

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4493

Appeal PA20-00026

Ministry of the Attorney General

February 29, 2024

**Summary:** The issue in this appeal is whether the appellant's request to the Alcohol and Gaming Commission of Ontario (the AGCO) is frivolous or vexatious under section 10(1)(b) of the *Act*. In this decision, the adjudicator finds the AGCO established the appellant's request is frivolous or vexatious and upholds the AGCO's decision to refuse the appellant access to the responsive records. The adjudicator also imposes conditions on future requests submitted by the appellant to the AGCO.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 10(1)(b); Regulation 460, section 5.1.

**Orders and Investigation Reports Considered:** Orders M-850, MO-2390 and MO-3278.

### OVERVIEW:

[1] By way of background, the Alcohol and Gaming Commission (the AGCO) is a regulatory agency operating under the *Alcohol and Gaming Commission of Ontario Act, 2019*. The AGCO is part of the Ministry of the Attorney General (the ministry). According to the ministry, the ministry administers access requests made under the *Act* on behalf of the AGCO.

[2] The Ontario Racing Commission (the ORC) was a regulatory agency tasked with administering the *Racing Commission Act, 2000*. On April 1, 2016, the ORC merged with the AGCO, and the AGCO assumed the ORC's previous responsibility for the regulation of

horse racing under the *Horse Racing License Act, 2015*,<sup>1</sup> which replaced the *Racing Commission Act, 2000*.<sup>2</sup> As a result of the merger with the ORC, the AGCO (and by extension, the ministry) is responsible for responding to access requests for ORC records submitted after the merger with the ORC.

[3] The appellant is a veterinarian, who was involved in a disciplinary matter before the College of Veterinarians of Ontario (the college). The appellant was also the subject of an Ontario Provincial Police (OPP) investigation on behalf of the ORC which resulted in criminal charges against him. These charges were later stayed.

[4] The appellant submitted a request under the *Freedom of information and Protection of Privacy Act* (the *Act*) to the AGCO for the following:

(a) With regards to the Ontario Provincial Police and the AGCO, the former Ontario Racing Commission conducted an investigation into an individual, [named individual], in 2004 and 2005. I hereby request access to all investigative records and evidence of the Ontario Racing Commission in the investigation of [named individual].

(b) With regards to the AGCO and former Ontario Racing Commission, I hereby request access to any and all investigative records and evidence along with the case materials from any matter that may invoke my name in the proceedings or make me implicit<sup>3</sup> in the matter of concern. This request encompasses complaints made to the Commission by confidential informants.

[5] In a letter dated October 28, 2019, the ministry, on the AGCO's behalf, issued an interim access decision and a fee estimate of \$105.00. The ministry advised the appellant a final access decision would be made upon receipt of the 50% fee deposit. However, the ministry advised a number of exemptions may apply to some of the records.<sup>4</sup>

[6] The appellant paid the requested fee in April 2021, almost two years after the ministry's interim decision letter. The ministry returned the fee to the appellant and issued a final decision denying him access to the records on the basis that his request was frivolous and vexatious pursuant to section 10(1)(b) of the *Act* and clauses 5.1(a) and (b) of Regulation 460.

[7] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC).

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<sup>1</sup> S.O. 2015, Chapter 38, Schedule 9.

<sup>2</sup> S.O. 2000, Chapter 20. Repealed on April 1, 2016.

<sup>3</sup> It appears the appellant may mean *complicit* rather than *implicit*.

<sup>4</sup> The ministry advised the appellant sections 14 (law enforcement), 19 (solicitor-client privilege), 21(1) (personal privacy), and 49 (access to records that contain the requester's personal information) may apply to exempt portions of the records from disclosure.

