Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1488

Appeals MA-000369-1 and MA-010200-1

City of Vaughan

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BACKGROUND:

The following description of a matter between the City of Vaughan (the City) and the appellant, which has been on-going over a number of years, is derived from a combined reading of the representations that each one submitted over the course of this inquiry. Without preferring one version of events over another, I believe it is useful to include a brief discussion of the matter in order to put this appeal in context.

A dispute arose between the appellant's mother and her neighbour relating to grading and drainage changes to a driveway that were allegedly made by the neighbour, apparently without first obtaining a building permit. The City believes the dispute began in April or May of 1998, which is the date that its Building Standards Department (BSD) became involved as a result of a complaint by the appellant. The appellant indicates that the neighbours began to make changes to their driveway late in the summer of 1996. According to the appellant, these changes resulted in surface and roof water being redirected onto his mother's driveway creating a hazardous ice-sheeting problem in the winter.

The City indicates that it attempted to mediate the dispute. The City explains what it was able to accomplish in dealing with this dispute and various complicating factors that ultimately resulted in little change. The City indicates that it does not have the authority to force the neighbour to make certain changes, and that it ultimately advised the appellant that this is a private matter that must be resolved between themselves.

From the appellant's perspective, his mother's concerns were ignored by the City. He acknowledges that the City advised him that there was nothing it could do. However, he indicates that there was an existing City by-law (By-law 189-96), which may have been applicable. The City, on the other hand, states that this by-law is prospective and cannot apply to grading changes made prior to its passage.

The appellant then built a retaining wall between the neighbouring properties without obtaining a building permit. Following receipt of a complaint, the City investigated and subsequently charged the appellant's mother with contravening a local by-law by not first obtaining a building permit, and then required her to apply for one. The building permit was approved and the charge was later withdrawn.

According to the appellant, the City's requirements with respect to the building permit were unreasonable as they included the provision of a land survey and civil engineering assessment. The appellant believes that his mother was treated differently from the neighbour and other property owners with lot grading issues. He takes the position that this treatment was unfair and that the City employed intimidating tactics in order to ensure compliance.

As a result of money losses incurred in connection with this dispute, which the appellant believes arose primarily as a consequence of the City's actions, the appellant's mother brought an action against the City in Small Claims Court. The Statement of Claim was served on the City on August 9, 2000. This action has not concluded.

NATURE OF THE APPEALS:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the appellant requested the following records from the City:

1. Any records related to the work undertaken at [the two neighbouring municipal addresses] since May 8, 2000 to date;

2. The total number of summons issued under the *Provincial Offences Act* [the *POA*] for building without a permit where the construction activity was in connection with By-law 189-96, the fill by-law.

3. The Request for Legal action tracking document used to capture milestone action against property owners alleged to be in breach of municipal by-law 189-96 or related provisions of the Ontario Building Code. A Request for Legal action should exist for each case where an Order to Comply has been issued to a property owner. We request copies of these tracking documents in regards to (but not limited to) the following grading complaint reference numbers or files: 970001, 970002, 980001, 980002, 980003, 980004, 980005, 980006, 980007, 980008 and 980009 (and other Orders to Comply issued between 1996 and March 23, 2000)....

4. The records used to capture which municipal staff used vehicles assigned to the Building Standards Department for the entire week of March 27th, 2000.

5. Any operational manuals, policy manuals, interpretation instructions, implementation guidelines, bulletins or memorandums that advise City of Vaughan staff or officials on the application of By-law 189-96, otherwise known as the fill by-law.

6. On May 28, 1998 the Building Standards Department received a complaint forwarded by Councillor DiVona and Councillor Racco. I would like any and all documents that speak to action/decisions/resolution and communications involving City of Vaughan officials on this matter.

7. On November 3, 1998 the Building Standards Department received a complaint regarding the construction of "a walkway on the property line", grading complaint reference number 9900020 ... I would like any and all documents that speak to action/decisions/resolution and communications involving City of Vaughan officials on this matter.

8. On April 27, 1998 the Building Standards Department received a complaint regarding the construction of "a walkway", complaint reference number 9800032. I would like any and all documents that speak to action/decisions/resolution and communications involving City of Vaughan officials on this matter.

The City issued a decision refusing to process the request on the basis that it was frivolous or vexatious as contemplated by section 4(1)(b) of the *Act*. In the decision letter, the City stated that it considers this request to be part of a pattern of conduct that amounts to an abuse of the right of access as well as an interference with the operations of the City. The City stated that it is of the opinion that the requests were made in bad faith or for a purpose other than to obtain access due in part to the complexity and scope of this request and previous requests.

In another vein, the City states that certain exemptions, including sections 8 (law enforcement), 12 (solicitor-client privilege) and 14 (invasion of privacy) "would apply to this request if the City had to process this access request".

In appealing the City's decision, the appellant stated that he is seeking to obtain information to assist with the Small Claims Court action he has filed against the City. He explained that the City made no attempt to contact him to clarify or refine the request, and that he had been as specific as possible in providing municipal tracking numbers to assist with the search for records. He stated that part of this request should have been responded to in accordance with the mediated settlement in his previous request under the *Act* and appeal to this office (MA-000032-1). He noted that some of the responses would be a "yes/no" answer, an actual count of records or a written confirmation of verbal information provided to him previously by the City's Freedom of Information Coordinator (the FOIC). The appellant confirmed that he is not seeking information that would identify any individual. He indicated further that the City has provided this type of information to him in the past.

This office opened Appeal MA-000369-1 to address the issues arising with respect to this request and decision.

During mediation, the appellant confirmed that he is not interested in the personal information of the homeowners, which would be contained in responsive records. He also clarified that he has received the number of infractions relating to by-law 189-96, but now, in point 2 of his request, he wants the number of formal charges laid under the *POA* relating to this bylaw.

The appellant indicated that, although he is attempting to obtain the records through Small Claims Court, he wishes both processes to proceed at the same time. He also explained to the Mediator his reasons for seeking records relating to each part of the request. For example, he indicated that he suspects or has been verbally informed that certain records may or do not exist, but he wishes written confirmation of this. He also indicated that he has requested records that he does not have, or that should have been provided to him in accordance with the terms of settlement in Appeal MA-000032-1. He noted further that the last three parts of his request pertain to records that were referred to in other records that he had previously received. The Mediator communicated this information to the City's FOIC, and was informed that the City's solicitors had directed the FOIC not to process the request because the matter was before the courts and the courts had ruled that these records were not relevant to his case.

The matter could not be resolved and the Mediator issued her Report of Mediator. In response, the City's solicitor wrote to the Mediator as follows:

- With respect to items 2 and 5 of the request, the appellant was provided with this information by way of letter dated January 13, 2000;

- The solicitor is unsure what the appellant is referring to when he asked for "milestone actions", but in any event, indicates that the matter was dealt with in the Report of Mediator for Appeal MA-000032-1, which stated that the appellant agreed to no longer seek access to files which are actively being prosecuted.

The Mediator contacted the appellant to discuss the City's comments regarding his request. The appellant reiterated at that time that he is not seeking access to records relating to active law enforcement investigations, but rather, is only asking for closed files. He acknowledged that it is possible that he may have previously received some of the information he had requested, but pointed out that had the City contacted him to clarify this point, it might easily have been resolved.

With respect to the exemptions referred to by the City, it is apparent that the City did not make any effort to determine what records it might have that would be responsive to this particular request. It is not clear whether the references to exemptions under the *Act* were made to put the appellant on notice that, even if the City did process the request, he would not receive access to any information, or whether their possible application is being used by the City as a further basis for determining that the appellant's request was frivolous or vexatious. In view of the intent of the City's decision letter taken as a whole, I do not consider the reference to certain exemptions to constitute a decision on access under the *Act*. Therefore, the sole issue to be determined in this appeal is whether the appellant's request is frivolous or vexatious.

I decided to seek representations from the City, initially and sent it a Notice of Inquiry setting out the facts and issues in this appeal.

The City submitted representations in response to the Notice of Inquiry and consented to their full disclosure to the appellant. I attached them to the copy of the Notice I sent to the appellant. The appellant was asked to review the City's submissions and to refer to them where appropriate in preparing his representations on the issues in this appeal. The appellant submitted representations in response and consented to the disclosure of all but one part of them to the City. I subsequently sent the non-confidential portions of the appellant's representations to the City and provided it with an opportunity to reply to them. The City submitted representations in reply.

During the inquiry stage of this appeal, the appellant submitted another related request to the City. In particular, the appellant asked for:

> All records related to 'active' or 'in-progress' notice of non-conformance and orders to comply issued to other [City] residents. These cases may have also involved the issuance of summons under the [*POA*]. I would like the time frame to be used for the record search to span up to and include the date of this request.
>
> Among other records that may be related to this request, I am particularly interested in the 'tracking document' … used by the [City] to capture milestone action against homeowners alleged to be in breach of municipal by-law 189-96 or related provisions of the Ontario Building Code. A copy of the 'tracking

> document' was made available to you on October 5, 2000 to clarify an earlier request. I would like a copy of the 'tracking document' ;for each of the following grading complaint reference numbers or files: 970001, 970002, 980001, 980002, 980003, 980004, 980005, 980006, 980007, 980008 and 980009.

In making this request, the appellant indicated that he was not seeking personal information. In addition, he noted that, in his previous request, he specified that he was only seeking non-active files and stated:

> Upon reflection and recognizing that access to these records is material to our dispute with the [City], I request access …

Again, the City refused to process the request on the basis that it was frivolous or vexatious. The appellant appealed this decision and Appeal MA-0100200-1 was opened. On agreement of all parties, this appeal was moved into Inquiry so that it could be disposed of together with Appeal MA-000369-1. The parties agreed that the submissions made in respect of the first appeal should also apply to the second.

