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

ORDER PO-2104

Appeals PA-020128-1, PA-020129-1 and PA-020130-1

Ministry of Public Safety and Security

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Ministry of Public Safety and Security (the Ministry) received three requests for access to information under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a single requester (now the appellant). The three requests were all filed within the same month and sought access to the following:

- **Request 1 - SGR02-0268 (Appeal Number PA-020128-1)** - all medical information, including the names and addresses of the originators of that information, about the appellant used by the Ministry, the Correctional Services of Ontario (CSO), the Ontario Provincial Police (OPP), and the Ontario Civilian Commission on Police Services (OCCOPS);

- **Request 2 - SGR02-0269 (Appeal Number PA-020129-1) –** all records in the custody of the Ministry and the CSO pertaining to another named individual who had provided his signed consent to allow disclosure of the information; and

- **Request 3 - SGR02-0270 (Appeal Number PA-020130-1)** – records from the OCCOPS pertaining to the appellant's and his wife's complaints.

The Ministry issued one response to the requests denying the appellant access to the information in each case on the basis that the requests were frivolous or vexatious pursuant to section 10(1)(b) of the *Act* and sections 5.1(a) and (b) of Regulation 460. In its decision letter, the Ministry outlined the basis for its conclusion citing examples of other similar requests made by the appellant and the decisions rendered in each of those cases.

The appellant appealed the Ministry's decision and this office opened three separate appeal files.

The appeals were joined at the mediation stage. Mediation was unsuccessful and the appeals proceeded to the inquiry stage.

Initially, I sought representations from the Ministry on the issues raised in these appeals. Representations were received from the Ministry and were shared in their entirety with the appellant. Representations were then sought from the appellant who delivered detailed and lengthy representations.

CONCLUSION:

The appellant's requests are not frivolous or vexatious within the meaning of section 10(1)(b) of the *Act* and, therefore, the access provisions of the *Act* apply to the requested records.

DISCUSSION:

ARE THE APPELLANT'S REQUESTS FRIVOLOUS OR VEXATIOUS?

Introduction

The *Act* and Regulations provide institutions with a summary mechanism to deal with requests that an institution views as frivolous or vexatious. It has been said in previous orders 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: see Order M-850.

On appeal, the onus of demonstrating that there are reasonable grounds for concluding that a request is frivolous or vexatious is on the institution, in this case the Ministry.

Several provisions of the *Act* and Regulations are relevant to the issue of whether the request is frivolous or vexatious. These provisions read as follows:

Section 10(1)(b) of the *Act* specifies that every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the head of the institution is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

Sections 27.1(a) and (b) of the *Act* indicate that a head who refuses to give access to a record or a part of a record because the request for access is frivolous or vexatious must state this decision in the decision letter and provide reasons in support of the decision.

Sections 5.1(a) and (b) of Regulation 460 provide some guidelines for defining the terms "frivolous" and "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 addition to the three requests at issue in this appeal, all of which were filed in February 2002, the appellant did file other requests pertinent to my determination. I have listed them below and also indicated the manner in which the Ministry responded to them.

Request SGR99-0930 was made in August 1999. The appellant made a request for notification in writing from the OPP if the OPP was engaged in any kind of surveillance or information gathering activity concerning the appellant and his wife between 1987 and 1999. The appellant also listed a series of other questions to be answered by various institutions, including the OPP, the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Attorney

General for Ontario, the federal Department of Justice, and the Ottawa Police Service, among others, and relating to numerous broad issues. The Ministry responded by providing a fee estimate. The appellant did not pay the fee so the request was closed.

Request SGR01-0873 was made on June 20, 2001. The appellant requested all general and personal records used by the OCCOPS to base its decision concerning the appellant and his wife. Eighty-eight pages of responsive records were provided. On September 25, 2001, the appellant requested an unedited copy of page 14, which was information withheld as not relevant to this request. The appellant then made a further request to OCCOPS for responsive records. The Ministry indicated that no further responsive records exist.

Request SGR01-0776 was submitted on July 2, 2001. It was a request for law enforcement records pertaining to the appellant and his wife, created as a result of a law enforcement endeavour, which targeted a named individual between 1990 and July 1, 2001. The Ministry clarified the request and then had a local OPP detachment conduct four separate searches for the information at the insistence of the appellant. No records were ever found to exist. The request was ultimately abandoned by the appellant.

Request SGR01-1226 was made on July 2, 2001. The appellant requested all information used by the OCCOPS to come to its decision to not act on the request for records dated 20 June 2001 because of "procedural problems".

Request SGR02-0267 was made on February 8, 2002. The appellant requested all records under the control of the Ministry of the Solicitor General and the CSO about 1) arrests, 2) charges of wrongdoing, 3) chargeable offences, 4) individuals who may have been/were reported to be using the appellant's identity. In respect of this request, the appellant provided 10 variations on his name/alleged aliases to be searched. The Ministry indicated that it had already responded to a similar such request under Request SGR01-0873.

Ministry's Representations

In general, the Ministry submits that the appellant's numerous requests are repetitive and for identical information, that the requests are designed to harass or accomplish some other objective unrelated to the process being used, and that the requests also revisit an issue that the Ministry has previously addressed. The Ministry also suggests that the appellant's requests are made in bad faith. The Ministry's representations appear to be, therefore, that the appellant's requests meet the requirements of both sections 5.1(a) and 5.1(b).

As evidence for its position, the Ministry details the seven alleged related or duplicate requests made by the appellant between August 6, 1999 and March 4, 2002, the last three being the subjects of the instant appeal, and its responses to those requests.

