Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4468

Appeal MA21-00225

Conservation Halton

November 30, 2023

Summary: At issue in this appeal is whether the appellant's request to Conservation Halton (CH) is frivolous or vexatious under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*). In this order the adjudicator finds that CH has established that the request is frivolous or vexatious under section 4(1)(b) of *MFIPPA*. He upholds CH's decision to deny access on that basis and imposes conditions on any current and future requests submitted by the appellant to CH, as well as conditions on appeals of CH's decisions.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, as amended, sections 4(1)(b) and 51(1); Regulation 823, section 5.1(a).

Orders Considered: Orders M-850, MO-4241 and MO-4257.

BACKGROUND:

[1] The appellant, a lawyer acting for plaintiffs in a class action discussed in more detail below, submitted a multi-part access request to Conservation Halton (CH) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to information relating to approval of the Saw-Whet Subdivision, situated on or in proximity to the golf course lands on Bronte Road in the Town of Oakville.

[2] In its representations, CH explains that it responds to hundreds of permit applications annually by land owners who wish to develop their properties in regulated

areas as well as commenting on hundreds of *Planning Act*[1] applications. It states that property owners cannot develop their properties until CH has issued a permit under the *Conservation Authorities Act*.[2] It adds that local planning authorities cannot make decisions on other land use applications, ranging from building permits to zoning by-laws and official plans until they have received CH's comments.

[3] The IPC has already addressed requests made to other institutions in relation to the development that gave rise to the class action, including the same request at issue before me. These are discussed below.

[4] Order MO-4257 dealt with three requests made by a law clerk who, along with the appellant in this appeal, is part of the legal team acting for the plaintiffs in the class action. I found those requests, made to the Town of Oakville, to be frivolous or vexatious under section 4(1)(b) of the *Act*.

[5] The appellant also made a multi-part request to the Town of Oakville. In Order MO-4241 that multi-part request was also found to be frivolous or vexatious. Identical requests were made to CH and the Town of Halton. It is the identical request made to CH that is at issue before me in this appeal. The request states:

1. All E-Mails, correspondence and discussions from 2012 to date, pertaining to Saw-Whet passing between (i.e. sent by, received by, or copied to):

    i. [Named individual] of Conservation Halton ("CH") and any member of the CH Board of Directors, whether acting as a local or regional council member, or otherwise;

    ii. [Named individual] of CH and any member of the CH Board of Directors, whether acting as a local or regional council member, or otherwise;

    iii. [Named individual] of CH and any member of the CH Board of Directors, whether acting as a local or regional council member, or otherwise;

    iv. representatives, agents or owners of Bronte Green Corporation or SGL Planning & Design and CH representatives and Town of Oakville representatives;

    v. [Named individual], Chair of Halton Region and any person or individual referred to in (i) to (iv), above.

2. All Flood Plain models from 2012 to date used in the delineation of the flood line, SWF reports, maps, storm run-offs, regulatory flood plain and flood hazards, including upstream and downstream impacts or analysis submitted by or behalf

[1] RSO 1990, c P.13.
[2] RSO 1990, c C.27.

of Bronte Green Corporation, by SGL Planning & Design and used internally by CH, Halton and Town of Oakville staff in all aspects of Saw-Whet decision-making, approval, commentary, communications and review processes, pertaining to:

i. the proposed Saw-Whet subdivision development application as submitted, revised and updated; and

ii. the 2016 Conditions of Draft Approval (OMB Matter Town File Number: 24T-14004/1530), to the satisfaction of CH (or Town of Oakville staff).

3. Pre and Post development storm water run-off figures, data, analysis and values, expressed as a percentage or otherwise (both with and without SWF controls) for Saw-Whet submitted by, or on behalf of Bronte Green Corporation, from 2012 to date for each of the approximate proposed (i) 849 residences (ii) 875 residences, and (iii) 1,181 residences or more, for that site. Include CH, Halton (and Town of Oakville) analysis or determinations of such figures, data and values.

4. The co-efficient factor(s) proposed, used, requested by and accepted by:

   i. CH

   ii. Town of Oakville

   iii. Halton and

   iv. Bronte Green in Saw-Whet flood hazard, storm run-off and flood plain model and mapping calculations, values and reports from 2012 to date, including upstream and downstream flood impacts or analysis.