DISCUSSION:

FRIVOLOUS AND VEXATIOUS

The provisions that I must consider to determine whether the appellant's request is frivolous or vexatious are in sections 4(1)(b) and 20.1(1) of the *Act* and section 5.1 of Regulation 823 made under the *Act*.

Section 4(1)(b) of the *Act* specifies that every person has a right of access to a record or part of a record in the custody or under the control of an institution unless the head of an institution is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. The onus of establishing that an access request falls within these categories rests with the institution (Order M-850).

Sections 20.1(1)(a) and (b) of the *Act* go on to indicate that a head who refuses to provide access to a record because the request is frivolous or vexatious must state this position in his or her decision letter and provide reasons to support the opinion.

Sections 5.1(a) and (b) of Regulation 823 provide some guidelines for determining whether a request is frivolous or vexatious. They prescribe that a head shall conclude that a request for a record or personal information 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.

In Order M-850, Assistant Commissioner Tom Mitchinson observed that these legislative provisions "confer a significant discretionary power on institutions which can have serious implications on the ability of a requester to obtain information under the *Act*", and that this power should not be exercised lightly.

The City's Position

The City submits that the appellant's requests are frivolous and vexatious on the basis of all of the criteria set out in the Regulation, due in part to the complexity and scope of these access requests and his six previous requests.

The City refers specifically to the circumstances surrounding a previous appeal submitted by the appellant (Appeal MA-000032-1), and mediation of that appeal which resulted in the file being closed on the basis of a mediated settlement. The City states that the appellant received the requested records as per this mediated settlement, that he had 30 days to review the City's decision in this regard, and that no further action appears to have been taken by him or this office.

The City indicates that in certain parts of the appellant's request, he is seeking records relating to law enforcement activities that have been completed or are no longer active and on-going, including "legal tracking" documents (although now he is also pursuing those that are active). The City refers to its original decision in Appeal MA-000032-1 in which it claimed the exemptions in sections 8 and 14 for information in the "specific files that relate to the issuance of Notices of Non-Conformance and Orders to Comply…" The City asserts that the appellant agreed, as part of the mediated settlement, that he was not interested in pursuing these records. The City submits that the appellant's decision to withdraw this part of his request was made in full knowledge of the basis for their exemption. The City questions why he is pursuing them again.

The City also refers to a decision letter it sent to the appellant following mediation of Appeal MA-000032-1, in which it stated that certain information from the prosecution file is exempt under section 8 of the *Act*, but the remainder (consisting of 16 pages) is disclosed in full. The City states further that although the appellant believes that he is seeking access to records that he does not have or that should have been disclosed to him in accordance with the mediated settlement, all records have, in fact, been disclosed to him. The City queries, "if this were not the case, then why did [the appellant] not appeal to your office?"

The City takes the position that, "on the basis of that mediation and the settlement that resulted therefrom, the City did honour its obligations". The City submits that to request this same information now is in bad faith or is for a purpose other than to obtain access.

Similarly, the City states that the appellant was provided with responses to items 2 and 5 of his current request in its previous access decision, which resulted in Appeal MA-000032-1. In particular, the City points out that the appellant was provided with the information responsive to item 2, and that he agreed not to pursue the information requested in item 5 as part of the mediated settlement.

The City notes that the requested records relate to a grading dispute between two neighbours. It indicates that this is a very complex matter, which has involved eight City departments at a significant financial cost to the City. The City points out that the appellant has requested records from nine different areas of the City, and that the Mayor has dealt with the appellant on two separate occasions. Noting that the appellant has made six previous access requests since September 22, 1998 and has received approximately 375 pieces of correspondence related to this matter, the City states that the appellant is making the same request for information "for which the City has honoured its obligations" and submits that in doing so the appellant is acting in bad faith or for a purpose other than to obtain access.

In arguing that responding to the request would interfere with its operations, the City compares itself with the City of Toronto in terms of population, numbers of building permits issued and their value, permits/staff ratio and staffing levels. The City states:

> At this staffing level, one full time staff person could provide freedom of information functions to a population base of about 540,000 persons … By comparison, the City of Toronto …staff per population ratio is about 1:173,000. This comparison indicates that the [City's] freedom of information staff need to allocate their resources to serve a population base three times greater than in the City of Toronto.

Similarly, the City notes that its BSD staff must process a significantly higher percentage of building permits than their counterparts in the City of Toronto. The City concludes, in both cases, that its staff "cannot afford to allocate their limited resources to process any vexatious and frivolous requests". On this basis, the City claims that the appellant's request "interferes with the operation and responsibilities" of the FOIC and the BSD.

The City indicates further that the appellant has filed a Small Claims Court action against it, and notes that he made a pre-trial motion for the same documents as requested in his first request (Appeal MA-000369-1). With respect to this motion, the City states:

> The Court expunged his pretrial motion because his request was biased and prejudicial to the [City's] defence. The Court deemed that [the appellant's] request for these documents was irrelevant to his action against the [City].

The City notes that, in submitting his access requests, the appellant did not indicate that he was going to sue the City and that he needed the records in order to prepare. Rather, as the City states, he "only provided enough information in order to obtain the records he wanted access to". The City suggests that:

> it is difficult to help an individual if they don't know what they want or if they know what they want and don't want to provide you with sufficient information or advise you of their action plan so that you are able to help them.

Further on this point, the City refers to the appellant's representations and interprets them as indicating that the appellant's "sole purpose" in making his access requests is to use the records in Court. Noting that "the Court has ruled that these records are inadmissible as evidence", the City takes the position that the requested information is of no use to the appellant. In this regard, the City states:

> These records cannot be used for the sole purpose for which [the appellant] is seeking access. If these records cannot be used for the original purpose as stated by [the appellant], then it is the City's position that [the appellant] should abandon his original request and the subsequent appeal so that these records cannot be used for a purpose other than the original purpose. If [the appellant's] original access purpose was to prepare his civil defence and claim against the City for Court, then why was information from the previously disclosed records provided to the National Post and other media sources?

Referring to *Donmor Industries Ltd.* v. *Kremlin Canada Inc*. (1991), 6 O.R. (3d) 501 (Gen. Div.), the City notes that the court relied on "abuse of process" in striking out a statement of claim "because it involved re-litigating matters that had been subject of a previous unsuccessful action between the same parties". The court in that case determined that to allow the plaintiff to proceed would permit a duplication of proceedings.

The City refers to Order M-618, wherein former Commissioner Tom Wright held that one factor in determining abuse of process is an increase in the number of requests or appeals made by a party following the initiation of court proceedings by the institution. The City submits that this finding is equally applicable where, as in this case, the proceedings are instituted by the appellant. The City also relies on the findings of the Court of Appeal for Ontario in *Foy* v. *Foy* (1978), 20 O.R. (2d) 747 in support of its position. The City states that the court in this case "held that abusive process of the court is to bring one or more actions to determine matters previously dealt with".

The City takes the position that the appellant:

> is determined to use whatever means are available, whether it is the Court, the [*Act*], or the media to try and get this issue resolved to his satisfaction…
>
> Please look at the National Post article that was submitted by [the appellant]… this story is totally bias [*sic*] against the [City]. The author did not contact the [City] to obtain their side of the story. The author did not mention anything in the story about [the City's] position in this matter. The author did not obtain all the facts and then write an unbiased story. This article was written in a vexatious tone against the interests of the [City].

In conclusion, the City states:

> By virtue of the nature of the request under appeal and the broad scope of previous requests, [the appellant] has displayed a pattern of conduct over a period of time which amount [*sic*] to an abuse of the right of access. [The appellant's] access requests are being used to revisit recurring subject matter, where a process

> is used more than once for the purpose of revisiting an issue which has previously been addressed. This pattern of conduct over a period of time demonstrates an abuse of the right of access and interferes with the operations of the [City].

The appellant's position

The appellant emphatically disagrees with the City's approach and conclusions with respect to his access requests generally and specifically with respect to his intended use of the information. In essence, he submits that his requests have been very focussed and that he has attempted to be as specific as possible in identifying the records he is seeking. He notes that his requests pertain to sequential periods of time and that where a previously released record shed light on some action taken by the City, he followed it up with a more targeted request.

With respect to the motivation behind these requests, the appellant states:

> Our requests are in support of our effort to hold the City accountable for their mishandling of local by-law issue and the unfair treatment of my mother relative to other City homeowners.
>
> …
>
> Again our purpose is clearly and solely to obtain access to records we feel will further bolster our legal claim against the [City] and be of assistance in Small Claims Court… Without [the *Act*], we would not be able to hold the City accountable for unreasonable use of statutory authority and discretion as well as the unfair treatment of one homeowner relative to others.

The appellant points out that his seven requests were made over a two and a half (actually eight requests over a three) year period and that they did not increase in number following the initiation of legal proceedings.

The appellant states that he was in error in not pursuing the records relating to active and non-active prosecution files during mediation of Appeal MA-000032-1 because he believes that this information would be valuable in "establishing a pattern of behaviour on the part of City officials".

With respect to replication of portions of his requests, the appellant indicates that he regrets this, but points out that had the City contacted him to clarify his request, as the FOIC had always done in the past, any replication could have been dealt with at that time.

