

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-4313

Appeal PA20-00734

Ministry of the Solicitor General

October 24, 2022

**Summary:** This order deals with an access request for records about the appellant, a veterinarian, that the Ontario Racing Commission provided to a veterinary college. The ministry denied the request, claiming that it was frivolous and vexatious pursuant to section 10(1)(b) of the *Act*. In this order, the adjudicator finds that the request is not frivolous or vexatious, and she orders the ministry to issue another decision in response to the appellant's request.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 10(1)(b); Regulation 460, section 5.1.

**Orders Considered:** Order M-850.

### OVERVIEW:

[1] By way of background, the Ministry of the Solicitor General (the ministry) includes the Ontario Provincial Police (the OPP). Officers from the OPP are seconded to the Ontario Racing Commission (ORC) to assist in investigating alleged contraventions of the ORC's laws and other criminal activity related to horse racing. The ORC is part of the Alcohol and Gaming Commission of Ontario (the AGCO), which is part of the Ministry of the Attorney General (MAG).

[2] The appellant is a veterinarian, who was involved in a disciplinary matter before the College of Veterinarians (the college). In addition, the OPP investigated on behalf of the ORC and laid criminal charges against him, which were later stayed.

[3] Following the disciplinary proceedings, the appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to each of the AGCO and MAG, seeking access to copies of any records about him that MAG/AGCO/ORC had sent to the college. MAG issued a decision<sup>1</sup> that was appealed to the Information and Privacy Commissioner of Ontario (the IPC) and, of relevance to the current appeal, in Order PO-4067-I, the adjudicator ordered MAG to "either transfer or forward, to the [ministry], the part of the appellant's ...request for records relating to the [ORC's] OPP investigation, which the appellant alleges the [ORC] sent to the college."

[4] This appeal relates to the part of the request that was transferred to the ministry, namely, records relating in particular to the OPP's investigation on behalf of the ORC, that the ORC sent to the college.

[5] The ministry denied access to any responsive records on the basis that the request was frivolous and vexatious pursuant to section 10(1)(b) of the *Act* and section 5.1 of Regulation 460. In its decision, it indicated that the ministry had already provided the appellant with access to the requested records in response to a previous access request ("the previous access request").

[6] The appellant appealed the ministry's decision to the IPC.

[7] During mediation, the ministry advised that the appellant had been granted access to all responsive OPP records to which he is entitled through previous access requests to the ministry and those records would include records that were provided to the college.

[8] The mediator provided this information to the appellant, who clarified that his request was not for a copy of all the records previously disclosed to him, which did not indicate which were provided by the ORC to the college. Rather, the appellant seeks only a copy of the records the ORC provided to the college, or an index of which of the OPP records previously disclosed to him were provided by the ORC to the college.

[9] The ministry advised the mediator that it was unable to identify which specific records were provided to the college. The appellant asserted that an index of items provided to the college should exist. The ministry conducted a search for an index of records, showing what records the OPP shared with the college, and issued a supplemental decision, advising that access to such a record could not be granted, as the information does not exist. The appellant remained of the view that the ministry should provide him with copies of records that the ORC provided to the college. The ministry confirmed that it is maintaining its decision that the request is frivolous and vexatious.

[10] No further mediation was possible and this appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an

---

<sup>1</sup> MAG is also responsible for responding to access requests submitted to the AGCO.

inquiry. The sole issue listed in the mediator's report was whether the appellant's request is frivolous or vexatious.

[11] I decided to conduct an inquiry into this matter. I began by inviting representations from the ministry on the issues set out a Notice of Inquiry. I received representations from the ministry, a copy of which was provided to the appellant. The appellant was then invited to make representations in response to the notice and the ministry's representations, which he submitted. I then sought and received reply representations from the ministry and sur-reply representations from the appellant. The representations of the parties were shared in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[12] In this order, I find that the request is not frivolous or vexatious, and I order the ministry to issue another decision in response to the appellant's request.

## **DISCUSSION:**

### **Preliminary issue**

[13] The appellant requests that, as a result of his specific concerns relating to abuse of process and bad faith on the part of the ministry, the IPC conduct a series of witness interviews for my consideration in deciding the issue under appeal. He submits that:

[The ministry] is attempting to imply that there is nothing left to adjudicate. This is not entirely correct. It is clear from my representations that there exist several questions that are left unanswered, along with inconsistencies and ambiguities which demand clarification. Section 52(8) of the Act authorizes the examination of potential witnesses, under oath. Such an exercise would be highly beneficial to resolve the conflicts identified. I would submit that the adjudicator make necessary orders to satisfy the nature [o]f this inquiry and address the inconsistencies that I have described. As well, Sections 61(1)(c.1) and 61(1)(e) are relevant provisions with respect to the commission of offences under the statute. Clearly, there exists further adjudication which should occur, the outcomes dependent on further witness examinations.

[14] I have considered the appellant's request and I deny his request that I conduct witness interviews. The sole issue before me in this appeal is whether the appellant's access request to the ministry is frivolous or vexatious. Both parties have submitted representations on this issue and I do not require additional evidence to issue my findings on it.