5. All hydrologic and hydraulic models, maps, data, parameters, variables, analysis, values and reports from 2012 to date, including HEC-RAS, that were submitted, studied, reviewed, approved, rejected, analyzed, revised as considered by CH, Halton and Town of Oakville, pertaining to (i) Saw-Whet, and (ii) related reaches of 14 Mile Creek, both upstream and downstream of Saw- Whet, including potential or known spills.

6. All documents, reports, maps & technical analysis submitted by or behalf of the owner Bronte Green Corporation, by SGL Planning & Design, including that used internally by CH, Halton and Town of Oakville in decision-making, approval, commentary, and review processes, pertaining to each of:

   i. The FSR, SWF, ASP, EA, sub-watershed reports, submissions and analysis for Saw-Whet, as originally submitted, revised and updated for the period 2012 to date.

7. Each of the documents, reports, certifications, things, approvals, requirements and comments for Saw-Whet from 2016 to date pertaining to each of:

    i. under items #30, #31, #32, #49, #72, #119 as set out in the OMB related 2016 Conditions of Draft Approval, to the satisfaction of CH, Halton and Oakville, and

    ii. under any other items as set out in the OMB related 2016 Conditions of Draft Approval;

    iii. under any of the settlement terms or conditions, as varied or required by CH, Halton, Bronte Green Corporation and Oakville, relating to Saw-Whet.

[6] CH submits that in making the multi-part request at issue in this appeal, the appellant was acting in concert with another law firm also acting for the plaintiffs in the class action and that the multi-part request is generally related to the class action. In that regard, CH submits that the class action legal team submitted numerous access requests since 2019 to CH and other defendants relating to the class action. As will be elaborated on below, CH issued a decision concluding that the appellant's multi-part request is frivolous or vexatious under 4(1)(b) of the *Act* and denied the request on that basis.[3]

[7] The requester (now the appellant) appealed the access decision to the Information and Privacy Commissioner of Ontario (the IPC).

[8] In this inquiry I sought and received representations from all of the parties. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[9] In this order, I find that CH has established that the appellant's request is frivolous or vexatious within the meaning of section 4(1)(b) of *MFIPPA*. I uphold CH's denial of access on the basis of section 4(1)(b) of the *Act* and I also find that this is a suitable situation to impose conditions on any current and future access requests submitted by the appellant to CH, as well as conditions on any appeals from CH's decisions.

DISCUSSION:

[10] The sole issue before me to determine is whether the appellant's multi-part request is frivolous or vexatious under *MFIPPA*.

[3] The appellant initially challenged the delegation of that decision. Based on my review of the materials that CH provided, I am satisfied that the authority to make the access decision was properly delegated and exercised in accordance with section 49(1) of the *Act*.

[11] The frivolous or vexatious provisions in *MFIPPA* provide institutions with a summary mechanism to deal with frivolous or vexatious requests. This power can have serious implications to a requester's ability to obtain information under *MFIPPA*, and therefore it should not be exercised lightly.[4] Orders under *MFIPPA* and its provincial equivalent, the *Freedom of Information and Protection of Privacy Act* (*FIPPA*), have also stated that an institution has the burden of proof to substantiate its decision that a request is frivolous or vexatious.[5]

[12] Section 4(1)(b) of *MFIPPA* reads:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
>
> > the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[13] Section 5.1 of Regulation 823 under the *Act* elaborates on the meaning of the phrase "frivolous or vexatious":

> A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,
>
> > (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
> >
> > (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[14] In other words, under *MFIPPA*, the head of an institution is required to conclude that a request for access is frivolous or vexatious if he or she is of the opinion on reasonable grounds that it fits into one or more of the following categories:

- it 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
- it is made in bad faith, or
- it is made for a purpose other than to obtain access.

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[4] Order M-850.
[5] See, for example, Order M-850.

[15] CH claims that the appellant's request is frivolous or vexatious under *MFIPPA* because it is part of a pattern of conduct that amounts to an abuse of the right of access and that processing the request would interfere with CH's operations.

