

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4519

Appeal MA23-00411

Municipality of Middlesex Centre

May 9, 2024

**Summary:** The Municipality of Middlesex Centre (the municipality) received a request under the *Act* for information related to the maintenance of a specified municipal property. The municipality denied the request on the basis that it was frivolous or vexatious, stating that the appellant had already been informed through previous letters from the municipality, disclosures under the *Act*, and court disclosures that the requested information does not exist. In this order, the adjudicator finds that the request was made for a purpose other than to obtain access and that it is frivolous or vexatious within the meaning of the *Act*. He dismisses the appeal.

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

**Order Considered:** Order MO-4412.

### OVERVIEW:

[1] The Municipality of Middlesex Centre (the municipality) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

1. [named company] was awarded the contract to install fiber optic cable(s) in Ilderton.

They used the north portion of [specified location] to stage their materials (sand, gravel, topsoil, etc.) for disbursement throughout the subdivision.

On completion they did not do any reparations to the [specified location] area they used for their operations.

A water main break occurred within the Island area in the late fall 2022, necessitating a complete digging and repair work, leaving the reparations to this spring, (2023) this involved removing subsoils, rocks, a huge pile of sand and unknown debris from the repair area.

Middlesex Centre maintenance crews rehabilitated the area but also did the reparation damage left by [named company].

I'd like to know if the Municipality billed [named company] for the work and if they were billed why not!

My point being that if the Municipality can repair damages incurred by others why they can't maintain the property at their expense.

2: I request a copy of all residents' addresses (past and present) and signatures of those residents past and present authorizing the Municipality of Middlesex to undertake maintenance of the [specified location] at the resident's expense!

[2] The municipality issued a decision letter stating that it will not be responding to the request, citing section 4(1)(b) of the *Act* and section 5.1 of Regulation 823 of the *Act* (frivolous or vexatious request). The municipality explained that it considers the request to be both frivolous and vexatious and that it is being made in bad faith and for a purpose other than to obtain access to the records.

[3] The decision letter further stated that the requester had made three requests to municipality in 2023 after initiating a court action against the municipality, which appears to be related to the request. The municipality considered the three requests to constitute nine separate requests batched together. The municipality stated that the requests represent a significant portion of the total access requests it received in 2023. The municipality stated that the nature of the request appeared to be an attempt to harass and bother the municipality that is adverse in interest in litigation proceedings that the requester had continuously threatened, and is not in keeping with the spirit and the purpose of the legislation.

[4] The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the municipality maintained its position and the appellant continued to seek access to the information. No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I conducted an inquiry,

where I sought and received representations from both parties. Representations were shared in accordance with the IPC's *Code of Procedure*.

[5] For the reasons that follow, I find that the appellant's request was made for a purpose other than to obtain access and is therefore frivolous or vexatious within the meaning of section 4(1)(b). I dismiss the appeal.

## **DISCUSSION:**

[6] The sole issue in this appeal is whether the appellant's access request is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*. Institutions should not exercise their discretion under section 4(1)(b) lightly, as this can have serious implications for access rights under the *Act*.<sup>1</sup>

[7] 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."

[8] 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

(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.

[9] Reading these sections together, there are four grounds under the *Act* for claiming that a request is frivolous or vexatious. Two of these grounds, claimed by the municipality in this appeal, are that the request is made in bad faith and that the request is for a purpose other than to obtain access.

[10] An institution that concludes that an access request is frivolous or vexatious has the burden of proof to justify its decision.<sup>2</sup> However, for requests made in both bad faith and for a purpose other than to obtain access, the institution does not need to demonstrate a "pattern of conduct."

---

<sup>1</sup> Order M-850.

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

[11] 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 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>3</sup>

[12] Similarly, a request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.<sup>4</sup> The IPC has previously found that 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."<sup>5</sup> 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.<sup>6</sup>

## **Representations**

### ***Municipality representations***

[13] The municipality provided background information on the request at issue in this appeal. It states that the appellant is seeking copies of invoices that do not exist. It explains that the appellant had previously requested all invoices for landscape maintenance in the town of Ilderton (the part of the municipality where the issues underlying the request occurred) for a two-year period, which were provided to him. It submits that no invoice from the municipality to the company referenced in the appellant's request exists.

[14] It explains that a second portion of the request relates to the signatures and addresses of area residents authorizing maintenance of the specified area in the request. It states that no such document exists as the maintenance provisions are set out in the approved subdivision agreement, which was previously provided to the appellant through disclosure in a related small claims action that the appellant initiated. The municipality submits that the appellant is generally seeking information that has previously been provided or does not exist, which forms part of a larger pattern of behaviour that includes harassment of municipal staff, council members, contractors, and legal counsel. The

---

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

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

<sup>5</sup> Orders MO-1168-I and MO-2390.

<sup>6</sup> Order MO-1924.

municipality states that it considered the nature of these interactions as part of their decision-making process, and submits that the request is being made in bad faith and for a purpose other than to obtain access, namely to consume municipal resources.

[15] The municipality provided further background information, stating that the appellant's issues with the municipality relate to an ongoing matter originating with a 2001 subdivision agreement, and a subsequent agreement between area residents and the municipality regarding the maintenance of a "small private landscape island area" (the specified location identified in the appellant's request). It provided an excerpt of the agreement, which states that "prospective purchasers are advised that [the island] is not a public park and therefore will have minimum maintenance undertaken by the Township ..." It explains that area residents are responsible for maintaining the island and there is an agreement in place that the municipality provide for contractors to perform the maintenance on the island and bill those costs back to subdivision residents (which includes the appellant).