The appellant also goes into some detail regarding the mediation of Appeal MA-000032-1, and points out that he spent a considerable amount of time explaining the records that he was seeking. He indicates that, despite this, the records that were released to him following the issuance of the Mediator's Report were not in keeping with what he had requested (as captured in the Mediator's Report). In responding to follow-up queries on this point, the appellant notes that the FOIC took the position that "these records" were not within the scope of the request.

The appellant states that "it was only after I contacted the Mediator and expressed my exasperation with the development … that the full scope of records were released to me".

The appellant explains that he does not trust that he has received all responsive records based, in part, on his past experience with the City and, in part, because of records he received in response to a subsequent request, which lead him to question why similar records were not released in response to Appeal MA-000032-1.

Finally, the appellant notes that, after the pre-trial conference relating to his Small Claims Court action, the City's solicitor indicated to him that he could use the *Act* to seek access to the same records. He expresses some difficulty in understanding why the City is now claiming that he is re-litigating matters or duplicating processes.

Discussion

I will now consider whether the facts of these appeals fit into one or both of the definitions referred to above. The City has based its claim, in part, on the fact that certain actions were undertaken as a result of a mediated settlement relating to a previous appeal. The appellant, on the other hand, takes the position that the City did not abide by the terms of the settlement. In order to determine the impact of this settlement on subsequent requests, it is necessary to consider the circumstances under which mediation with respect to the previous appeal occurred. Accordingly, I have reviewed the files in this office (the IPC) relating to Appeal MA-000032-1 (and MA-000032-2).

The appellant suggests that, in part, it is the City's own actions in the manner in which it has responded to his access requests, that have led him to pursue the current requests for similar or related information. I have, therefore, also reviewed and/or considered all of the appellant's previous access requests and the manner in which the City responded to them.

The history of the dealings between the City and the appellant is a lengthy and complex one. In the following discussion, I have described the various requests made by the appellant and the City's responses to them, as well as my observations regarding the purpose and nature of the requests and the manner in which they have been dealt with (at least insofar as the evidence before me permits).

In order to put all of this into context, it is important to point out that, from the appellant's perspective, much of his persistence in pursuing his access requests results from his inability to access what he refers to as "third party records", and because of the manner in which the City has consistently interpreted and responded to his requests. These concerns are borne out by his correspondence in the various appeal files in this office.

Chronology of events

The appellant has submitted eight requests to the City over the past three years.

Request #1

Beginning on September 22, 1998, the appellant asked for all records regarding work underway at a particular municipal address (that belonging to the neighbours).

The City responded on October 20, 1998 and subsequently disclosed certain records to the appellant. The City's decision letter does not make any mention of the existence of third party records, nor were any disclosed to the appellant.

The appellant did not appeal this decision.

Request #2

On June 24, 1999, the appellant asked for all records regarding the same above-noted property and that belonging to his mother (situated next door) from October 10, 1998 to June 24, 1999 (in other words, for the next sequential time period).

The City issued two "decision" letters dated July 30 and August 13, 1999. Neither letter identified the existence of any records nor were any apparently released (although this is not entirely clear from the evidence).

Again, the appellant did not appeal this decision.

Request #3

After receiving the first decision letter in response to Request #2 (July 30), the appellant submitted another request (on August 10, 1999). This request was more detailed than his previous requests, and specified that he was seeking records contained in four specific departments "for the whole City" relating to notices of non-conformance and orders to comply generally, and specifically relating to by-law 189-96, known as the "fill by-law" for 1998 and 1999.

The appellant then sent another letter to the City on August 16, 1999 (following receipt of the City's second decision letter in response to Request #2) in which he revised his August 10 request by clarifying the time frame for certain parts. A notation on the City's copy of the August 10 request indicates that the FOIC confirmed with the appellant that the August 16 letter supercedes the August 10 request. It is apparent from this that the City recognized that the August 16 letter was simply a clarification of the August 10th letter rather than two separate requests. In this request, the appellant asked for:

1. the number of notices of non-conformance in 1998 – 1999;
2. the number of orders to comply in 1998 – 1999;
3. the value or description of construction work relating to each order to comply in 1999;
4. the number of notices of non-compliance and orders to comply under by-law 189-96 since 1996;

5. the number of orders to comply that resulted in court action and a description and the value of the construction work involved;
6. the number of orders to comply under by-law 189-96 that resulted in court action and a description and value of the construction work involved;
7. the number of orders to comply that resulted in the laying of charges under the *POA* and a description and value of the construction work involved; and
8. records indicating that the driveway of [the neighbours] was at any time since the house was built wider than the eastern edge of the garage.

In its decision dated September 16, 1999 (in response to the August 16 letter), the City explained what searches it undertook and advised that records did not exist in certain departments referred to in the appellant's request. The City explained the enforcement and prosecution process to the appellant, indicating that files originate in the area responsible for the enforcement and laying of charges, such as the By-law Enforcement and Licensing Division (By-law enforcement), and are then sent to the Legal department for prosecution. At the conclusion of the prosecution, the files are returned to their originating department. The City indicated that the Legal department did not keep computerized statistics summarizing the total number of prosecutions or charges in 1996 or 1997 but was able to provide the numbers for the number of charges prosecuted in 1998 and 1999 (originating from the BSD, By-law enforcement and Fire and Rescue Department).

The City stated, however, that no records exist in By-law enforcement. The City did not indicate that a search had been conducted in this department, in contrast to the manner in which it responded with respect to the other three departments.

The City indicated that records consisting of Notices of Non-Conformance, Orders to Comply, property files and building permit plans for the two properties were located in two departments and provided a written response to the appellant's request for records, which it characterized as its "disclosure decision". In particular:

- in responding to part four, the City provided the following information: 1996 – 2; 1997 – 9; 1998 – 9; 1999 – 6 (to this date in 1999);

- The City indicated that information relating to the value and description of the construction work involved is not recorded or tracked and that it would be necessary to review each property and/or prosecution file in order to obtain this information;

- Similarly, the City stated that the BSD does not record or track the orders to comply generally, or under by-law 189-96 and it would be necessary to review each property file in order to obtain this information;

- With respect to orders to comply generally, the City indicated that they may record more than one violation. If an owner complies, the order to comply is filed in the property file; if the owner refuses to comply, a prosecution file is opened;

- The City provided the number of prosecutions requested by the BSD in 1996 and 1997, but indicated that this information had not been calculated for 1998 and 1999. Again, it indicated that it would be necessary to review each property file to obtain the total number;

- Finally, the City advised that it had records responsive to part eight of the request and provided the appellant with records originating from within the City, which it indicated had been disclosed to him in response to his previous access request (October 20, 1998). It is important to note that the City did not conduct a search for records responsive to part eight for the complete time frame requested, and that it restricted its search to only one department. The City only searched for records from 1998 since that was when the appellant had made his complaint to the City.

No "third party records" were released or identified by the City.

Following receipt of this decision, the appellant contacted the FOIC for clarification of his response and was told (verbally) that no third party records exist. As well, the FOIC provided the appellant with verbal clarification of the "disclosure decision".

The appellant did not appeal this decision.

Request #4

The appellant subsequently submitted a follow-up request to his August 10/16, 1999 request on December 21, 1999 in which he asked for (written) confirmation of the verbal information provided by the FOIC. This time, he clarified that his request was to include specifically third party records. In particular, he sought:

- confirmation of the number of notices of non-conformance and orders to comply issued under by-law 189-96 since it was introduced;

- to review specific files relating to these notices and orders with the aim of obtaining information relating to part 6 of his August 10/16 request, ie. the number of orders to comply under by-law 189-96 that resulted in court action and a description and value of the construction work involved. It should be pointed out that he submitted this portion of the request because the FOIC told him that he needed to submit a separate and new request in order to obtain this information;

- confirmation of the FOIC's verbal response that no records exist, including third party records relating to part eight of his previous request; and

- to review the City's policy manual(s) that provide staff guidance relating to by-law 189-96.

The City responded to this request on January 13, 2000 (which ultimately lead to Appeal MA-000032-1). In particular, the City's response provided:

- confirmation of the numbers requested by the appellant (although it should be noted that two of the numbers differed from what the appellant was verbally told and differed significantly from the response provided in the September 16 decision letter. For example, with respect to the response to part four (of the August 10/16, 1999 request – response set out above), the City provided the following information: 1996 – 2 notices of non-conformance – 0 orders issued; 1997 – 9 notices of non-conformance – 2 orders to comply; 1998 – 28 notices of non-conformance – 9 orders to comply; 1999 – 14 notices of non-conformance – 6 orders to comply;

- identification of records in the BSD, such as computer generated statistics, notices of non-conformance, orders to comply, property files and building permit files for the two properties as being "related to the request". The City does not indicate whether these records will be disclosed to the appellant or not.

- the request to review specific files was denied pursuant to sections 8(1)(a), 8(2)(a), and 14(1), noting that there are seven prosecution cases pending and indicating that orders to comply do not record the description and value of work involved (similar to its previous decision), which is the reason given by the appellant for wishing to view the actual files;

- no policy manual(s) exist relating to by-law 189-96; and

- a description of the searches for the four departments referred to by the appellant was provided. The City indicated that no records exist in these four departments other than what was disclosed to him in response to his first and third requests. With respect to records in the Engineering Department, the City indicated that it only searched 1998 and 1999 files in one record series, and indicated that it would be prepared to search other years and record series but fees would apply. It appears that, rather than clarifying with the appellant whether he wanted to pursue this information prior to issuing its decision, the City invited the appellant to contact the FOIC for assistance.

The City also indicated that in his August 10, 16 and December 21 requests, the appellant had specified the department in which the search was to be conducted. The City stated that it cannot confirm that any records may exist in other departments as they fell outside the scope of the requests.