[16] In the discussion that follows, I explain why I have concluded that the appellant's access request is part of a pattern of conduct that amounts to an abuse of the right of access. For that reason, I find that his access request is frivolous or vexatious and I uphold CH's decision to deny it on that basis.

CH's representations

[17] CH submits that the multi-part request at issue relates to an ongoing class action against it. This class action[6] alleges that the defendants, including CH, through act or omission, improperly increased flooding or flood risks for members of the class. CH submits that the appellant, as part of a class action legal team acting for the plaintiffs in the class action, has submitted numerous access requests to CH since 2019 relating to topics that are raised in the class action. CH submits that the high volume of requests has overburdened CH. It is also CH's position that the appellant's conduct is an attempt to exhaust CH's resources and bring the institution's operations to a halt while CH defends the class-action proceeding.

[18] CH provided a chart detailing the access to information requests CH received from the class action legal team, including a multi-part request transferred to CH under section 18 of the *Act*.[7] CH submits that as of the date of its representations, the class action legal team had initiated 14 separate access requests starting in June, 2019, and that when each request is broken down into its constituent parts, it amounts to 46 requests in total. CH submits that the class action legal team has a pattern of including multi-part requests and using very broad language, such as "any," "all" and "each" as well as seeking records often spanning between a 9 to 30 year time frame. It adds that 7 of the requests initiated by the class action legal team were deemed to have been abandoned as a result of:

- failing to pay the application fee,
- failing to respond to CH's fee estimate; and
- failing to respond to CH's request to reduce the scope of the request.

[19] CH submits that this has resulted in CH staff continuously receiving, reviewing, and assessing the access to information requests, spending time and resources to meet

[6] CH provided a copy of the Statement of Claim as an attachment to its representations.
[7] Section 18(3) of the *Act* provides that if an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

its obligations under the *Act*, and then learning that the class action legal team has abandoned or not pursued the access request.

[20] Although CH concedes that a requester involved in litigation with a government agency is permitted to submit access requests,[8] it submits that this case is different. It states that a party to a class action is generally not entitled to documentary discovery in the pre-certification phase,[9] and that in this instance, the access to information regime is being improperly used to circumvent the documentary discovery rules in class action cases.

[21] In support of its position that the request at issue is an abuse of the rights of access, CH states that it would take 602 hours to process the multi-part request and provides a chart in support of its time estimate. It states that this estimate is based on the broad nature and detailed scope of each sub-request for information spanning a nine year time period and CH is a relatively small non-for-profit organization with one access to information coordinator and limited staff dedicated to responding to access to information requests of this nature.

[22] It adds that the same staff hold critical duties to the public in fulfilling CH's public mandate, which is the protection of the watersheds in the Halton area. CH submits that given its relatively small size, and the fact it has only one access to information coordinator, it is impractical to expect it to have the ability, time, or resources, to fulfill the multi-part request that remains at issue and to simultaneously discharge its public duties.

[23] CH also asserts that the multi-part request at issue in this appeal is one of many requests made by the class action legal team that overlap, have a broad and onerous nature and are very similar to ones already made. CH included with its representations a chart of the similarities in the previous requests made by the class action legal team to the multi-part request at issue before me.

[24] CH submits that it was never the intention of the *Act* to allow for "fishing expeditions" or broad investigations into the operations of an institution over a 30-year time period, and that to protect the overarching principle underlying the *Act*, such access request should be held to be abusive and inconsistent with the *Act's* core purpose.

[25] CH submits that processing the multi-part request "would grind to a halt CH's ability to function properly and to service the community." It states that the appellant's previous access to information requests were each considered on their merits and where information was readily available, it was provided without delay, but that this latest request reflects a pattern of conduct that interferes with CH's operation.

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[8] CH references Order MO-1924 in this regard.

[9] CH references *Durling v. Sunrise Propane Energy Group Inc.*, 2008 CanLII 65591 (ON SC) in support of this submission.

Appellant's representations

[26] The appellant asserts that CH has provided insufficient evidence to support the denial of access to the records sought and has failed to establish that the request is frivolous or vexatious. He takes issue with what he alleges is CH's improper motivation to deny his request that he says is primarily based on the simple existence of the class action proceeding. The appellant submits that there is no reasonable basis for concluding the access to information requests are frivolous or vexatious or made in bad faith.