Appellant's Representations

The appellant provided very lengthy representations. Within those representations, the appellant made reference to attached documentary evidence, itself also voluminous and totalling 330 pages. The appellant's representations were extremely detailed and, in many areas, difficult to

comprehend. In addition, much of the representations focus on issues beyond the scope of this appeal, such as the appellant's belief that his privacy has been invaded by the misuse of his personal information by various named institutions, and his fear that law enforcement officials have targeted him.

Nonetheless, I have read all of the appellant's representations and have considered them carefully and have been able to distil some central points that respond directly to the matters at issue in this appeal.

The appellant submits that the Ministry has not said what other function the requests were designed to accomplish if not to obtain access to the requested information. The appellant contends that his reasons for making the requests are to inspect and correct errors in his personal information, to investigate the details behind what he sees as the illegal collection and use of his personal information by various law enforcement agencies - he refers specifically to the Quebec Justice Department (sic), the Ottawa Police Service and the Ministry. The appellant also claims that the Ministry has used the "frivolous or vexatious" provisions of the *Act* to suppress information responsive to his requests, to avoid embarrassment and possible civil or criminal acts.

The appellant also enumerates and describes the seven requests, the manner in which they were processed by the Ministry and any resulting proceedings in this office.

Findings

General Conclusions

I have carefully reviewed the representations and evidence before me and considered them in the context of the case law relevant to this issue.

The tests under section 5.1 set a high threshold that has not been met in the circumstances of these appeals. There is insufficient evidence that the appellant has engaged in a "pattern of conduct amounting to an abuse of the right of access" pursuant to section 5.1(a). I also find that the Ministry has failed to show that the requests were made in bad faith or for a purpose other than to obtain access as required by section 5.1(b).

Section 5.1(a): Pattern of conduct amounting to abuse of the right of access

The meaning of section 5.1(a) has been commented upon in several orders of this office. Both elements of this part of the section must be met in order to establish that a request is frivolous or vexatious.

"Pattern of conduct" has been found to require "recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected some material way)". The time over which the behaviour occurs is also a relevant consideration: see Order M-850.

The determination of what constitutes "an abuse of the right of access" has been informed both by the jurisprudence of this office in addition to the case law dealing with the term "abuse of

process". Order M-864 provides a succinct, though not exhaustive, summary of some of the factors considered relevant to deciding whether a pattern of conduct amounts to an abuse of the right of access. They include:

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 that 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 request 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 to harass government or to break or burden the system?

The Ministry has failed to prove its case under section 5.1(a) because there is very little evidence of a "pattern of conduct" in the circumstances of these appeals. I have considered the details of all of the requests advanced as demonstrative of a pattern of conduct and I find that only two of the appellant's requests can reasonably be considered repetitive. Request 3 is clearly repetitive of request SGR01-0873. Both requests are for records from the OCCOPS in relation to specific past events – complaints made by the appellant and his wife. Request 3 also revisits an issue previously addressed by the Ministry in that the Ministry responded to SGR01-0873 by disclosing 88 pages of responsive records. While the appellant took issue with the Ministry's non-disclosure of one non-responsive record, the appellant pursued no other appellate proceeding.

On the other hand, the other five requests, while perhaps related by theme, are different from each other and seek various kinds of information. In addition, the number of requests cannot reasonably be considered excessive though there are several. Two identical requests, then, in this context, are not part of, nor do they constitute, a "pattern of conduct".

Furthermore, there is little evidence of behaviour that amounts to an "abuse of the right of access". There is insufficient evidence that the appellant's intent in making the requests is malicious or to cause harm. Though it is unnecessary for me to make this finding, in light of my finding that there is no pattern of conduct, any analysis in this regard is also pertinent to the Ministry's submission that the appellant's requests are made in bad faith or for a purpose other than to obtain access pursuant to section 5.1(b).

For similar reasons, I find that there is insufficient evidence to establish that the requests form part of a pattern of conduct that "would interfere with the operations of" the Ministry under section 5.1(a) of Regulation 460.

Section 5.1(b): Bad faith or purpose other than to obtain access

The concept of "bad faith" in section 5.1(b) and that of an "abuse of the right of access" under section 5.1(a) overlap to some extent and, on occasion, the same evidence can be used to prove or disprove that each of these provisions apply in a particular case: see Interim Order P-1534.

In Order M-850, Assistant Commissioner Mitchinson commented on the meaning of the term "bad faith" and indicated that it is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral underhandedness. I cannot characterize the appellant's behaviour in this way, in the context of these appeals.

It is clear to me that the appellant persists with requests based on his beliefs that the information exists. While the appellant may be misguided in this regard, without more, this cannot lead to a conclusion that the appellant's requests are made in bad faith or made for a purpose other than to obtain access. And, while I can see that the appellant's requests arguably have become a nuisance for the Ministry, there is simply insufficient evidence to show that the appellant's *aim* is to be a nuisance. Furthermore, while it is also clear to me that the appellant is suspicious of the motives and actions of officials, at this point his requests do not appear to be meant to accomplish some nefarious objective in relation to the government.

Based on the foregoing analysis, I find that the Ministry has not satisfied the requirements of section 5.1(b) of Regulation 460.

Accordingly, as I have found that the Ministry has not established the requirements of either section 5.1(a) or (b) of Regulation 460, I find that the requests are not frivolous or vexatious within the meaning of section 10(1)(b) the *Act*.

ORDER:

1. I do not uphold the Ministry's decision that the requests are frivolous or vexatious.

2. I order the Ministry to issue an access decision to the appellant in accordance with Part II of the *Act*, treating the date of this order as the date of the request.

Original signed by: January 28, 2003
Rosemary Muzzi
Adjudicator