In his letter of appeal, the appellant stated that despite efforts to clarify his request, the City interpreted it very narrowly. He indicated that he is seeking records relating to infractions of by-law 189-96, whether complete, dormant or in-progress. He indicated further that he wants to know the nature of the construction work in each case as well as, for example, the size and scope of each project, materials used, specific infraction and supporting information requested and supplied to the City for each case file.

The appellant believed the City's decision identified 70 case files of which seven are pending. He noted, however, that when he asked to view those files that were "not in progress" or "complete", the City advised him that it has not prosecuted any property owners under the by-law.

Extensive mediation was undertaken in an attempt to resolve Appeal MA-000032-1. The appellant indicated that he was satisfied with the responses given to parts one and four of his request. With respect to part three, he indicated that he was satisfied with the City's response regarding the four departments identified. However, he took the position that the City's response to this part of his December 21 request should include "other departments" since it was a new request for information for which he paid the prescribed fee (presumably as opposed to a clarification of the previous request). It should be noted that, in this request, the appellant did not appear to restrict the search to the four departments identified in the previous request.

Also during mediation, the appellant clarified that he was seeking the requested information to determine whether the City is consistent in its actions. He indicated that he was not interested in receiving the names of property owners or lot numbers. He also accepted the mediator's advice that he was not likely to obtain information from "active" files. He continued to pursue access to "non-active" files, however.

Finally, the City agreed to conduct searches for other departments on the basis that the appellant accept that fees could be applied.

As a result of mediation, the parties agreed that the City would issue a new decision and the file would be closed. The specific terms under which the file was closed reflect the final discussions during mediation (as outlined above).

On June 5, 2000, the City issued its decision to the appellant in response to, but apparently not in accordance with, the terms of the settlement. In particular, the City re-iterated its answer to part one of the request. With respect to part two, the City enclosed copies of the anonymized notices of non-conformance and orders to comply for 1996 to 1999. Finally, the City provided the appellant with a list of City departments and asked him to check off those he wanted searched. The City then indicated that fees may be applicable to this search.

Shortly after receiving this letter, the appellant contacted the mediator to advise that he had some concerns about the information sent to him. On June 26, 2000, the appellant wrote to the City and indicated that the records released consist of orders and notices only, not "files". He stated in his letter that this disclosure is not in keeping with the scope of the agreement as reflected in point three of the Mediator's Report which provides: "The appellant agrees to accept anonymized copies of the files that correspond to the 70 [Non-Conformance] Notices and Orders reflected in the response to Part 1 of the request". The appellant then pointed out that notices and orders are likely to have technical drawings, surveys, correspondence and engineering reports related to them.

During subsequent discussions between the FOIC and the mediator, the FOIC appeared to take the position that the information identified by the appellant is not responsive to his request for "prosecution" files since this type of information is contained in the permit file, which apparently is a separate sub-file of the file. In the end, however, it appears that the FOIC acknowledged that he was in error in limiting "files" to only notices of non-conformance and orders to comply. Despite this, there is evidence in the appeal file of the FOIC's reluctance to deal with this matter further.

On November 14, 2000, the appellant wrote to the Commissioner seeking her intervention in the manner in which the City has been responding to his access requests, and in particular, its June 5, 2000 decision. The appellant stated:

> The Mediator's Report was very clear and said all records related to Notices of Non-Conformance and Orders to Comply. When I contacted [the FOIC], indicated that they were not germane to the request and asked that I contact their legal department …

An appeal file was opened, initially, to address this complaint (Appeal MA-000032-2) but it was subsequently closed as being "out of time", that is, outside the 30-day appeal period. The appellant was advised by this office that he could make a new request for the information he is seeking.

Request #5

During the mediation stage of the previous appeal (relating to Request #4), the appellant submitted a new access request to the City (on March 23, 2000), which reads:

> Any and all records, third party as well, relating to work (construction, expansion, modifications, alterations or realignment) at [the two properties]. Work undertaken from May 1998 to date. The time frame for the above request being July 1, 1999 to March 23, 2000.
>
> Confirmation that records prior to July 1, 1999 have been provided through previous requests.

In response to this request, the City sent a clarification letter to the appellant and a fee estimate on April 13, 2000. This letter was not provided to me, and I am unable, therefore, to determine what clarifications were made. It appears, however, that the appellant paid the fee since the City issued an access decision on June 15, 2000.

In its decision, the City identified a number of City departments in which searches were undertaken. The City also states: "You indicate that the records prior to July 1, 1999 have been provided through previous requests". Absent any information to the contrary, this statement would appear to be completely at odds with the appellant's request.

The City identified a number of responsive records, which it disclosed to the appellant in whole or in part, citing the provisions in sections 12 and 14 of the *Act* as the basis for withholding portions of them. In total, the City disclosed some 61 records (totalling approximately 158 pages although a number of these are duplicates).

The appellant did not appeal this decision directly, although he made reference to it in his November 14, 2000 letter to this office. In particular, he referred to a record which was disclosed to him in response to this request (which he identified as a 'tracking sheet') and queried why this document was not disclosed to him in response to his previous requests. He also believed that similar tracking sheets would exist for other property owners and should, therefore, have been disclosed to him in response to this request.

As I noted above, however, the November 14, 2000 letter was sent to this office well after the 30-day appeal period (which for this decision would have been July 16, 2000).

Request #6

On or about May 26, 2000, the appellant submitted another request to the City for records related to the issuance of a summons concerning his mother's property (a copy of this request was not provided to me, although the City's decision letter was).

The City's response, dated June 15, 2000, identified responsive records in the BSD and the Legal Department. The City noted that the Legal Department had a prosecution file related to a violation at that address and that the BSD had submitted information to it to substantiate the charge, indicating that this information was contained in the prosecution file. The City disclosed 17 pages of an 18-page document citing section 8 as the basis for withholding one page. The City also identified correspondence in its Legal Department relating to the property to which it denied access on the basis of section 12 of the *Act*.

The appellant did not appeal this decision. However, I note that, in his letter of appeal regarding his final request (Appeal MA-010200-1), the appellant states that after he reviewed the records disclosed in response to Request #6, he determined that records relating to active by-law cases would be useful to him in regards to his claim against the City.

Section 5.1(a)

Pattern of Conduct that Amounts to an Abuse of the Right of Access or would interfere with the operations of the institution

To determine whether the City's submissions meet the criteria outlined in section 5.1(a), I must first determine whether the appellant's filing of either one or both requests form part of a "pattern of conduct". If I find that it does, then I must determine (1) whether this pattern amounts to an abuse of the right of access, or (2) whether this pattern would interfere with the operations of the City.

In Order M-850, Assistant Commissioner Mitchinson defined the term "pattern of conduct". He stated that, for such a pattern to exist, one must find "recurring incidents of related or similar **requests** on the part of the requester (or with which the requester is connected in some material way)". He 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. Further, in Order P-1534, he determined that a distinction must be made between formal requests for access **under the *Act*** and informal contact between a member of the public and an institution outside the formal context of the *Act*. I agree with these approaches and adopt them for the purposes of this appeal.

In determining whether the current requests reflect a "pattern of conduct" within the meaning of section 5.1(a), it is useful to review the manner in which past orders of this office have dealt with this issue. In this regard, a number of orders have looked at the volume of requests, the time over which they were submitted and their content.

In Order M-864, former Assistant Commissioner Irwin Glasberg considered whether the filing of 15 requests over an 18-month period constituted a "pattern of conduct". He concluded that they did not, noting that although the theme of the requests was similar, each request asked for different pieces of information. He also reviewed the nature of the requests, as well as their timing. He noted that seven of the requests were submitted at two-week intervals over a three-month period and were very detailed, but that this "pattern" stopped and the remaining three requests were filed over a four-month period. He concluded that "had the appellant continued to file requests of the same type and at similar intervals as the original seven, I might well have concluded that his actions constituted a pattern of conduct…"

On the other hand, in Order PO-1872, Adjudicator Donald Hale found that 23 requests made by one person over a 21-month period constituted a "pattern of conduct". In that case, all of the requests were related and were of a similar nature. It appeared that many of the requests were identically worded or consisted of restatements or reformulations of earlier requests.

In Order M-947, former Adjudicator Anita Fineberg considered whether 14 requests submitted to the institution over an 11-month period constituted a "pattern of conduct". In this case, the appellant had submitted numerous previous requests. In determining that the City had established a pattern of conduct in the circumstances of this appeal, the former Adjudicator noted that "the fact that previous requests may overlap with each other will not, on its own, establish that **these requests** are part of such a pattern" (emphasis in the original). She concluded, however, that:

> What is most striking about the pattern of these requests is that the City has identified each of the ten parts comprising the August 7 request alone as being duplicates of previous requests. In addition, two parts of the November 10, 1995 request duplicate previous requests, and two are duplicated within this one request. Because of the duplication in the August 7 request, I have concluded that, by themselves, these fourteen requests constitute "recurring incidents of related or similar requests" and, hence, a pattern of conduct for the purposes of section 5.1(a) of the Regulation.

Recently, in Order MO-1477, Assistant Commissioner Mitchinson concluded that "six requests over a 12-month period is not, in itself, sufficient to establish a pattern of conduct".

A number of other orders have considered whether various types of behaviour or activities on the part of requesters, alone, or in conjunction with the number of requests, amount to a pattern of conduct.