[27] The appellant submits that the proposed class action is not on trial before me, nor are its processes or procedures and that CH is unduly concerned with the legal implications of "what the legal implications of what the Saw-Whet records it is concealing will reveal."

[28] The appellant submits that by focussing on the discovery process in the class action proceeding:

> … CH is attempting to conflate the freedom of information process, with the civil litigation process. In essence, CH argues it doesn't have to release […] records which might be relevant or disclosable in legal proceedings. CH seems obsessed with proceedings, other than the actual issue raised under [*MFFIPA*]. …

[29] The appellant submits that based on section 51(1) of *MFIPPA*, that argument must fail.

[30] Section 51(1) provides that:

> This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

[31] In contrast to CH's position, the appellant asserts that the request at issue in this appeal was a single and specific request for the "Saw-Whet" development file, a development that had been approved as part of a legal settlement in 2016. He characterizes the multi-part request before me to simply be for the following information:

1. E-Mails from (and to) various CH staff - involving the "Saw-Whet" development proposal - from 2012.

2. Flood Plain Models from 2014 to date - submitted by the developer involving the "Saw-Whet" development proposal - from 2012.

3. Storm Run off calculations (pre and post) - submitted by the developer involving the "Saw-Whet" development proposal - from 2012.

4. Co-efficient Factor used in items #2 and #3 above - involving the "Saw-Whet" development proposal -- from 2012.

5. Hydraulic & Hydrologic Models - involving the "Saw-Whet" development proposal - from 2012.

6. All documents or reports submitted by the developer involving the "Saw-Whet" development proposal - considered or used by CH in the approval process - from 2012.

7. All documents or reports submitted by the developer (or required by CH) involving the "Saw-Whet" settlement" terms & conditions - from 2016.

[32] The appellant asserts that his request is not seven requests and that CH has mischaracterized it "to boot-strap its argument that the request is, "frivolous" or "vexatious", when it was neither." The appellant submits that it is a single records request, comprised of separate elements to make it easily locatable and retrievable. He adds that:

> All the records sought as part of responsible record keeping should be in one location, or "file" on the Bronte Green development application. Whether or not CH is the subject of a proposed class-action lawsuit alleging decades of negligence or other causes of action - is entirely irrelevant to locating, retrieving and reviewing a single development file, out of the thousands of development files archived or retained by CH. CH also fails to indicate whether it has released all, or part, of the sought records to other requesters, or on what basis it would refuse to do so. Rather, CH argues as to why the records shouldn't be released based on supposed motives of the requestor - not how easily they can be located, reviewed and released by CH, but for its fettered decision-making process. CH is concocting a motive-based denial, by improperly exercising discretion on the part of the CEO - who is a central figure in litigation, which will likely examine his very role in CH's alleged systemic contravention of Ontario policy.

[33] The appellant argues the request at issue simply seeks access to "Saw-Whet" related information that spans an 8-year period. He submits that:

> … CH has issued (and approved) over 10,000 development applications over the past 40 years. Those other record holdings are not within the scope of the [access to information] request - only a single specific Saw-Whet related record holding is being sought. Those are the facts. CH is also an "approving party" to a settlement with the owners of Saw-Whet - and those publicly referenced documents by both CH, the Town of Oakville and its municipal partners are being sought in this [access to

> information] request. There is simply no reasonable basis for a finding of any "frivolous" or "vexatious" finding, on these facts.

[34] The appellant submits that in order to address the appeal, it is important to examine the actual facts:

> … To begin with, this [access to information] request is not as CH has asserted in its lengthy submissions - a 30 year abusive or vexatious "fishing expedition" into its operations by the requestor. In fact, it is nothing of the sort. The fact is it is a single, simple […] records request under [*MFIPPA*] legislation seeking access to the CH "Saw-Whet" records - held by CH from 2012 to 2020. The records sought span an 8 year period - not 30 years as asserted by CH. Secondly, those records have nothing to do with CH's operations, apart from the Saw-Whet review & decision-making process. The records sought are focused on a single development application file for Bronte Green at the former Saw-Whet golf course under CH's regulatory mandate, which CH approved, along with its municipal partners.