[8] During mediation, the appellant claimed the investigations relating to other individuals should contain his information. The appellant identified specific individuals and asked the ministry to conduct a search for information relating to him in the records regarding the investigations into these individuals. The AGCO reviewed the appellant's list of individuals and stated the appellant did not appear to have narrowed the scope of his request since he indicated the list was "not exhaustive. The AGCO maintained its position that the request was frivolous and/or vexatious.

[9] The appellant does not agree with the AGCO's determination that his request is frivolous and/or vexatious.

[10] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to the appeal decided to conduct an inquiry. The adjudicator sought and received representations from the AGCO<sup>5</sup> and the appellant. Representations were shared between the parties in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*.

[11] The appeal was then transferred to me to complete the inquiry and issue a decision. I reviewed the file and the parties' representations and decided I did not need to hear from the parties further.

[12] I note the appellant claims the AGCO only referred to part (b) of his request. As such, the appellant claims the AGCO has "no issue" with part (a) of his request and should provide all documentation as requested. I confirm the AGCO's access decision to the appellant advised that his entire request was frivolous or vexatious. There is no evidence before me to support the appellant's claim that his request was bifurcated by the AGCO. Accordingly, I will consider whether the entire two-part request is frivolous or vexatious.

[13] I also note the appellant claims the ORC improperly disclosed records relating to him to the college and submitted evidence that he alleges supports his claim. The appellant also makes submissions regarding the manner in which his records were handled by the OPP and the ORC. I cannot comment on these issues. The only issue before me is whether the appellant's current access request is frivolous or vexatious.

[14] In the discussion that follows, I uphold the AGCO's decision to withhold access to the responsive records on the basis that the appellant's request is frivolous and vexatious. Additionally, I impose conditions on future requests submitted by the appellant to the AGCO.

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<sup>5</sup> The AGCO submitted the representations in this appeal because the appellant seeks access to records relating to the AGCO.

## PRELIMINARY ISSUE

[15] The appellant submitted his request to the AGCO. The appellant's request identified records "with regards to the Ontario Provincial Police and the AGCO." The ministry issued an access decision to the appellant. Representations were first sought from the ministry in response to the Notice of Inquiry. The representations that were submitted were drafted by the AGCO.

[16] In his representations, the appellant notes the ministry was identified as the respondent in this matter, but it appears the representations were drafted by the AGCO. He submits it is unclear if the representations "produced [were] authored by anyone who had the jurisdiction to produce such a document." Given these circumstances, the appellant submits the representations submitted by the AGCO should be dismissed and the ministry be noted as "non-compliant with the provisions of the *Act*."

[17] In response, AGCO confirmed it is an *institution* under the *Act* pursuant to Regulation 460. As such, the AGCO has the authority to provide representations in accordance with section 52(13) of the *Act*. The AGCO submits the original representations were prepared and submitted by the AGCO's legal counsel in accordance with section 52(14) of the *Act*. Given these circumstances, the AGCO submits its representations are valid.

[18] The appellant was provided with an opportunity to respond to the AGCO's submissions on this matter. He did not do so.

[19] According to the AGCO website,<sup>6</sup> the AGCO is an Ontario provincial regulatory agency that reports to the ministry. I further note the AGCO is an institution under the *Act*.<sup>7</sup> I contacted the AGCO and the ministry to clarify their relationship with regards to receiving and processing access requests, issuing access decisions, and participating in appeals before the IPC. The ministry advised it assists the AGCO with administering access requests made to the AGCO. However, the ministry confirmed the AGCO makes its own access decisions. Further, in this case, the AGCO submitted representations on its own behalf.

[20] I have reviewed the circumstances of the appeal, the appellant's request, and the parties' representations. I find the AGCO was authorized to provide representations in response to the Notice of Inquiry. It appears from a review of the file materials and the parties' comments that the ministry handles the administrative component of access requests and appeals, and the AGCO handles the substantive component by making the decisions regarding access and submitting representations to the IPC.

[21] Therefore, I find the AGCO's representations are valid and both the ministry and the AGCO are in compliance with the *Act*. While the ministry is the respondent in this

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<sup>6</sup> <https://www.agco.ca/about-us>.