In Interim Order MO-1168-I, I stated:

> The Board has taken the position that the totality of the appellant's actions in its dealings with it amounts to a "pattern of conduct". In Order M-906, former [Adjudicator] John Higgins dealt with a similar situation. In that case, the City of Elliot Lake argued that various actions taken by the appellant, including "unsuccessful appeals under the *Rental Housing Protection Act*, the submission of complaints to and subsequent investigation by the Ministry of Municipal Affairs and Housing, the submission of complaints to and subsequent investigation by local police, a recent unsuccessful court action ..." amounted to a pattern of conduct as contemplated by section 5.1(a).
>
> In Order M-906, the former [Adjudicator] stated:
>
>> In my view, the appellant's complaints and litigation are not part of a "pattern of conduct" as defined in Order M-850 because they are unrelated to access under the *Act*, and are not "recurring incidents of related or similar requests". They may be relevant to whether a request is submitted "for a purpose other than to obtain access" under section 5.1(b) of the Regulation and I will refer to them again in that context, below.
>
> I agree entirely with these comments. I find that the reasons provided by the Board regarding this issue relate to activities of the appellant which are completely unrelated to his attempt to gain access to records under the *Act*.

Finally, in Order P-1311, former Adjudicator Higgins considered the history between the parties, including the origin of the problem between them, the way in which the appellant's previous request was handled by the Ministry and the appellant's reason for asking for the information, in determining that the request was not part of a pattern of conduct. In responding to the Ministry's allegation that the appellant was revisiting an issue previously decided, the former Adjudicator noted that the original request filed by the appellant was general in nature, but the one at issue was specific. He also noted that, according to the appellant, parts of the request at issue arose from information disclosed to him as a result of the earlier request.

In the current appeals, the appellant has filed eight requests over a three-year period. Consistent with the Assistant Commissioner's findings in Order MO-1477, I find that this number of requests alone is insufficient to establish a pattern of conduct.

As noted in previous orders, a relevant consideration in determining that a request is part of a pattern of conduct is whether, in submitting a request, the requester is seeking a re-determination of a matter previously decided or otherwise resolved. In certain circumstances, I might be inclined to find a pattern of conduct where it is shown that an appellant repeatedly agrees to remove certain information from the scope of his or her appeals during mediation and then re-submits requests for the same information. However, I would not be as quick to reach the same conclusion where this happens only once, as in the current appeals (albeit through two requests). On this basis, I find that such a turn in these appeals, alone or in conjunction with other factors, does not establish a pattern of conduct. It may, however, be relevant to whether the requests are an "abuse of the right of access" or made in "bad faith", and I will refer to these circumstances again in these contexts.

Another relevant (and somewhat related) consideration in determining this issue is whether the requests are generally similar in nature or related to each other or are, in fact, repetitious. Initially, it would appear that they are on all counts. All of the appellant's requests relate, in some way, to the two properties, to the manner in which the City has dealt with the owners of each one, and to the manner in which the City has dealt with infractions by other homeowners of City by-laws, and in particular, By-law 189-96.

However, when viewed contextually, there appear to be significant mitigating factors that, in my view, sufficiently explain the appellant's rationale in pursuing certain information the way he did.

As the appellant points out, most of his requests relate to sequential periods of time. Given that the matter is currently on-going and that any one access request (of the nature of these requests in any event) will only capture records to the date of the request, it is not unreasonable for the appellant to want to track these types of records over time. Even so, were this approach to involve a number of repeated requests over a relatively short period of time, similar to former Assistant Commissioner Glasberg's findings, I might well have concluded that his actions constituted a pattern of conduct. It is important, however, to note that the appellant is not submitting requests every few weeks or months. Rather, there are approximately nine months between his first two requests and again between his second and fifth requests (which are very similar except for the time frame).

The appellant's third request is considerably more detailed, and appears to have been made in response to the inadequate responses he received to his previous requests. Similarly, his fourth request is a direct follow-up to the third request and subsequent verbal information provided by the City. It appears from reviewing the requests and subsequent correspondence from the appellant that, rather than appealing the first two decisions (presumably on that basis that more records should exist), the appellant chose to reformulate his requests in order to detail the types of information he was attempting to access. While the option was open to the appellant to simply appeal these decisions, based on his perceptions (as reflected in his correspondence) of the apparently co-operative discussions he was having with the FOIC, his approach to the deficiencies in the records he expected to receive does not appear, at least at this point, to be unreasonable. Nor does it suggest that he was engaged in a "pattern of conduct".

With some exceptions, the appellant's final two requests (which are the subject of this order), contrary to the City's assertion, appear to relate to information he has not received in response to his previous requests, and in part, seek records the appellant has only become aware of as a result of records that have been disclosed to him. Admittedly, certain portions of these requests do replicate previous requests.

The City's decision letters are quite long and detailed, often providing answers to questions or information in response to requests as opposed to records. To a degree, this is a commendable approach and has likely made information available to the appellant that might have been more difficult or costly to obtain otherwise. Although it appears that the City has gone to great lengths to respond to the appellant's requests, it has at times rephrased his requests in such a way that, in the end, does not provide the appellant with the information he is seeking. In addition, the City has construed his requests so narrowly that the appellant does not receive the records he is requesting. Although the appellant has repeatedly identified the types of records he is seeking, the City has consistently taken the position that such records are not responsive to his requests. Further, the City's verbal and written responses regarding certain information are inconsistent. Whether through inadvertence or design, the City's responses confuse and/or ignore the appellant's requests, which appear to me to be quite clear.

If the appellant's requests were vague, initially, in my view, the conversations between the parties should have been sufficient to give clarity to the appellant's intentions in making his requests. I am somewhat at a loss in understanding how the City has managed to obfuscate to such a degree the relatively straightforward requests submitted by the appellant.

Finally, given the way in which information appears to be trickling out to the appellant and the general approach the City has taken in responding to his requests, the appellant may be justifiably confused about which parts of his requests the City has actually responded to – I admit that I am.

Has the City established a "pattern" in the appellant's eight requests? Yes, there is clearly a "pattern" of the appellant submitting similar or related requests for information. Does this constitute a "pattern of conduct" within the meaning of section 5.1(a) in the circumstances? No, it does not. The appellant did not obtain the types of records he was seeking even after submitting a more detailed request identifying the specific information he wanted. Dissatisfied with the responses to that point, he attempted to clarify further, through informal discussions with the FOIC, and ultimately submitted a follow-up request aimed at obtaining written confirmation of the verbal clarification. It is important to note that following his verbal discussions with the FOIC in which he presumably explained what he was looking for, the FOIC told him that he would need to file a new request for that information, which he did. In the final two requests (at issue in these appeals), the appellant is seeking information which possibly should have been disclosed to him in accordance with the mediated settlement, but which, in any event, he does not have.

On this last point, the City notes that the appellant did not appeal the decision it issued following the mediated settlement of Appeal MA-000032-1. In fact, he did (Appeal MA-000032-2). However, this appeal file was closed because it was filed outside of the 30-day period for filing an appeal. In his letter dated November 14, 2000, the appellant indicates that he did not receive the records he should have in accordance with the mediated settlement. It appears, according to the appellant's representations, that he has now received some of them. However, he continues to believe, based on other records in his possession, that more records exist relating to non-active files. The appellant has not received records relating to active files.

I have not been privy to the various discussions between the parties and can therefore not speak to difficulties they might have had in communicating with each other. However, it is quite apparent that the City and the appellant are frustrated with each other. That does not, in my view, excuse the City from responding to the appellant's requests in accordance with the intent of the *Act*.

Based on the circumstances under which the appellant has submitted his eight requests, I am not prepared to conclude that the filing of these last two requests constitutes a "pattern of conduct" within the meaning of section 5.1(a).

Even if I were to make such a finding, I would conclude, based on the ensuing discussion, that the remaining components of this section are not established by the evidence or the arguments put forth by the City.

Abuse of the right of access

The meaning of "abuse of the right of access" was also discussed by Assistant Commissioner Mitchinson in Order M-850. He commented on this phrase as follows:

> In determining what constitutes "an abuse of the right of access", I feel that the criteria established by Commissioner Tom Wright in Order M-618 [decided before the "frivolous or vexatious" amendments were added to the *Act* by the *Savings and Restructuring Act*, 1996] are a valuable starting point. Commissioner Wright found that the appellant in that case (who is not the same person as the appellant in this case) was abusing processes established under the *Act*.
>
> The Commissioner described in detail the factual basis for the finding that the appellant had engaged in a course of conduct which constituted an abuse of process. The Commissioner found that an excessive volume of requests and appeals, combined with four other factors, justified a conclusion that the appellant in that case had abused the access process. The four other factors were:
>
> 1. the varied nature and broad scope of the requests;
>
> 2. the appearance that they were submitted for their "nuisance" value;
>
> 3. increased requests and appeals following the initiation of court proceedings by the institution;

> 4. the requester's working in concert with another requester whose publicly stated aim is to harass government and to break or burden the system.
>
> Another source of assistance for interpreting the words "abuse of the right of access" is the case law dealing with the term "abuse of process".
> ...
>
> To summarize, the abuse of process cases provide several examples of the meaning of "abuse" in the legal context, including:
>
> - proceedings instituted without any reasonable ground;
> - proceedings whose purpose is not legitimate, but is rather designed to harass, or to accomplish some other objective unrelated to the process being used;
> - situations where a process is used more than once, for the purpose of revisiting an issue which has been previously addressed.
>
> In my view, although this is not intended to be an exhaustive list, these are examples of the type of conduct which would amount to "an abuse of the right of access" for the purposes of section 5.1(a).