[35] The appellant asserts that "[i]t is inconceivable that a single [access to information] record request could require "602 hours to complete:"

> … Yet that is what senior management at CH "determined", without indicating that the Bronte Green development file - is likely in a single location at CH (albeit composed of several elements such as engineering, regulatory compliance etc.). If CH staff require 602 total hours to locate responsive records as claimed in their lengthy submission - that is equivalent to a full-time search of the single CH office at 2596 Brittania Road West -- of 7.5 hours a day (with 30 minutes for lunch), every day, over a 4 month or 120 day period.

[36] The appellant submits that if CH is concerned with the time spent to respond to the access to information request, then the IPC could assist it by setting a "records search plan."

[37] The appellant adds that:

> Presumably CH has "electronic" records as of 2012, which coupled with simple search terms (e.g. Saw-Whet flood model etc.), could simplify and provide even faster record locating. There is no credible basis to demonstrate that CH - or its lawyers - have raised any valid factual or legal grounds to deny the […] records sought. …

[38] The appellant submits that his request relates to issues of transparency and the accountability of CH relating to its review, assessment and granting of development permission to the Saw-Whet development as well as ongoing safety concerns. The

appellant submits that CH possesses no "immunity" from citizens seeking a right of access to records held by it and that:

> … The interest at stake is an individual right of access to records - collected and held by CH, ostensibly for purposes of carrying out its purposes which is flood prevention and protection of the public from flooding hazard risks, including the right to deny development that may in its opinion create or aggravate flood hazards. Those are exactly what the "Saw-Whet" related records sought in this case are. CH is attempting to paint this records request as some type of illicit enterprise, when it is not. It is a request for records and information known to be held by CH.
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> … Though the records are directly related to a contentious development alleged to have been approved - they also relate to a serious flood hazard risks posed to both the life and property interests of downstream Oakville residents.

[39] The appellant submits that CH has exceeded both its statutory authority and acted *ultra vires*. He submits that:

> … While CH and its directing minds may not relish the prospect of having to provide access to records that may inculpate either itself - or its municipal partners under the public or private law with respect to any aspect of the Saw-Whet development approval process - it has no legal basis for thwarting access to transparent and accountable government. If another citizen were to request those same Saw-Whet records tomorrow - presumably CH would respond that it is incapable or unwilling to provide those records, on this same basis.

CH's reply

[40] CH submits that the appellant's representations have not established a basis to challenge CH's decision and contain a number of inaccuracies that divert from the core issues on this appeal, as well as serious, unfounded, inflammatory allegations that are prejudicial to CH. It also provides responses to the various allegations made by the appellant.

[41] CH asserts that the evidence establishes that it "thoughtfully considered each request for access made by the class action legal team, and that it reviewed each and every [access to information] request in good faith and in accordance with its statutory obligations."

Analysis and finding on a pattern of conduct that amounts to an abuse of the right of access

[42] The first part of section 5.1(a) of Regulation 823 under *MFIPPA* sets out that one

way that a request can be determined to be frivolous or vexatious is if the institution establishes reasonable grounds for concluding that the requests form part of a pattern of conduct that amounts to an abuse of the right of access. What constitutes "reasonable grounds" requires an examination of the specific facts of each case.[10]

"Pattern of conduct"

[43] A pattern of conduct must be found to exist, prior to determining whether that pattern of conduct amounts to either an abuse of the right of access or would interfere with the operations of the institution.

[44] Previous IPC orders under *MFIPPA* have addressed the meaning of the phrase "pattern of conduct." For example, in Order M-850, former Assistant Commissioner Tom Mitchinson stated:

> [I]n my view, a "pattern of conduct" requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).