[16] The municipality explains that the appellant brought a small claims action against the municipality regarding this arrangement in 2021, which was subsequently withdrawn. It states that as part of the small claims process, all documentation related to the maintenance of the island, including any agreements, correspondence, and related materials, were provided to the appellant as part of the disclosure processes. It further explains that the landscape contractor performing the island maintenance resigned in 2021 after submitting a complaint to the municipality detailing inappropriate and harassing behaviour towards the worker by the appellant. It provided correspondence that was sent to the appellant regarding the incident and its concerns about the appellant's behaviour towards the contractor.

[17] The municipality submits that the appellant has continued to send regular email correspondence, which it states is of a harassing nature, contains inappropriate language, and disparages municipal staff. It provided a sample of 18 emails sent over a two-day period in June 2023. It also provided a copy of correspondence sent from the municipality's chief administrative officer to the appellant regarding ongoing inappropriate communications and to provide information on the island maintenance issue.

[18] The municipality also provided a summary of the requests submitted by the appellant:

- Request 2023-01, received in January 2023, for all invoices related to external maintenance performed by the municipality in Ilderton over a two-year period. The request was processed in accordance with the *Act* and documents were disclosed.
- Request 2023-02, received March 2023, for all requests for proposal, requests for tender, tender submissions, and correspondence related thereto for contracts with external contractors to perform external landscaping maintenance for any areas in

Ilderton. The documents were prepared and an index of records provided, but the appellant failed to pay the \$60.80 fee, and the request was abandoned.

- Request 2023-03, received April 2023, which is the subject of this appeal.
- Request 2023-05, received June 2023, requesting any documentation containing the signature of the appellant which relates to the maintenance of the island. The municipality also claimed this request to be frivolous or vexatious, and this is the subject of a separate appeal before the IPC.

[19] The municipality states that the particulars of the matter surrounding the maintenance of the island have been made clear to the appellant through previous requests and communications, and that obligations related to document disclosure have been fulfilled. It states that all documentation related to this matter has previously been provided as part of previous access requests and court disclosures.

[20] Referring to the frivolous or vexatious claim specifically, the municipality submits that the request was made for a purpose other than to obtain access, stating that it was made to unreasonably burden and create a nuisance for municipal staff, elected council members, and legal counsel. It explains that previous requests submitted by the appellant were fulfilled and abandoned for non-payment, with the number of requests representing nine separate requests related to the same subject matter. It also submits that the appellant's requests are excessively broad, stating that all invoices for 2021/22 are similar to one another. It referenced Order M-850 as an example of when a requester, having stated that he was testing or examining the boundaries of the *Act* and having fun filing requests, was found to be doing so for a purpose other than to obtain access.

### ***Appellant representations***

[21] In response to the municipality's representations, the appellant submits that he is not going to address the issues raised by the municipality, and that there are always two sides to a story. He submits that the issues raised by the municipality are not relevant to the appeal. He submits that his access request posed two questions to the municipality, and he asks that they be answered in clear and precise language.

### **Analysis and finding**

[22] Having considered the information provided by the parties, I find that the request at issue in this appeal is frivolous or vexatious within the meaning of section 4(1)(b). Specifically, as contemplated by Regulation 823, I find that the request was made for a purpose other than to obtain access to information. As the municipality explained in its representations, which the appellant did not dispute when given the opportunity to do so, the appellant has previously been provided information and documentation about the maintenance fees for the island in the municipality and the surrounding history, and is aware that the information that he is seeking in this request does not exist.

[23] Based on the background information provided by the municipality, the purpose of the appellant's request, although not stated directly by the appellant, appears to be to compel the municipality to reiterate to the appellant that the information at issue does not exist. The information's lack of existence may potentially be relevant to his overall position that the municipality, rather than the residents of the area around the island, should be responsible for the maintenance of the island. However, the issue of who should be responsible for maintenance is not before me in this appeal, and is clearly outside of the IPC's jurisdiction. Rather, the issue before me is if the request is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act* and, as claimed by the municipality, made in bad faith or for a purpose other than to obtain access to information.

[24] As outlined above, an intention by the appellant to take issue with a decision made by the municipality, in this case the island's maintenance model and fee structure, is not enough to support a finding that the request is frivolous or vexatious under the *Act*. It is clearly the case that individuals file access requests under the *Act* in order to obtain documents that would assist them in various endeavours, such as litigation against municipalities. As described in Order MO-4412 and others, access to information legislation exists to ensure government accountability.<sup>7</sup> However, based on the information the municipality provided, which the appellant did not dispute, I accept that the appellant has previously been told, through correspondence with municipal staff, court disclosures, and in response to previous access requests, that the information that he is seeking does not exist.

[25] Considering this, any response that the appellant would receive to his access request would only be a repeat of what the municipality has already told him. While I do not necessarily find that the appellant's overall conduct is sufficient to interfere with the operations of the municipality, I do find that if an access request is made for information that the appellant knows does not exist, and he has previously been informed that it does not exist, it is being done for a purpose other than to obtain access. In this case, having considered the background information provided by the municipality and the appellant's representations, I am satisfied that this specific request is being made to inconvenience the municipality by requiring it to repeatedly confirm to the appellant that the requested information does not exist. As such, I find that it is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*.

[26] Having found that the request was made for a purpose other than to obtain access, I do not need to consider if it was also made in bad faith.

---

<sup>7</sup> This principle has also been articulated in, for example, Order MO-1924.

**ORDER:**

I uphold the municipality's decision and dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Chris Anzenberger  
Adjudicator

\_\_\_\_\_ May 9, 2024