



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1894

Appeal MA-030258-2

Regional Municipality of Peel



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

On June 3, 2003, the following request was submitted to the Regional Municipality of Peel (the institution) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Search: to perform a software search of the Region's email accounts, both past and present, including deleted and archived directories and file areas for all email containing the text [part of the requester's name].

Records #1: to provide the list of emails generated by the above search. The list is to be generated by identifying the sender, receiver, copied parties as well as the date and subject of each email. I would like this list to be exported as a digital file and emailed to [a specified e-mail address] or delivered on magnetic media, CD or Floppy disk.

Records #2: the emails themselves are requested as records exported to magnetic media, CD or Floppy disks.

The requester asked that the fee, if one was charged, be calculated on the two parts of the request separately.

The institution issued a decision on July 4, 2003, stating that this request was frivolous or vexatious under section 4 of the *Act* and Regulation 823.

Order MO-1841, issued on September 30, 2004, dealt with a decision by the institution that another request of this same appellant was frivolous or vexatious. In that order Adjudicator Liang made reference to the current request as part of her deliberations. The order includes a finding that:

On balance, I am satisfied that there were reasonable grounds for the Region to decide that the appellant's request is frivolous or vexatious as part of a pattern of conduct amounting to an abuse of the right of access.

In light of this finding, Adjudicator Liang fashioned the following remedy:

Based on my conclusions in this appeal, I am also satisfied that the appropriate remedy is to limit the number of the appellant's active access to information matters with the Region to one at any given time. This does not preclude a finding that any current or future request is frivolous or vexatious.

Following the issuance of Order MO-1841 I confirmed with the institution's Freedom of Information Co-ordinator and the appellant that appeal MA-030258-1, was the one matter that the appellant wished to proceed with. On October 22, 2004 I wrote:

I would like to clarify how to proceed with MA-030258-1. As the original decision relied upon Frivolous or Vexatious provisions in the *Act* and Order MO-

1841 has set up a scheme to deal with this issue, the institution should now issue a decision.

The institution is expected to issue a decision on access, subject to the provisions of the *Act*, using the date that the appellant indicated which transaction to proceed with, as the date of the request i.e. October 19th. A copy of the decision should be copied to my attention.

The institution issued a decision dated November 23, 2003 that states:

Further to IPC Order MO-1841-1, we regret to advise that we will not be responding further to this request as we have concluded that it is frivolous and/or vexatious in accordance with section 4(l) of the *Municipal Freedom of Information and Protection of Privacy Act* and Regulation 823.

It is our view that this request is part of a pattern of conduct that amounts to an abuse of the right of access and/or which interferes with the operations of the Region of Peel. Further, your request is made in bad faith for a purpose other than to obtain access.

We have reached this conclusion because this particular request is:

- patently unreasonable on its face given the resources, effort and staff time that will be required to respond; and
- made to gain leverage on claims made by your company that have been rejected by the Region of Peel.

On December 1, 2004, the appellant appealed the institution's decision and Appeal MA-030258-2 was opened. The appellant states:

The decision letter is improper since it still just maintains the original "frivolous and vexatious" exemption already resolved by Order MO-1841, which makes this exemption altogether moot. It is an abuse of process for this exception to be claimed by Peel at this point and time.

DISCUSSION:

On December 2, 2004, I wrote to the institution indicating that:

It is my preliminary view that the institution's decision dated November 23, 2004 is not a valid decision and therefore the institution is in a "deemed refusal" situation. In my view, the reasons relied upon by the institution to claim that this request is part of a pattern of conduct that amounts to an abuse of access were already considered by Adjudicator Liang in Order MO-1841 and remedied by

order provisions which place conditions on the processing of any requests and appeals from the appellant with respect your institution.

Deemed refusals are set out in section 22(4) of the *Act* that states:

A head who fails to give notice required under section 19 or subsection 21(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given.

In light of my preliminary view, I advised that:

...the institution should issue an access decision letter to the appellant with a copy to me no later than **Friday December 10, 2004**. Should the decision not be issued by this date, I intend to issue an order disposing of this matter.

Should you disagree with my preliminary view, I would like to extend the opportunity for you to provide me with written submissions before I issue an order. Your submissions should explain why the institution's decision should be considered a valid decision when it appears that the reasons relied upon by the institution to claim that this request is part of a pattern of conduct that amounts to an abuse of access were already considered by Adjudicator Liang in Order MO-1841 and remedied by order provisions which place conditions on the processing of any requests and appeals from the appellant with respect your institution.

Please send any written submissions to me on or before **Friday December 10, 2004**. After I have considered your submissions I will provide you with a written decision.

The institution's submissions state:

With all due respect, the Region maintains that this request is frivolous and vexatious, and will support this claim by drawing reference to Order MO-1841.

While the Adjudicator's decision responds to the cumulative requests made by the Appellant, the Adjudicator states: "I have also considered the appellant's conduct in pursuing his monetary claims, which can be described as at the very least provocative, including the tape recording of telephone conversations, the email message of May 20, 2003, and liberal accusations of illegal and unethical conduct. From all of these facts, I infer that a substantial part of the appellant's purpose in making the requests is unrelated to access, but arises out of a desire to "make life difficult" for the Region's staff. Whether they yield him with leverage in his monetary claims or simply provide some satisfaction in dealing with an adversary, I agree with the Region that the appellant is using the *Act* as a 'mechanism' to advance other aims."

The Adjudicator also indicates "I am also satisfied that the appropriate remedy is to limit the number of the appellant's active access to information matters with the Region to one at any given time. This does not preclude a finding that any - current or future request is frivolous or vexatious." On this basis, the Region maintains that, for reasons previously stated, this particular request is also motivated by the Appellant's desire to "make life difficult" for Regional staff and thus on its own merits meets the Adjudicator's definition of frivolous and vexatious request.

It follows that the Region respectfully disagrees with your "preliminary view" as Adjudicator Liang's decision explicitly permits the Region to treat any singular request as frivolous and vexatious on its own merits.

Adjudicator Liang took the request at issue into consideration in Order MO-1841. The institution's submissions, to support its claim that this request is part of a pattern of conduct that amounts to an abuse of access, merely quote from this order.

The reasons relied upon by the institution were, in my view, already considered by Adjudicator Liang in Order MO-1841 and remedied by order provisions that place conditions on the processing of any requests and appeals from the appellant with respect to the institution. The institution's submissions do not provide details that distinguish this request for reasons not already considered in Order MO-1841.

I therefore find that the decision issued on November 23, 2004 is not a valid decision, and therefore does not remove the institution from being in a deemed refusal situation.

ORDER:

1. I order the institution to issue a decision letter to the appellant regarding access to the records in accordance with the *Act* and without recourse to a time extension, no later **January 7, 2005**.
2. In order to verify compliance with Provision 1 of this Order, I order the institution to provide me with a copy of the decision letter referred to in Provision 1 by **January 7, 2005**. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original signed by: _____
Robert Binstock
Registrar

December 29, 2004 _____