b. the appellant does not deny that he acted in concert with the law clerk in submitting 82 access to information requests with 348 parts from 2019 to present, nor that the town had already responded to 69 of these 82 requests prior to issuing its decision that the appealed requests were frivolous or vexatious;

c. the appellant does not deny that the appealed requests pertain to topics raised in the class action;

d. the appellant does not provide any justification for his failure to pay for the release of records responsive to 36 of the 69 processed requests submitted by the appellant and the law clerk,

e. the appellant largely, if not wholly, fails to address the relevant criteria for a frivolous or vexatious finding and does not expressly deny that the appealed

requests are part of a pattern of conduct amounting to an abuse of the right of access.

[45] The town submits that the appellant's assertions regarding its alleged "motive-based denial" and improper exercise of discretion in respect of the appealed requests are "entirely baseless and unsupported conjecture." Further, the town denies refusing to respond to the appealed requests in a calculated effort to avoid disclosing the town's conduct.

[46] Furthermore, the town denies being inconsistent in answering some of the appellant's requests but not others and asserts that it responded to all the requests submitted by the appellant until it determined that the appellant's continued voluminous and onerous multi-part requests had passed the point of reasonableness and were frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*.

[47] The town states that it has never taken the position that it should not be required to respond to the appealed requests on the basis that responsive records are or will become accessible to the appellant through the litigation process.

[48] The town reiterates that over 20,000 responsive records have been reviewed in relation to the 69 processed requests, and that over 252 hours have been spent in reviewing and severing records responsive to the processed requests.

[49] The town submits that the appellant understates the work required by the town in responding to access to information requests and disregards the fact that the town must also respond to access to information requests submitted by other requesters. It adds that:

> … The town performs electronic searches using search terms and date ranges as suggested by the appellant, however, each responsive record must then be reviewed for applicable exemptions and severed pursuant to the *Act* prior to production. Town efforts are also required in communicating with requesters, engaging the third-party notice framework pursuant to the *Act*, scanning/photocopying records, and indexing voluminous responsive records. These efforts are not addressed in the appellant's submissions.

[50] The town denies that in claiming the requests at issue in this appeal are frivolous or vexatious that it has acted contrary to "what the Ontario legislature intended when it passed [access to information legislation]". The town takes the position that it has complied with the *Act*, Regulation 823 under the *Act*, and applicable IPC jurisprudence.

Analysis and finding on a pattern of conduct that amounts to an abuse of the right of access

[51] The first part of section 5.1(a) of Regulation 823 under *MFIPPA* sets out that one

way that a request can be determined to be frivolous or vexatious is if the institution establishes reasonable grounds for concluding that the requests form part of a pattern of conduct that amounts to an abuse of the right of access. What constitutes "reasonable grounds" requires an examination of the specific facts of each case.[11]

"Pattern of conduct"

[52] A pattern of conduct must be found to exist, prior to determining whether that pattern of conduct amounts to either an abuse of the right of access or would interfere with the operations of the institution.

[53] Previous IPC orders under *MFIPPA* have addressed the meaning of the phrase "pattern of conduct." For example, in Order M-850, former Assistant Commissioner Tom Mitchinson stated:

> [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).

[54] The former Assistant Commissioner also pointed out that, in determining whether a pattern of conduct has been established, the time over which the behaviour occurs is a relevant consideration. The reasoning in Order M-850 has been considered in many subsequent orders issued by the IPC, which have also established that the cumulative nature and effect of a requester's behaviour may be relevant in the determination of the existence of a "pattern of conduct".[12]

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

[55] Once it has been established that a request forms part of a pattern of conduct, it must be determined whether that pattern of conduct amounts to "an abuse of the right of access." In making that determination, institutions may consider a number of factors, including the cumulative effect of the number, nature, scope, purpose and timing of the requests.[13] 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.[14]

[56] Previous orders have also stated that the focus should be on the cumulative nature and effect of a requester's behaviour because, in many cases, ascertaining a requester's purpose requires the drawing of inferences from his or her behaviour.[15]

[57] The IPC may also consider an institution's conduct when reviewing a "frivolous or

---

[11] Order MO-3292.
[12] Order MO-2390.
[13] Orders M-618, M-850 and MO-1782.
[14] Order MO-1782.
[15] Order MO-1782.

vexatious" finding. However, an institution's misconduct does not necessarily mean that it was wrong in concluding that the request was "frivolous or vexatious."[16]

Pattern of conduct

[58] I begin the analysis by noting that, as the town did in the multi-part request, the town often assigned separate request numbers to a request by subdividing parts that were either listed by number or letter. That said, in my view, the evidence demonstrates that the appellant has made recurring related or similar requests which recently have been related to the topics raised in the class action, and that the access request before me form part of that pattern of conduct.