<sup>7</sup> See the Schedule to Regulation 460 of the *Act*.

appeal, the AGCO is the appropriate institution with carriage and responsibility over the request and appeal. Accordingly, in this order, I will be referring to the AGCO's representations and the order provisions will refer to the AGCO's decision.

## **DISCUSSION:**

[22] The sole issue before me is whether the appellant's request is frivolous or vexatious. Section 10(1)(b) of the *Act* provides institutions with a straightforward way of dealing with frivolous or vexatious requests. However, institutions should not exercise their discretion under section 10(1)(b) lightly, as this can have serious implications for an individual's access rights under the *Act*.<sup>8</sup>

[23] Section 10(1)(b) reads:

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 is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[24] Section 5.1 of Regulation 460 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.

[25] In other words, the head of an institution is required to conclude an access request is frivolous or vexatious if he or she is of the opinion on reasonable ground 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

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<sup>8</sup> Order M-850.

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

[26] An institution that concludes an access request is frivolous or vexatious has the burden of proof to justify its decision.<sup>9</sup>

[27] The AGCO submits the appellant's request is part of a pattern of conduct that amounts to an abuse of the right of access. The AGCO also claims the appellant's request is part of a pattern of conduct that would interfere with its operations. Finally, the AGCO takes the position the appellant made his current request in bad faith and for a purpose other than to obtain access. Given my finding that the appellant's request is part of a pattern of conduct that amounts to an abuse of the right of access, I do not need to consider the other grounds to establish a frivolous or vexatious request.

### **Pattern of conduct that amounts to an abuse of the right of access – section 5.1(a) of Regulation 460**

[28] Previous IPC orders have addressed the meaning of the phrase "pattern of conduct," 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. For example, in Order M-850, the adjudicator states,

... 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).

[29] In Order M-850, the adjudicator also states that, in determining whether a pattern of conduct has been established, the time over which the behaviour occurs is a relevant consideration. This reasoning has been followed in many subsequent orders which 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."<sup>10</sup>

[30] 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.<sup>11</sup> Order MO-2390 provides a helpful summary of the main factors found in previous IPC orders to be relevant including:

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<sup>9</sup> Order M-850.

<sup>10</sup> Order MO-2390.

<sup>11</sup> Orders M-618, M-850, MO-1782 and MO-1810.

- the number of requests – whether the number is excessive by reasonable standards;
- the nature and scope of the requests – whether they are excessively broad and varied in scope or unusually detailed, or, whether they are identical or similar to previous requests;
- the purpose of the requests – whether the requests are intended to accomplish some objective other than to gain access without reasonable or legitimate grounds; and
- the timing of the requests – whether the timing of the requests is connected to the occurrence of some other related event, such as court proceedings.

[31] The institution's conduct may also be a relevant consideration weighing against a frivolous or vexatious finding. However, misconduct on the part of the institution does not necessarily negate a frivolous or vexatious finding.<sup>12</sup> 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.<sup>13</sup> The focus should be on the cumulative nature and effect of a requester's behaviour.

### ***AGCO's representations***

[32] As background, the AGCO states the appellant held a licence issued under the *Racing Commission Act*. However, in 2005, the ORC suspended the appellant for seven years and fined him \$100,000. The AGCO notes the appellant is eligible for re-licensing upon payment of the fine but has not done so. The AGCO states the appellant also held a veterinarian license issued by the college, but his license was revoked in 2017. Since his veterinary license was revoked, the AGCO submits the appellant has filed four multi-part, broadly worded and intertwined requests for investigatory records relating to himself. First, the AGCO states the appellant submitted a request in May 2016 for police investigation records relating to him. In May 2017, the appellant submitted a two-part access request to the AGCO for documentation obtained by the ORC which the appellant alleges was subsequently disclosed to the college and the investigation records relating to the police investigation concerning the appellant that took place in 2013.

