Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4493

Appeal MA23-00167

Township of Oro-Medonte

February 26, 2024

Summary: The Township of Oro-Medonte (the township) received a three-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) about a certain water infrastructure issue. The township decided that it had reasonable grounds to consider the request as frivolous or vexatious under section 4(1)(b) of the *Act*. In this order, the adjudicator upholds the township's decision, and dismisses the appeal.

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).

Order Considered: Order M-850.

OVERVIEW:

[1] The Township of Oro-Medonte (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual working with a group which was gathering information about a certain water infrastructure issue.

[2] The three-part request was as follows:

> Request [A]: We have been unable to find a by-law that matches the resolution and initiatives taken by Council in 1995 to take over the operation and maintenance of the Horseshoe Highlands Water System. While there

are specific Final Certificates available, there appears to be no By-law that officially transfers the ownership of the Horseshoe Highlands waterworks to the municipality.

We have examined:

1. Motions of June 14, 1995, directing staff to take over the system.

2. Letter from CAO to [name] of June 21, 1995, making arrangements to do so with Horseshoe.

3. Memorandum from [name] to [name] of September 24, 1996, stating that system was taken over.

4. Statement of Issues Affidavit dated April 1997 regarding assumption of Horseshoe System [name] on July 1, 1995.

Please provide the legislative tool that transfers the ownership of the Horseshoe Highlands system to the Township. [A specified person] said that this took place on July 1, 1995, yet we cannot find the By-law that actually allows this transaction to take place.

Request [B]: On April 3, 1996, Council carried motion No. 22 "[text omitted]." Could we have a copy of this 'Draft Letter'. Remember that you issued 2 letters dated April 1, 1996, regarding the termination of Agreement 185779. Is this draft letter related to the termination letters of April 1, 1996? If so, how could a draft letter presented to Council be presented two after the date of the actual letters sent to Horseshoe? Is this draft letter something different?

Request [C]: In subdivision agreement 51M-391 (Phase 1 Horseshoe Highlands), Schedule 'G' of Instrument No. LT151526 provides that easements would be granted for wells and the pumphouse on Plan 51R-18762. Could we see a copy of the registered easements regarding the Zone 2 supply wells, treatment equipment, and pumphouse?

[3] In response to this request, the township issued a decision saying that it had reasonable grounds to consider the request as frivolous or vexatious, under section 4(1)(b) of the *Act*.

[4] The requester (now the appellant) appealed the township's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] I conducted an inquiry into the appeal. The parties were invited and provided representations about the issues under appeal.

[6] For the reasons that follow, I uphold the township's decision, and dismiss the appeal.

DISCUSSION:

[7] The only issue to be decided in this appeal is whether the access request is frivolous or vexatious, within the meaning of section 4(1)(b) of the *Act*.

Background information

[8] The appellant is part of a group of residents that conducted research about the water infrastructure issue that is the subject of the request. The research involved making access requests and the appellant was designated to coordinate most of the requests made to the township about this water infrastructure issue. The township says that 35 access requests were filed, and the appellant acknowledges that.

[9] The group that the appellant is part of also sued the township in court. The township provided court documents about this. The lawsuit was regarding certain user fees for the water system, and ownership of the water system.

Section 4(1)(b) of the *Act*

[10] Section 4(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 4(1)(b) lightly, as this can have serious implications for access rights under the *Act*.[1]

[11] Section 4(1)(b) says: "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" as follows:

> 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

[1] Order M-850.

> (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] Reading these sections together, under the *Act*, there are four grounds for claiming that a request is frivolous or vexatious. One of these grounds is that the request is part of a pattern of conduct that amounts to an abuse of the right of access.[2]

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

[15] The township claims each of the four grounds in this appeal, but since I find that it established one of them, there is no need to consider the other three.

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

[16] A pattern of conduct must be found to exist before determining whether that pattern of conduct amounts to an abuse of the right of access.

[17] The number, nature, scope, purpose, and timing of access requests may be relevant factors in determining whether a pattern of conduct amounts to an "abuse of the right of access." Other factors specific to the case can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.[4]

[18] The IPC may also consider an institution's conduct when reviewing a "frivolous or vexatious" finding. However, an institution's misconduct does not necessarily mean that it was wrong in concluding that the request was "frivolous or vexatious."[5]

[19] The IPC has found that 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 their behaviour because a requester seldom admits to a purpose other than access.[6]

Analysis/findings

[20] For the following reasons, considering the cumulative nature and effect of the appellant's behaviour, I find that the appellant's access request is part of a pattern of conduct that amounts to an abuse of the right of access.

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[2] The other grounds are that:
- the request is part of a part of a pattern of conduct that would interfere with the operations of the institution,
- the request is made in bad faith, and/or
- the request is made for a purpose other than to obtain access.

[3] Order M-850.
[4] Order MO-1782.
[5] Order MO-1782.
[6] Order MO-1782.