In Order M-864, Assistant Commissioner Irwin Glasberg summarized the interpretations of "abuse of the right of access" in Orders M-618 and M-850 as follows:

> Following my review of these two orders, and taking into account the wording of section 5.1(a) of the regulations, I believe that there are a number of factors that are relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access. Some of these considerations are listed below:
>
> (1) The actual number of requests filed
>
> (Are they considered excessive by reasonable standards?)
>
> (2) The nature and scope of the requests
>
> (For example, are they excessively broad and varied in scope or unusually detailed? Alternatively, are the requests repetitive in character or are they used to revisit an issue which has previously been addressed?)
>
> (3) The purpose of the requests
>
> (For example (a) have they been submitted for their "nuisance" value, (b) are they made without reasonable or legitimate grounds,

> and/or (c) are they intended to accomplish some objective unrelated to the access process?)
>
> (4) The sequencing of requests
>
> (Do the volume of requests or appeals increase following the initiation of court proceedings by the institution or the occurrence of some other related event?)
>
> (5) The intent of the requester
>
> (Is the requester's aim is to harass government or to break or burden the system?)
>
> While this list is not intended to be exhaustive, these factors represent the type of considerations which could define "an abuse of the right of access" for the purposes of section 5.1(a). I would also reiterate the view, originally expressed by Commissioner Wright in Order M-618, that a high volume of requests alone would not necessarily amount to an abuse of process.

Previous orders of this office have found that the abuse of the right of access described by section 5.1(a) refers only to the access process **under the *Act***, and is not intended to include proceedings in other forums (Orders M-906, M-1066, M-1071 and P-1534).

I adopt the analyses put forward by these orders for the purposes of the present appeal. A number of orders of this office have also addressed this issue applying the analyses set out above.

In Order PO-1872, after considering the reasoning in Order M-850, Adjudicator Hale was persuaded by the Ministry's arguments that the appellant's requests constituted an abuse of the right of access. In that case, the Ministry provided submissions and evidence that the volume of requests was excessive in relation to the subject matter, that they were broad in scope and revisited issues already addressed, that they were submitted for the purpose of harassing the Ministry, and that they were repetitive, particularly in view of the appellant's refusal to provide clarification when asked and his practice of re-submitting requests when faced with a denial of the information on the basis of one of the exemptions in the *Act* as opposed to appealing the decision.

In Order M-906, former Adjudicator Higgins cautioned that simply filing related access requests should not be construed as a pattern of conduct amounting to an abuse of the right of access as interpreted in Order M-850:

> These requests relate to some of the land transactions referred to in the present request. However, in my view, it is not the intent of the "frivolous or vexatious" provisions of the *Act* and Regulation to prohibit an individual from submitting several requests about a matter. Moreover, it is apparent from the materials

> submitted to me that the appellant had legitimate business reasons to request information about these transactions.

After considering arguments relating to the nature, scope and purpose of the requests (as described in Order M-864), former Adjudicator Higgins noted in Order P-1311:

> Of the factors listed above, the Ministry's arguments and the circumstances of this case indicate the need to consider the following:
>
> (1) the possibility that the requests were submitted for their nuisance value, or with an intention to harass, or without legitimate grounds, and
>
> (2) the possibility that the request is revisiting an issue previously decided (i.e. access is being requested to the same records a second time).
>
> With regard to point (1), as I noted above, I am of the view that the whole history of this matter, including the appellant's assessment problems, and the way in which his previous request was handled by the Ministry, would explain, and lessen the impact of, any appearance of an intention to harass which might attach to the appellant's requests. This would apply equally to any appearance that they were submitted for their nuisance value.
>
> Moreover, the history of this matter overwhelmingly supports the view that the appellant had a legitimate reason to ask for the requested information and in my view this would, in the circumstances, outweigh any other purpose which might be attributed.
>
> With regard to point (2), revisiting an issue previously decided (i.e. the appellant's earlier request), I am persuaded that, whether or not additional records actually exist, there is a sufficient distinction between the earlier request, which was general in nature, and the present one which is fairly specific. This view is supported by the appellant's submission to the effect that parts of the current request arise from information disclosed to him as a result of the earlier request.
>
> Therefore, I have concluded that the request is not part of a pattern of conduct which amounts to an abuse of the right of access.

Similar to the findings in Orders M-906 and P-1311, where it appears from the evidence that an appellant has legitimate reasons for requesting the information, this office is reluctant (absent other exacerbating circumstances such as in Order P-1434) to find that the requests amount to an abuse of the right of access under the legislation (see also: Order M-864). For example, in concluding that the OMB did not establish that the request was frivolous or vexatious pursuant to section 5.1(a), Assistant Commissioner Mitchinson commented in Order P-1534 that:

> Finally, it is important to point out that the appellant has provided evidence of a legitimate reason to submit his request under the *Act*. He points out that his

> request arose out of information which came to his attention for the first time when the yellow sheets were provided to him by the OMB. He has made it clear on a number of occasions, including in his request letter, that he is seeking all responsive records, and not only those from the OMB's so-called "public file". Although the distinction between "public" and "non-public" files may be relevant to the business activity of the OMB, this distinction is not appropriate when responding to a request for access under the *Act*. Significantly, it was not until the OMB responded to the appellant's representations in this appeal, a very late stage in the appeals process, that it identified two legal opinions responsive to the appellant's request, and maintained that they were exempt under solicitor-client privilege (section 19). I find it impossible to reconcile the OMB's principle argument that the appellant's request is frivolous and vexatious because the OMB has "frequently, adequately and accurately replied to each of [the appellant's] requests for information", with the fact that it identified two additional responsive records during the course of this inquiry, which are clearly within the scope of the request, and would not have been identified but for the fact that this matter proceeded to appeal.

On a related note, in Order MO-1427, Adjudicator Liang rejected the institution's assertion that the application of solicitor-client privilege or any other exemption to the records was a basis for finding that the request was frivolous or vexatious, stating:

> I concur with the comments of Assistant Commissioner Tom Mitchinson on a similar issue in Order P-1534, in which he stated that he had "a great deal of difficulty in accepting the [Ontario Municipal Board's] position that the appellant is abusing the access process when he has not yet had the benefit of a determination through all phases of the statutory access scheme." It may well be that the District will be vindicated in its view that many of the records will be exempt from access because of privilege, but this is not a basis for refusing to respond to a request in the usual manner prescribed under the *Act*.

Commenting on the "legitimacy" of an appellant's purpose in making access requests, former Adjudicator Fineberg found in Order M-947, that the appellant's purpose changed in focus over time, thus becoming an abuse of the right of access:

> In my view, when the appellant initially began requesting information from the City, particularly concerning the Cawthra Woodlot and the Woodlot Management Program, he could very well have been said to have had a legitimate interest in the records being requested. I would note however, that, despite the fact that he has suggested that there is a public interest element to his requests, he has never provided any evidence of the legitimate uses to which he has put the information to which he has received access. Nor his he provided any evidence of the community and/or environmental groups which he maintains are interested in the information he receives. It is my view that very shortly after these requests began, the appellant's conduct with respect to the City became "an abuse of the right of access" for the following reasons.

> The apparent purpose of the requests changed their focus from reasonable or legitimate grounds to one which may be characterized as seeking to accomplish some objective unrelated to the access process. For example, the requester became focused on seeking information related to how the City dealt with his requests and the amount of time and money the City had spent dealing with him. Because the appellant did not feel he was receiving the "service" from the City's Freedom of Information branch to which he felt he was entitled, he began using the *Act* and the freedom of information process as a means to express his personal attacks on the personnel involved in the process. To this end, his requests became a "springboard" for launching attacks on City council members and the City legal department.
>
> Although the appellant now explains why he pursued requests where the City had previously indicated that no responsive records existed, I find that this explanation comes rather late in the day and lacks credibility. As I have noted, at no time during the request and appeals process involving these issues did the appellant raise this point. I can think of no other explanation, nor has the appellant offered a credible one, as to why he would pursue these particular cases unless it was for their "nuisance" value or to harass the City. Neither of these objectives support the use of the process for a legitimate purpose.
>
> The same holds true with respect to those appeals involving fees. Under the *Act*, the appellant is entitled to dispute the amount of fees charged for access to information, as well as appealing the City's decision not to waive the fee. If, as in the case of Order M-509, the City's position is upheld, again the appellant has the right to decline to pay the fees. However, in my view, these legitimate positions under the *Act* become an abuse of the right of access when access is requested to the same records a second time.
>
> In addition, the appellant has repeatedly appealed decisions of the City in which he was provided access to the records to which he was seeking access. An example of this conduct relates to the ARIS/IRIS appeals in which the issue was addressed by Order M-716. The appellant continued to pursue appeals in which the same matter considered in that order was the only issue in dispute. Again, I can think of no legitimate purpose, nor has the appellant offered one, for this exercise.
>
> In my view, taking the evidence as a whole, the City has provided me with sufficient evidence to establish that there are reasonable grounds for the City to consider the appellant's requests as part of a pattern of conduct that amounts to an abuse of the right of access.

These sentiments have been echoed in other decisions of this office, as I noted above in Order M-864 and in the postscript to Order P-1311:

> In this case, I have found that the appellant's request was not frivolous or vexatious. However, as I noted in my analysis, it would be possible to interpret aspects of the appellant's conduct towards the Ministry as indications of a possible intention to harass. Should this conduct continue, in combination with a continued pattern of similar requests, a future appeal of this nature could produce a different result.

The City's primary reasons for claiming that these requests are frivolous and vexatious are based on their repetitious nature, the fact that a mediated settlement had previously dealt with them, the ruling of the Court that the records are inadmissible in that proceeding, thus rendering these requests a "duplication of proceedings", and because of the use to which the appellant will ultimately put the records.