[59] Although the requests may not be identical, because they pertain to different information, individuals and/or different time frames, the type of information that he seeks in most of his requests is related to the issues raised in the class action. I say this while acknowledging that an appellant is not prevented from requesting information relating to litigation.[17]

[60] Given these circumstances, I find that the appellant's requests are part of a pattern of conduct as contemplated by section 5.1(a) of Regulation 823.

[61] As I have found that the requests are part of a pattern of conduct, I will now consider whether that pattern of conduct amounts to an abuse of the right of access.

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

[62] I find the number of requests made by the appellant alone, even if considered to be made up of multi-part single requests, is excessive by reasonable standards. In reaching this conclusion, I have also considered the cumulative effect of all the requests that have been made by the appellant.

[63] In addition, it does not appear to me that this number will decrease over time. The appellant has not suggested that they will decrease. The town has provided evidence setting out a potential increasing number of requests over time, noting up to the time it provided it representations in June 2021, approximately 16% of the requests received by the town were from the appellant or the law clerk.

[64] Accordingly, I find that the sum total of the appellant's requests, however counted, is sufficiently high to be considered a factor weighing heavily in favour of a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

[65] Furthermore, the nature and scope of many of the requests are excessively broad and unusually detailed. In addition, many of the appellant's requests constitute

---

[16] Order MO-1782.

[17] See in this regard section 51(1) of the *Act*.

recurring incidents of related or similar access requests on the part of the appellant. In that regard, although the requests may not be identical, because they pertain to different information, individuals and/or different time frames, the type of information that he seeks in all of his requests is substantially similar or, at the very least, related to the issues raised in the class action.

[66] In these circumstances, I find that I have been provided sufficient evidence to conclude that the nature and scope of the appellant's requests are excessively broad or have the cumulative effect of being excessively broad by reasonable standards.

[67] 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 town submits that the appellant's purpose for making his requests is other than to obtain access and that this is a factor in favour of finding that the requests are part of a pattern of conduct amounting to an abuse of the right of access. The appellant disagrees.

[68] I am not entirely convinced that the appellant is attempting to burden the system with his access requests, including the seven-part request that is at issue here. In my view, he is attempting to obtain information relating to the class action litigation or is attempting to hold the mayor and town councillors accountable by scrutinizing various requested records. 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 requests, has produced the same outcome, namely an abuse of the right of access.[18]

[69] Lastly, I have considered the appellant's suggestion that there has been bad faith on the part of the town in responding to his requests, and that this should be a factor in determining whether the requests are frivolous or vexatious. In my view, the appellant has made bald assertions of bad faith without providing sufficient evidence to support those assertions. In the circumstances, I find that there has not been bad faith on the part of the town, and do not find this to affect my decision in this appeal. I accept the town's evidence that it responded to all the requests submitted by the appellant until it determined that the number of the appellant's requests had passed the point of reasonableness.

[70] Accordingly, I accept that the town has provided me with sufficient evidence to establish that the appellant's requests form part of a pattern of conduct that amounts to an abuse of the right of access under section 5.1(a) of Regulation 823 under *MFIPPA*. Therefore, I find that the town has established reasonable grounds for making a finding that the appellant's requests are frivolous or vexatious on that basis under section 4(1)(b) of *MFIPPA*.

---

[18] See in this regard the discussion in Order MO-3763.

Remedy

[71] I have found the appellant's access requests at issue in these appeals to be frivolous or vexatious, and I uphold the town's decision to deny the access requests on that basis. I will now consider whether I should impose conditions such as limiting the number of active requests and appeals the appellant may have in relation to the town.[19]

[72] I invited representations from the parties on the appropriate remedy in the circumstances of these appeals. The town responded by stating that I should grant the following:

a. that the appellant shall resolve all outstanding access requests with the town by either paying the applicable fees for the release of responsive records or expressly withdrawing the outstanding requests, prior to submitting any further access to information requests to the town;

b. that he be limited to only submitting one active request, with no more than three parts, to the town at a time; and,

c. that he be limited to having one active IPC appeal in respect of the town at a time.