[21] The parties agree that since March 2020, the township received 35 access requests, involving the appellant.[7] The appellant acknowledges that each of these requests resulted in an appeal to the IPC.

[22] The appellant explains that he was designated to handle most of the access requests to avoid unnecessary costs and redundancy. He submits that the township has improperly conflated two groups of citizens working on the water infrastructure issue. However, he acknowledges that they have overlapping members and does not dispute that the groups' activities are related.

[23] For the purposes of this appeal, it is not necessary to differentiate exactly between these groups for two reasons:

- 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,[8] and

- the appellant acknowledges being behind the 35 access requests saying, "We submitted 35 requests."

[24] The parties agree that the request in this appeal and the other access requests all relate to the water infrastructure issue.

[25] In addition to these 35 access requests, the township explains that it received over 350 emails about this issue, seeking information that is accessible on the township website (such as by-laws, reports to township council, and minutes of meeting). The appellant acknowledges that a significant amount of email communication has occurred.

[26] The appellant's representations are lengthy and detailed, noting alleged discrepancies, questions, and/or gaps in the information that the group's research of public documentation has uncovered about the water infrastructure issue. I understand this to be presented as a rationale for the number of access requests and emails. However, whatever the justification (if any), the fact remains that the appellant filed 35 access requests in three years.

[27] In the circumstances, I find that 35 access requests in three years all relating to the same issue sufficiently establishes that the access request in this appeal is part of a pattern of conduct, as contemplated by section 5.1(a) of Regulation 823.

[28] The next question to consider is whether this pattern of conduct amounts to an

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[7] The appellant directly acknowledges having filed 35 access requests and appeals, saying: "We submitted 35 requests, 35 of which were appealed." However, he later draws attention to the township's counting of requests in other correspondence that mentions 27 requests. For the purposes of this appeal, either number would not change my decision in this order. Given the appellant's direct acknowledgement that he filed 35 requests and 35 appeals, I will use that number.

[8] Order M-850.

abuse of process. In making that determination, institutions (and the IPC, on appeal) may consider a number of factors, including the cumulative effect of the number, nature, scope, purpose, and timing of the requests.[9]

[29] The appellant submits that he seeks further information about the water infrastructure issue, which he describes as being related to fundamental human rights and safety issues. He submits that the litigation against the township is a separate process and is irrelevant to his access request.

[30] The township submits that the 35 access requests were filed to help the appellant with the litigation, instead of obtaining disclosure through "the proper channels." It also highlights the common subject matter between the lawsuit and the access request before me (both involve the question of the ownership of the water infrastructure issue) – and the date that this access request was made, during a time when the court provided the appellant (as part of the plaintiff group) the chance to request all relevant documents for the court proceeding. The township submits that the appellant's request is intended to be for nuisance value, to harass the township staff, or burden the township's system. It states that the requests that have resulted in "extraordinary legal costs, costs incurred for staff time answering emails for publicly available documentation and staff resources and further legal costs with regards to the [*Act*] avenue."

[31] I find that 35 requests in three years is excessive by reasonable standards, even with the background provided by the appellant, and even without regard for the hundreds of related emails sent by the appellant (or his associates). In reaching this conclusion, I have also considered the cumulative effect of all the requests that have been made by the appellant. This weighs heavily in favour of upholding the township's position. These access requests and emails all relate to the same subject, even if they are not identical or relate to different information. In the circumstances, this common subject matter weighs significantly towards accepting that the pattern of conduct amounts to an abuse of the right of access.

[32] As the IPC has previously ruled, an intention by the requester to take issue with a decision made by an institution, or to take action against an institution, is not enough to support a finding that the request is "frivolous or vexatious."[10] In order to qualify as a "purpose other than to obtain access," the requester would need to have an improper objective above and beyond an intention to use the information in some legitimate manner.[11]

[33] It is not clear from the evidence before me whether any of the access requests were made to assist the appellant (and the group he was working with) in litigation against the township. Even if that was the purpose, that, would not be improper under

[9] Orders M-618, M-850 and MO-1782.
[10] Orders MO-1168-I and MO-2390.
[11] Order MO-1924.

the *Act*.

[34] In addition, I accept that the appellant is interested in obtaining further information about the water infrastructure issue. Although I accept that the appellant had a genuine interest in the information, I am persuaded by the township's argument that the request is best viewed as part of an overall pattern of conduct intended to overburden the township at a time when the township was already burdened by access requests and litigation in relation to similar issues. Even if I am wrong that the appellant did not expressly intend to overburden the township, the cumulative impact of this particular pattern of conduct was the same, given the repetitive access requests all related to a subject that was also being litigated.

[35] For these reasons, I uphold the township's determination that the access request in this appeal is frivolous and vexatious as it forms 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 the *Act*. Accordingly, the appellant does not have a right of access to the requested records.

ORDER:

I dismiss the appeal.

Original signed by:	February 26, 2024
Marian Sami Adjudicator	