[15] Accordingly, I will now turn my attention to the issue of whether the access request is frivolous or vexatious.

**Issue: Is the access request frivolous or vexatious?**

[16] Section 10(1)(b) of the *Act* provides institutions with a straightforward way of dealing with frivolous or vexatious requests. However, institutions should not exercise their discretion under section 10(1)(b) lightly, as this can have serious implications for access rights under the *Act*.<sup>2</sup>

[17] Section 10(1)(b) 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.

[18] Section 5.1 of Regulation 460 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.

[19] An institution that concludes that an access request is frivolous or vexatious has the burden of proof to justify its decision.<sup>3</sup>

[20] The ministry relies on the "bad faith" ground to support its claim of frivolous or vexatious under section 5.1(b) of Regulation 460.

[21] If a request is made in bad faith, the institution does not need to demonstrate a "pattern of conduct."<sup>4</sup>

[22] The IPC has defined "bad faith" as:

The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted

---

<sup>2</sup> Order M-850.

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

<sup>4</sup> Order M-850.

by an honest mistake as to one's rights, but by some interested or sinister motive. ... "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.<sup>5</sup>

[23] Where a request is found to be frivolous or vexatious, the IPC will uphold the institution's decision. The IPC may also impose conditions such as limiting the number of active requests and appeals the requester may have with the particular institution.<sup>6</sup>

[24] If the IPC does not uphold the institution's decision, it will generally order the institution to make another access decision without relying on the frivolous and vexatious provisions in the *Act*.

### ***Representations of the parties***

#### *Appellant's previous access request*

[25] I note at the outset that the appellant had made a similar but not identical access request to the ministry. The appellant's previous access request to the ministry was for all records gathered in the OPP's investigation of him:

complete disclosure of all information gathered with respect to [an] investigation of myself, including the names of "confidential informants", as well as a copy of the un-redacted Information to Obtain (ITO) in [that] matter.

[26] The ministry granted the appellant partial access to officers' notes, surveillance-related records, occurrence summaries and other records generated by the OPP.

[27] The appellant filed an appeal with the IPC, which resulted in Order PO-4037. In that order, the adjudicator upheld the ministry's decision to grant partial access to the records. As I explain below, the records disclosed to the appellant do not indicate which ones (if any) the ORC provided to the college.

#### *Ministry's representations*

[28] The ministry submits that the appellant has acted in bad faith. It submits that, in light of the factual circumstances of this appeal, the appellant's decision to continue with this appeal, and his unnecessarily extending this appeal, constitutes bad faith.

[29] It explains that its response to the appellant's access request was to advise him

---

<sup>5</sup> Order M-850.

<sup>6</sup> Order MO-1782.

that he had already been provided with access “to all responsive records to which he is entitled through previous access requests and *those would include records*” that were provided to the college. The ministry submits that, while this should have ended this access request, the appellant “clarified” that instead of requesting records previously disclosed to him, he was “specifically interested in receiving a copy of the records the ORC disclosed to the college”, and to that end, the appellant believes that an index of such records should exist.

[30] The ministry specifically takes issue with the appellant continuing to request an index of the records that were provided to the college. The ministry has determined upon conducting a search that it has neither an index, nor a copy of what has been disclosed by the ORC to the college. It explains that the appellant was advised of this by the ministry, directly and through the mediator. The ministry submits that:

Given that these records do not exist, as [the ministry has] determined upon conducting a search, [it maintains] there is nothing left to adjudicate. If there is nothing to adjudicate, but the appellant presses on with the appeal, then [the ministry] contend[s] that the appellant is acting in bad faith.

[31] It also submits that it is confused by the appellant’s request because he has received the records that the OPP has about him (subject to necessary redactions) and he knows the records the college has about him given the records disclosed to him as part of the college-initiated proceedings against him.<sup>7</sup> It is the ministry’s position that the appellant can likely deduce what records would have been provided by the ORC to the college.<sup>8</sup> The ministry submits that “insisting upon proceeding with this appeal, in light of these factual considerations, is in [the ministry’s] view unnecessarily extending this appeal such that doing so constitutes bad faith.”

[32] By way of remedy, the ministry requests the dismissal of the appeal.

#### *Appellant’s representations*

[33] The appellant submits that the ministry is attempting to have his request labelled as vexatious to prevent him from making future requests for access to information under the *Act* and to protect the interests of the ministry and the OPP. He submits that his previous access request to the MAG and subsequent appeal to the IPC were reviewed and addressed by a previous IPC adjudicator, which implies that his previous request and the current request have merit and are not frivolous or vexatious.

[34] He specifies that he seeks access to what the ORC provided to the college. He

---

<sup>7</sup> The ministry provided me with a link to a case summary of the college’s proceedings against the appellant.