With respect to the last two points, consistent with previous decisions, I find that the application of the frivolous and vexatious provisions is only relevant to the use of the "processes" of the *Act*. The fact that the appellant may use the records to embarrass the City or to otherwise challenge its actions by giving them to the media is simply not relevant to this issue. Moreover, to argue, or ultimately to find that a request is an abuse of the right of access on the basis that the requester may use the information to "hold the City accountable" would be "contrary to the spirit of the *Act*, which exists in part as an accountability mechanism in relation to government organizations" (See: Order M-906).

On a related note, previous orders of this office have found that the *Act* establishes a regime and process for obtaining access to records which is separate and distinct from the discovery or disclosure mechanisms related to court actions (Orders 48, P-609, PO-1688, M-982, M-1109, MO-1192 and MO-1477), as noted by Adjudicator Liang in Order MO-1427:

> The District asserts that the appellant already has "all of the documentation", and further, that it will be produced a second time as part of the litigation between the parties.
>
> …
>
> [E]ven if it is true that many of the documents will eventually be produced as part of the litigation between the parties, this is no bar to having a request dealt with in the usual manner under the *Act*, and is not a basis for finding the request "frivolous or vexatious". The scheme under the *Act* for obtaining access to records in the hands of government institutions exists separately from discovery processes associated with civil actions: see, for example, Order PO-1688.

In my view, this separation exists with respect to issues relating to the admissibility of evidence in a court action generally. On this basis, the appellant is entirely within his rights to request information from the City, regardless of whether it is subject to disclosure, or ultimately determined to be inadmissible in the court action.

Moreover, it is important to point out that Section 1 of the *Act* provides a general right of access to records under the control of institutions, including the City. It does not limit that right to a specific purpose, nor does it require a requester to justify or even identify the reason for making a request (see: Order MO-1477).

Accordingly, I find that these two arguments do not provide a basis for concluding that the requests are an abuse of the right of access under the *Act*.

With respect to the mediated settlement in Appeal MA-000032-1, I am somewhat more sympathetic to the City's position. Mediation, which is mandated in the legislation, is an important component of the appeals process, designed to engage the parties in an informal and co-operative attempt to resolve the issues and/or records in an appeal. When a file is streamed to mediation, the role of the mediator is to attempt to identify and clarify issues and records, and to attempt to settle all or some of them. The general expectation is that the parties, having agreed to participate in the mediation process, will honour or adhere to agreements reached in mediation. There is a recognition, however, that in many cases an appeal will not be completely mediated but will be narrowed to fewer issues or records. In such cases, in the absence of clearly articulated disagreement from a party regarding the results of mediation, the appeal will proceed to adjudication on that basis.

In some cases, the mediator will engage in discussions with both parties in which a tentative settlement is reached dependent on one party taking a particular action. For example, an institution may agree to disclose a record to which an exemption has been applied, or will agree to look for additional records or take some other action requested by the appellant on condition that the appellant agrees not to pursue other records or issues. Or, an appellant may agree not to pursue certain records or issues on the condition that the institution does certain things. Once these agreements are reached, a Mediator's Report is issued to the parties, which sets out the terms upon which settlement is based (and any conditions, if they are relevant in the circumstances).

In these situations, once the agreement is formalized and the agreed upon actions undertaken, the parties are justifiably entitled to expect that this will conclude the matter. To engage the access process of the *Act* in order to seek these records again may indeed be demonstrated to be an abuse of the processes of the *Act* and/or an indicator of bad faith (particularly if it is demonstrated that an appellant entered into the agreement fully intending not to comply with its terms). This reasoning is similarly applicable to an institution entering into such agreement and then failing to comply with its terms.

In other cases, the parties may simply agree to remove certain records or issues from the scope of the appeal in order to further mediation or to expedite the appeal process so that other issues are disposed of more quickly, particularly in complex cases, or because the party accepts the opinion of the mediator as to the likely outcome of a particular issue or claim. Although a party is free to accept or reject the mediator's opinion, where he or she does accept it (as reflected in the Mediator's Report), there is an expectation that the issue or record will not be re-introduced in **that** appeal. In essence, once a Mediator's Report setting out the terms of the agreement is issued, there is an expectation that any issues or records removed from the scope of the appeal as part of the mediation process will remain non-contentious in **that** appeal, or any subsequent appeal arising from the settlement (see, for example: Order PO-1946). This expectation is reflected in previous orders of this office, wherein a number of adjudicators have rejected a party's attempt to re-introduce issues or records withdrawn during mediation or, on occasion, to introduce new issues after the Mediator's Report has been forwarded on to adjudication (see, for example: Orders PO-1755, PO-1853, PO-1941, PO-1944 and MO-1261).

However, in retrospect, the party may decide that he or she wishes a resolution of the issue or record which had been removed during mediation. While the principles of mediation envision that the parties will respect the agreements reached, and that the matter will be resolved (at least insofar as the original appeal is concerned), in my view, in this second type of mediation, there is likely less of a basis for the expectation that the matter will be finally concluded and not re-visited at a later date through a new request.

In the circumstances of Appeal MA-000032-1, the appellant agreed to narrow the issues and records in this appeal during mediation. The notes and correspondence in the appeal file indicate that the appellant worked co-operatively with the mediator in order to further mediation. The City does not claim, nor do any of the notes of discussions in the file or the Mediator's Report suggest, that its agreement to the resolution of Appeal MA-000032-1 was contingent upon the appellant withdrawing his request for active prosecution files.

There appears to be some confusion, as reflected in the appeal file relating to Appeal MA-000032-1, regarding what the appellant was seeking and what the parties had agreed to as part of mediation. Despite the confusion and the results of mediation as set out in the Mediator's Report, the appellant's objectives in making that access request never waivered. He was seeking information about the manner in which the City has dealt with other property owners with respect to a particular by-law. He was seeking, presumably for comparative purposes, information about the value and nature of the construction work involved in other files where an order to comply has been issued. He was also seeking, in part, records that the City has obtained, as opposed to records that the City created itself, relating to these prosecutions generally, and specifically relating to the dispute between his mother and her neighbour. The appellant's objectives are very apparent to me from a reading of his requests, each of which has built on information that has been provided, or in some cases, not provided by the City in response to previous requests.

In the circumstances of this appeal, given the appellant's clearly stated intentions with respect to the information he agreed to remove, I accept his argument that he was "in error" in agreeing to the appeals being resolved in such a manner in the first place. Regardless of whether he made a mistake in entering into this agreement, in my view, it is likely that he would not have anticipated that he could, thereafter, be precluded from requesting those records again. Moreover, I am not convinced that the City's participation in mediation depended on the appellant withdrawing these portions of his request nor that it will be prejudiced in any way by now being required to respond to them. Finally, it is apparent from the appeal files and subsequent correspondence that the City did not, initially or for an extended period of time, adhere to the terms of settlement.

Although I accept that parties are expected to abide by the terms of a mediated settlement and that failure to do so undermines the mediation process, for the reasons set out above, I find that, in this case, the appellant's attempt to reintroduce his request for these records, pursuant to new access requests, does not constitute an abuse of the processes of the *Act*. Nor do I find, based on the discussion of this and the previous issues, that the repetitive nature of the appellant's requests is sufficient to establish an abuse of the processes of the *Act*.

Interfere with the operations of the City

In Order M-850, Assistant Commissioner Mitchinson stated:

> ... in my view, a pattern of conduct that would interfere with the operations of an institution is one that would obstruct or hinder the range of effectiveness of the institution's activities.
>
> It is not possible to establish a finite set of criteria that will demonstrate "interference with the operations" as used in section 5.1(a). It is important to bear in mind that interference is a relative concept which must be judged on the basis of the circumstances a particular institution faces. For example, it may take less of a pattern of conduct to interfere with the operations of a small municipality than with the operations of a large provincial government Ministry, and the evidentiary onus on the institution would vary accordingly.

Recently, Adjudicator Liang had occasion to comment on an institution's assertions that responding to the appellant's request would interfere with its operations (Order MO-1427):

> The District states that this request is a "major interference" with its operations. It states that it is a relatively small municipality engaged in the provision of a variety of services, and that its resources are stretched to the limit. It is concerned about the resources which will be required to deal with this request.
>
> …
>
> [I]t should be noted that the *Act* provides for certain measures which relieve the burden on an institution faced with an apparently onerous request. These are found in section 45 of the *Act* (fees) and the related provisions in the Regulations, and the interim access decision and fee estimate scheme described in Order 81 (which permit, in certain cases, the postponement of the majority of the work required to respond to a request until a deposit has been received). In some circumstances, a time extension under section 20(1) may also provide relief, although where the process described in Order 81 is adopted, such a time extension may only be claimed once the appellant pays any deposit which may be required: see Order M-906.
>
> In this case, I conclude that the District cannot rely on "interference with operations" as a ground for finding the request "frivolous or vexatious". The

> request is in reality much narrower than the District asserts and, in any event, I am satisfied that the *Act* would provide meaningful relief from the burden of responding to the request.

In Order M-1071, former Adjudicator Marianne Miller, also referring to comments made by former Adjudicator Higgins in Order M-906 relating to alternative measures that are available under the *Act* to relieve an institution faced with a request which may, on the surface, appear likely to interfere with its operations noted that:

> Denying a requester his right of access under the *Act* is a serious matter. In my view, the interference complained of must not be of a nature for which the *Act* or the jurisprudence (Order 81) provides relief.

In my view, these comments are equally applicable in the circumstances of these appeals.