[45] The former Assistant Commissioner 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. The reasoning in Order M-850 has been considered in many subsequent orders issued by the IPC, which have also established that the cumulative nature and effect of a requester's behaviour may be relevant in the determination of the existence of a "pattern of conduct".[11]

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

[46] Once it has been established that a request forms part of a pattern of conduct, it must be determined whether that pattern of conduct amounts to "an abuse of the right of access." In making that determination, institutions may consider a number of factors, including the cumulative effect of the number, nature, scope, purpose and timing of the requests.[12] Other factors, particular to the case under consideration, can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.[13]

[47] Previous orders have also stated that the focus should be on the cumulative nature and effect of a requester's behaviour because, in many cases, ascertaining a requester's purpose requires the drawing of inferences from his or her behaviour.[14]

[48] The IPC may also consider an institution's conduct when reviewing a "frivolous or

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[10] Order MO-3292.
[11] See, for example Order MO-2390.
[12] Orders M-618, M-850 and MO-1782.
[13] Order MO-1782.
[14] Order MO-1782.

vexatious" finding. However, an institution's misconduct does not necessarily mean that it was wrong in concluding that the request was "frivolous or vexatious."[15]

Pattern of conduct

[49] In my view, the evidence demonstrates that the appellant has made recurring related or similar requests related to the topics raised in the class action, and that the multi-part access request before me forms part of that pattern of conduct.

[50] As explained above, CH provided a chart detailing the access to information requests CH received from the class action legal team, including a request transferred to CH under section 18 of the *Act*. CH submitted that as of the date of its representations, the class action legal team had initiated 14 separate access requests starting in June, 2019, and that when each request is broken down into its constituent parts, it amounts to 46 requests in total. It would appear from my review of the chart that the appellant submitted 8 of the requests, which are comprised of single item and multi-part requests all related to the class action. When broken down into its constituent parts, it appears that they amount to 37 requests in total.

[51] Based on my review of the chart provided by CH, I am satisfied that the appellant's requests are recurring incidents of related requests for similar information.

[52] Although the requests may not be identical, because they pertain to different information, individuals and/or different time frames, the type of information that he seeks in his requests, including the one at issue in this appeal, is related to the issues raised in the class action. I say this while acknowledging that an appellant is not prevented from requesting information relating to litigation.[16]

[53] Given these circumstances, I find that the appellant's request is part of a pattern of conduct as contemplated by section 5.1(a) of Regulation 823.

[54] As I have found that the request is part of a pattern of conduct, I will now consider whether that pattern of conduct amounts to an abuse of the right of access.

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

[55] I find the number of requests made by the appellant alone, is excessive by reasonable standards. In reaching this conclusion, I have also considered the cumulative effect of all the single and multi-part requests that have been made by the appellant.

[56] Accordingly, I find that the sum total of the appellant's requests, however counted, is sufficiently high to be considered a factor weighing heavily in favour of a

[15] Order MO-1782.
[16] See in this regard section 51(1) of the *Act*.

finding that a pattern of conduct exists that amounts to an abuse of the right of access.

[57] Furthermore, the nature and scope of many of the requests are excessively broad and unusually detailed. In addition, many of the appellant's requests constitute recurring incidents of related or similar access requests on the part of the appellant. In that regard, although the requests may not be identical, because they pertain to different information, individuals and/or different time frames, the type of information that he seeks in all of his requests is substantially similar or, at the very least, related to the issues raised in the class action.

[58] In these circumstances, I find that I have been provided sufficient evidence to conclude that the nature and scope of the appellant's requests are excessively broad or have the cumulative effect of being excessively broad by reasonable standards.

[59] With respect to CH's submission that the appellant's purpose for making his requests is other than to obtain access and to burden CH, I am not entirely convinced that the appellant is attempting to burden the system with his access requests, including the multi-part request that is at issue here. In my view, he is attempting to obtain information relating to the class action litigation. In the circumstances of this appeal, however, I find that it is irrelevant whether the appellant intended to burden the system because the impact of his pattern of conduct, culminating with his excessively broad and unusually detailed requests, has produced the same outcome, namely an abuse of the right of access.[17]

[60] Lastly, I have considered the appellant's suggestion that there has been bad faith on the part of CH in responding to his request, and that this should be a factor in determining whether the requests are frivolous or vexatious. In my view, the appellant has made bald assertions of bad faith without providing sufficient evidence to support those assertions. In the circumstances, I find that there has not been bad faith on the part of CH, and do not find this to affect my decision in this appeal. I find that CH responded to all the requests submitted by the appellant until it determined that the number of the appellant's requests had passed the point of reasonableness.