[73] The town adds that because appellant has acted in concert with the law clerk in "overwhelming the town with a high volume of burdensome access to information requests pertaining to topics raised in the class action", the IPC should impose the following restrictions on the law clerk and his law firm and all agents or representatives of the law clerk's law firm as well as the law offices of the appellant:

a. that they collectively be limited to only submitting one active request for records pertaining to topics raised in the class action, with no more than three parts, to the town at a time; and,

b. that they collectively be limited to having one active IPC appeal in respect of the town at a time.

[74] The appellant takes the position that the town's denial of access is without foundation, and says that the only appropriate remedy is for the institution to respond to his requests in accordance with the *Act*.

[75] In my view, given the appellant's pattern of conduct, he should be restricted from submitting an excessive number of further requests or requests that are similarly excessively broad and unusually detailed. However, in my view, it is also necessary not to foreclose the appellant's right to seek access to records under the *Act*.

---

[19] Order MO-1782.

[76] I have decided that a just order in the circumstances is to order that the appellant be restricted to having no more than one active request with the town and one active appeal with the IPC for the next year starting from the date of this order. In addition, to prevent the appellant from submitting multi-part access requests that are similar to one that is the subject of this appeal, I will stipulate that any access requests that he submits to the town in future may only have a maximum of two parts.

[77] The appellant is to provide the town with the active request he wishes to pursue. The balance of the requests will be deemed to be withdrawn, without prejudice to the appellant being permitted to refile a request in accordance with the terms of this order.

[78] Further, the appellant may only pursue one active IPC appeal in respect of the town at any given time. All other appeals (other than the appeals that are dismissed by this order) will be placed on hold and reactivated at the discretion of the IPC Registrar. Moreover, the appellant will be asked to identify the active request and appeal that will proceed.

[79] I am placing these limits on the appellant independently of any limits on the law clerk, which will be addressed in a separate order.

[80] In conclusion, based on the evidence before me, the appellant's access requests meet the threshold of frivolous and vexatious requests, without regard to the access requests of the law clerk.

ORDER:

1. I uphold the town's decision to deny the access requests at issue in these appeals on the basis that they are frivolous or vexatious under section 4(1)(b) of *MFIPPA*. As a result, these appeals are dismissed, without prejudice to the appellant's right to submit new requests for information in accordance with the conditions set out in provision 2 below.

2. I impose the following conditions on the appellant's access requests to the town, and his appeals to the IPC from decisions of the town:

    a. I am limiting the appellant to one active request to the town and one active IPC appeal involving the town that may proceed at any given point in time, including any requests and appeals (other than the appeals that are dismissed by this order) that are outstanding as of the date of this order.

    b. If the appellant wishes any of his currently outstanding requests that exist with the town to continue to be processed, the appellant shall notify the town and advise as to which request he wishes to proceed. For the purposes of this provision, a multi-part request shall be considered to be

multiple requests and the appellant must choose a maximum of two parts to proceed with. Any outstanding requests with the town are deemed to be abandoned, without prejudice to the appellant's right to make the same request in the future, in accordance with order provision 1.

c. If the appellant wishes any IPC appeal (other than the appeals that are dismissed by this order) from a decision of the town to proceed to completion, the appellant shall notify the IPC Registrar and advise as to which appeal he wishes to proceed. The remaining appeals will be placed on hold and reactivated only when the active appeal is resolved.

d. Any access requests that the appellant submits to the town in future may only have a maximum of two parts.

3. The terms of this order shall apply to any requests and appeals made by the appellant or by an individual, organization or entity acting on his behalf or under his direction, including the appellant's law firm but excluding the law clerk.

4. At the conclusion of one year from the date of this order, the appellant, the town and or any person or organization affected by this order, may apply to the IPC to seek to vary the terms of this order, failing which its terms shall continue in effect until such a time as a variance is sought and ordered.

Original Signed by: August 19, 2022

Steven Faughnan
Adjudicator