<sup>8</sup> The ministry also suggests that the appellant could submit an access request to the college for the records the college has about him. However, I note that the college is not an institution under the *Act*.

explains that he may wish to address, through legal action, any error in law or possible criminal behaviour related to the disclosure of documents to the college. Accordingly, he submits that his request cannot be characterized as being frivolous or vexatious, as any information resulting from his request would be important to him personally and would promote transparency and procedural fairness of a regulatory proceeding.

[35] The appellant denies that his request was made in "bad faith". He also submits that the legal test to determine "bad faith" relies on "conduct demonstrating malice, fraud, collusion, dishonesty, abuse of power, discrimination, unreasonable conduct without proper cause, intentional deception and ill motivated conduct leading to procedural unfairness". He explains that his request "results from an apparent breach of [his] constitutional rights evidenced by the result of another Access to Information Request, in conjunction with a statutorily imposed regulatory proceeding of the [college]." He also explains that his request is not frivolous or vexatious, nor was it made in bad faith because the records held by the college do not match the records he obtained from the ministry in his previous access request, and this is why he is pursuing this access request. He says he needs the records in order to examine the fairness of his college proceedings.

[36] In response to the ministry's claim that there is nothing left to adjudicate, the appellant submits that his previous access request demonstrates otherwise and he submits that the ministry's representations are patently false and misleading because some documents were not disclosed to him.<sup>9</sup>

[37] In response to the ministry's claim that he should be able to deduce what records were provided to the college, the appellant submits that "it is impossible" to determine from the college's records, which documents were specifically provided to the college by the ORC.

### ***Analysis and findings***

[38] Having reviewed the representations, I do not find a sufficient basis to conclude that the appellant's access request was "made in bad faith", as claimed by the ministry.

[39] The test for "bad faith" under section 5.1(b) of Regulation 460 sets a high threshold. As set out above, the IPC has interpreted "bad faith" as implying the "conscious doing of wrong because of dishonest purpose or moral obliquity" and contemplating "a state of mind affirmatively operating with furtive design or ill will."<sup>10</sup>

[40] I acknowledge that there is an ongoing conflict between the appellant and the ministry (and other parties). However, in my view, the evidence provided by the ministry does not establish that the appellant consciously exercised his access rights in

---

<sup>9</sup> While the ministry indicates that "other agencies" disclosed records to the college, the appellant claims that MAG and the AGCO (formerly the ORC) have denied disclosing any documents to the college.

<sup>10</sup> Order M-850.

bad faith; that is, for a “dishonest purpose” or “with furtive design or ill will”.

[41] It may not be unreasonable for the appellant to seek information about the records that the ORC provided to the college and the process by which the information was disclosed given his concerns about such disclosure and the effect it has had on him (both personally and professionally). I am unable to find based on the evidence before me that the appellant’s request meets the high bar for a bad faith request.

[42] The ministry specifically takes issue with the appellant’s continuing to request an index of the records that the ORC provided to the college. However, the appellant has explained that he is seeking access to what was provided to the college, either by identifying the actual records themselves or by providing an index of such records, given that the ministry has already disclosed to him a copy of records that would include the records the ORC provided.

[43] I understand that the ministry’s position is that it has already provided the appellant with access “to all responsive records to which he is entitled through previous access requests and *those would include records*” that were provided to the college. However, I also understand the appellant’s request is for access to the specific records provided to the college, which would presumably be a subset of all responsive records. The appellant is seeking access to specific information that cannot be accomplished by providing him with access to all responsive records, which he already has access to, namely, all police records that the ORC provided to the college.

[44] Also, while the ministry claims that it has neither an index, nor any indication of what was specifically provided to the college, the only issue before me in this appeal is whether the appellant’s request is frivolous or vexatious. The issue of whether the ministry should have the records the appellant seeks, or whether it conducted a reasonable search for records, are not before me. While the ministry’s supplemental decision advised that an index of what was provided by the OPP to the college does not exist, it did not retract its decision to deny the appellant’s access on the basis that it was frivolous and vexatious. The issue of reasonable search is not before me in this appeal, as confirmed in the Mediator’s Report. In order to preserve the appellant’s appeal rights with respect to the ministry’s search, I will order the ministry to issue another decision.

[45] In my view, while the appellant’s access request for records the ORC provided to the college could be construed as persistent, it falls short of the high bar for “bad faith” set out in section 5.1(b) of Regulation 460. I am not satisfied by the ministry’s representations that this threshold has been met, in the circumstances of this appeal. I find, therefore, that the ministry has failed to establish reasonable grounds for finding that the request is frivolous or vexatious. Therefore, I find that the appellant’s request does not fit within section 5.1(b) of Regulation 460, to provide a basis for the ministry to deny access on the basis that the request is frivolous or vexatious.



**ORDER:**

I order the ministry to issue another decision in response to the appellant's access request, without relying on section 10(1)(b), and treating the date of this order as the date of the request for the purposes of the procedural requirements of the *Act*.

Original Signed By: \_\_\_\_\_  
Valerie Silva  
Adjudicator

\_\_\_\_\_ October 24, 2022