[61] Accordingly, I accept that CH has provided me with sufficient evidence to establish that the appellant's request forms part of a pattern of conduct that amounts to an abuse of the right of access under section 5.1(a) of Regulation 823. Therefore, I find that CH has established reasonable grounds for making a finding that the appellant's request is frivolous or vexatious and I uphold its decision to deny it on that basis under section 4(1)(b) of *MFIPPA*.

Remedy

[62] I have found the appellant's multi-part access request at issue in this appeal to be frivolous or vexatious, and I uphold CH's decision to deny the access request on that

[17] See in this regard the discussion in Order MO-3763.

basis. I will now consider whether I should impose conditions such as limiting the number of active requests and appeals the appellant may have in relation to CH.[18]

[63] I invited representations from the parties on the appropriate remedy in the event that I uphold CH's decision at issue in this appeal. CH responded by stating that I should grant the following:

> that the class action legal team be limited to one active access to information request and one IPC appeal at any given time;
>
> that CH be permitted to deny and request made by any member of the class action legal team that would exceed 40 hours of processing time.

[64] The appellant made no specific submission on remedy.

[65] In my view, given the appellant's pattern of conduct, he should be restricted from submitting an excessive number of further requests or requests that are similarly excessively broad and unusually detailed. However, in my view, it is also necessary not to foreclose the appellant's right to seek access to records under the *Act*. Indeed, CH has suggested that I not do so.

[66] I have decided that a just order in the circumstances is that the appellant be restricted to having no more than one active request with CH and one active appeal involving CH with the IPC at any given time for the next year starting from the date of this order. In addition, to prevent the appellant from submitting multi-part access requests that are similar to the one that is the subject of this appeal, I will stipulate that any access requests that he submits to CH for the next year may only have a maximum of two parts. In my view, in light of these limitations, it is not necessary to set out a limit applicable to the entire class action team or to the request processing time restriction requested by CH.

[67] The appellant is to identify for CH any active request that he wishes to pursue now. The balance of the requests will be deemed to be withdrawn, without prejudice to the appellant being permitted to refile a request in accordance with the terms of this order.

[68] Further, the appellant may only pursue one IPC appeal, in respect of CH at any given time for the next year.

[69] I am placing these limits on the appellant independently of any limits on the law clerk of another law firm acting for the plaintiffs in the class action, which will be addressed in a separate order.

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[18] Order MO-1782.

ORDER:

1. I uphold CH's decision to deny the access request at issue in this appeal on the basis that it is frivolous or vexatious under section 4(1)(b) of *MFIPPA*. As a result, this appeal is dismissed, without prejudice to the appellant's right to submit new requests for information in accordance with the conditions set out in provision 2 below.

2. I impose the following conditions on the appellant's access requests to CH, and his appeals to the IPC from decisions of CH:

    a. I am limiting the appellant to one active request and one active appeal with the IPC, involving CH that may proceed at any given point in time, including any requests and appeals (other than the appeal that is dismissed by this order) that are outstanding as of the date of this order.

    b. If the appellant wishes any one of his currently outstanding requests that exist with CH to continue to be processed, the appellant shall notify CH by January 2, 2024 and advise as to which request he wishes to proceed. For the purposes of this provision, a multi-part request shall be considered to be multiple requests and the appellant must choose a maximum of two parts to proceed with. Any outstanding requests with CH are deemed to be withdrawn, without prejudice to the appellant's right to make the same request in the future, in accordance with order provision 1.

    c. Any access requests that the appellant submits to CH in the next year may only have a maximum of two parts.

3. The terms of this order shall apply to any requests and appeals made by the appellant or by an individual, organization or entity acting on his behalf, including the appellant's law firm but excluding the law clerk at another law firm also acting for the plaintiffs in the class action.

4. At the conclusion of one year from the date of this order, the appellant, CH and/or any person or organization affected by this order, may apply to the IPC to seek to vary the terms of this order, failing which its terms shall continue in effect until such a time as a variance is sought and ordered.

Original Signed by: November 30, 2023

Steven Faughnan
Adjudicator