The City's submissions suggest that it is simply fed up with this appellant. It has erroneously included all of its dealings with the appellant, under the *Act* and outside of the *Act* in arguing that dealing with his access requests would interfere with its operations. As previously noted, section 5.1(a) refers only to the access process **under the *Act***, and is not intended to include proceedings in other forums (Orders M-906, M-1066 and M-1071) or informal contact between an institution and a member of the public outside the formal context of the *Act* (Order P-1534).

It also appears, from the City's submissions, that it has allocated very limited resources to freedom of information generally. In my view, rather than shifting the responsibility onto appellants, the City should perhaps look to its own resources and consider whether they are sufficient to meet the needs of an institution of its size.

Finally, although it appears that some portions of the appellant's requests have asked for different categories of information, the bulk of the information requested is relatively narrow and focussed. Just as an appellant cannot expect that an institution will maintain records in such a manner as to facilitate every access request (see, for example: Order 31, which addresses this issue in the context of the charging of fees), an institution should not complain when an appellant seeks certain types of records simply because they might exist in more than one location (if that is how the institution chooses to maintain them). Moreover, after reviewing the manner in which the City has dealt with the appellant's previous six requests for information, I am left to wonder whether complete clarification and co-operation by the City in addressing these requests would not have eliminated or at least reduced some of the time it has spent dealing with this individual.

On the basis of the above discussions, I find that the City has not established that these requests constitute a pattern of conduct that would interfere with its operations.

Section 5.1(b)

The City also submits that the matter falls within section 5.1(b) as it is of the opinion that the requests are made in bad faith as well as for a purpose other than to obtain access.

Under section 5.1(b), a request will be defined as "frivolous" or "vexatious" where the head of an institution is of the opinion on reasonable grounds that the request is made in bad faith or that it was made for a purpose other than to obtain access. There are no further requirements to be met. In particular, no "pattern of conduct" is required. I will examine each component of section 5.1(b) separately.

Bad Faith

In Order M-850, Assistant Commissioner Mitchinson commented on the meaning of the term "bad faith". He indicated that "bad faith" is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral underhandedness. He went on to conclude that it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with secret design or ill will.

I adopt this approach for the purposes of the present appeal. Recently, I considered whether a requester's intended use of requested records, as alleged by the institution, constituted "bad faith" within the meaning of section 5.1(b). Commenting on the nature of the evidence required to make a finding of "bad faith", I concluded in Order MO-1472-F:

> In Interim Order MO-1168-I, I considered various arguments related to whether a request had been made in "bad faith" and concluded:
>
>> In my view, the fact that there is some history between the Board and the appellant, or that records may, after examination, be found to fall outside the ambit of the *Act*, or that the appellant may have obtained access to some confidential information outside of the access process, in and of itself is an insufficient basis for a finding that the appellant's request was made in bad faith. *The question to ask is whether the appellant had some illegitimate objective in seeking access under the Act*. I am not persuaded that because the appellant may not have "clean hands" in its dealings with the Board, that its reasons for requesting access to the records are not genuine.
>>
>> In a similar vein, there is nothing in the *Act* which delineates what a requester can and cannot do with information once access has been granted to it (see: Order M-1154). In fact, there are a number of exemptions (such as section 10(1), for example) which recognize that disclosure to the public could reasonably be expected to result in some kind of harm. In orders dealing with section 14(1) of the *Act*, this office has acknowledged that disclosure of personal information to individuals other than the individual to whom the information relates under the *Act* is, effectively, disclosure to the world, and this is a consideration to be taken into account in determining whether the exemption applies. In my view, the fact that the appellant may decide to use

> the information obtained in a manner which is disadvantageous to the Board does not mean that its reasons in using the access scheme were not legitimate. [emphasis added]

> Put another way, the use to which a requester wishes to put records once access is granted does not, nor should it, factor into the question of whether the use of the *Act* is frivolous or vexatious. This factor is more appropriately dealt with under the "harms" provisions of various exemptions set out in the *Act*. In my view, it is the activities or conduct on the part of a requester in using the "process" of the *Act* that engages the application of these provisions. Looking at the issue from this perspective, I do not accept the Board's contention that the appellant's request was made in bad faith.

> Essentially, the appellant is seeking information about the number of students in each self-contained class and the breakdown of exceptionalities within each class in order to determine for herself whether the profile of a particular class would likely meet the needs of her own child's profile. Whether she is able, ultimately, to influence which class her child attends is no doubt subject to a number of considerations that are outside the scope of this discussion. However, as I indicated above, the use to which the appellant intends to put any information she receives is a factor that might be of relevance in determining whether the information is exempt under the *Act*, but it is not a factor to consider in determining whether the request was made in bad faith.

In Order M-864, former Assistant Commissioner Glasberg found that, in the situation where the appellant used information to assist his wife with her legal proceeding against the institution, the access request was filed for legitimate reasons. Having found that the objects of the appellant's requests were genuine and that they were not designed to harass the Board, he concluded:

> I find that the appellant filed his access requests for a legitimate, as opposed to a dishonest, purpose and that he was not operating with an obvious secret design or ill will.

A number of previous orders have similarly concluded that once it is determined that the request was made for the purpose of obtaining access (or for legitimate reasons), this purpose is not contradicted by the possibility that the appellant may also intend to use the documents against the institution or to make the records public once access is granted (see: Orders MO-1269 and P-1534 for example).

In my view, my reasons for finding that the appellant's requests are not an abuse of the process of the *Act* are similarly applicable to this issue. Accordingly, based on the above discussions, I find that the City has not established that the appellant had some illegitimate objective in using the process of the *Act* in order to obtain the information requested. Moreover, in my view, the evidence does not support a finding that the appellant was consciously "doing a wrong", nor that he had any dishonest purpose, moral underhandedness or secret design in using the access procedures of the *Act*. As a result, I conclude that the appellant's requests were not made in bad faith or for an improper purpose.

Request for a Purpose other than to Obtain Access

Similarly, the fact that once access is obtained, the appellant intends to use the documents for a particular purpose, for example to take issue with the City's decision-making, either privately or in a public forum such as through the use of the media or for his own assistance in preparing for his action against the City, does not mean that the request is "for a purpose other than to obtain access" within the meaning of section 5.1(b) of the Regulation, as noted by former Adjudicator Higgins in Order M-860:

> ... if the appellant's purpose in making requests under the *Act* is to obtain information to assist him in subsequently filing a complaint against members of the Police, in my view this does not indicate that the request was for a purpose other than to obtain access; rather, the purpose would be to obtain access **and** use the information in connection with a complaint.

I agree completely with these comments. I am satisfied that the requests were made for the purpose of obtaining access. Moreover, I find that this purpose is not contradicted by the possibility that the appellant may also intend to use the documents against the City once access is granted. Similarly, this purpose is not contradicted by the fact that he may not be able to tender the information as evidence in his Small Claims Court action. As noted by Adjudicator Liang (above) in Order MO-1427, the scheme under the *Act* for obtaining access to records in the hands of government institutions exists separately from discovery processes associated with civil actions. This applies equally to the rules governing the submission of evidence in the action itself.

Finally, in my view, former Adjudicator Higgins observations in Order M-906 are particularly relevant to this issue and with respect to the City's attitude towards the appellant's requests generally:

> ... to find that a request is "for a purpose other than to obtain access" and thus "frivolous or vexatious" on the basis that the requester may use the information to oppose actions taken by an institution would be completely contrary to the spirit of the *Act*, which exists in part as an accountability mechanism in relation to government organizations.

Therefore, I find that the City cannot rely on this part of section 5.1(b) of the regulation to decline to process the appellant's access request.

Conclusion

In conclusion, I find that the City has not established that the appellant's actions in submitting these two access requests are frivolous or vexatious within the meaning of the *Act*. That being said, there is, at times, a very fine line between aggressively pursuing information from a government source and acting in a frivolous or vexatious manner. This is particularly the case where the *Act* contains a right of appeal of an institution's decision.

Once the appellant realizes that the institution is not addressing the full scope of his requests, or if he believes that more records exist, rather than persisting by filing additional reformulated requests, the appellant may seek assistance from this office. Although there is clearly merit in attempting to resolve these disputes informally, either prior to appeal or through mediation under the *Act*, the *Act* contemplates final resolution of them by way of adjudication. As noted in previous orders referred to above, an appellant's actions, while initially legitimate and reasonable, can cross that line at some point, and a finding may be made that additional requests are frivolous or vexatious.

Similarly, although I have been critical of the City's handling of the appellant's access requests, I intend to place some responsibility on the appellant as well to communicate with the City clearly to ensure that it fully understands what he is seeking, and to ensure that his access requests do not revisit questions or records that have already been addressed. Although I found that the duplication of some requests was insufficient to establish a pattern of conduct on the appellant's part in the circumstances of these appeals, I do not entirely accept the appellant's position that, had the City simply clarified with him, any repetition in his requests could have been dealt with. There is an obligation on the appellant, particularly where he is seeking related records, to take care in formulating his requests, by reviewing his previous requests, the responses provided and the records received. Otherwise, the appellant risks a finding that his actions have indeed crossed that line.

ORDER:

1. I do not uphold the City's decision that the appellant's requests are frivolous and vexatious.

2. I order the City to provide the appellant with decisions on access with respect to both appeals in accordance with the time frames set forth in section 19 of the *Act*, using the date of this order as the date of the requests.

3. I further order the City to provide me with a copy of the letter(s) referred to in Provision 2 by forwarding copies to my attention c/o the Office of the Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: November 26, 2001
Laurel Cropley
Adjudicator