[33] The AGCO states the appellant submitted a complaint in November 2019 to the AGCO claiming the police investigation records were improperly disclosed by the ORC to the college. The AGCO states the appellant then made an "ethics-based complaint" to the AGCO about how he believed the ORC disclosed those investigation records to the college in April 2020. The AGCO states the appellant also submitted a privacy complaint to the IPC in November 2020, claiming his privacy was breached due to the ORC's alleged disclosure of those investigation records to the college. The AGCO denies the appellant's

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<sup>12</sup> Order MO-1782.

<sup>13</sup> Order MO-1782.

allegation and confirms the OPP disclosed its police investigation records to the college, not the ORC.

[34] The AGCO states the appellant submitted the current request in October 2019. The AGCO issued an interim access decision and fee estimate to the requester on October 28, 2019. However, AGCO submits the appellant did not confirm he would pay the fee deposit until April 27, 2021. On May 6, 2021, the AGCO (through the ministry) advised the appellant it would be treating his request as a frivolous and vexatious request.

[35] The AGCO states the appellant submitted a fourth request in June 2020 for records relating to the investigation regarding his ethics complaint. The AGCO handled this request, and the appellant filed another appeal to the IPC regarding the AGCO's response to this request.

[36] The AGCO submits the appellant commenced a civil action against the ORC and certain employees and seconded staff in 2017. The AGCO also submits the appellant has litigated other historical complaints against the ORC and its officials in civil courts.

[37] The AGCO refers to Interim Order PO-4067-I which upheld its search for OPP records the appellant alleged the ORC sent to the college as reasonable. However, in that order, the IPC ordered the AGCO to search for non-criminal, regulatory records the ORC may have disclosed to the college. The AGCO conducted a search and located no additional responsive records. The IPC upheld the AGCO's search in Final Order PO-4111-F.<sup>14</sup>

[38] The AGCO submits the appellant's current request is part of a pattern of conduct amounting to an abuse of the right of access. The AGCO submits the appellant submitted access requests as described above, and all but the first request resulted in an appeal before the IPC. In addition to these requests, the AGCO submits the appellant filed complaints to and against the AGCO in connection to his belief that the ORC disclosed police-based investigation records about him to the college.

[39] The AGCO submits the appellant's previous requests are intertwined with the current request as part of the chain of requests from the appellant. The AGCO submits the number of requests in conjunction with the complaints to and about the AGCO can be seen cumulatively as an excessive number of requests on the topic of investigatory records involving him. The AGCO submits the current request, taken with the number of access requests before itself and other institutions, the similar nature of the subject matter of the requests filed, and the appellant's complaints on the subject matter leads to the conclusion that the request is part of a pattern of conduct that amounts to an

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<sup>14</sup> The AGCO also notes that it transferred a portion of the request that results in the above-noted orders to the Ministry of the Solicitor General and the Ministry of Agriculture, Food and Rural Affairs. The request with the Ministry of Agriculture, Food and Rural Affairs resulted in an appeal that is currently before the IPC.



abuse of the right of access.

[40] In addition, the AGCO claims the request is overly broad as the appellant seeks “any and all investigative records and evidence along with the case materials from any matter that may invoke my name in the proceedings or make me implicit in the matter of concern.” The AGCO claims the appellant’s request is unreasonable in scope because it would require a search for *any* reference to the appellant’s name and “somehow determine if there is ‘any matter’ that may invoke the [appellant’s] name or would ‘make [him] implicit in the matter.” Furthermore, the AGCO notes the appellant has not specified a time period for his request, which suggests he seeks records to when the *Racing Commission Act, 2000* was established.

[41] The AGCO states it sought clarification regarding the request from the appellant during mediation. The appellant provided the AGCO with the names of a number of ORC employees who may have been involved with the investigation relating to the appellant, requesting that the AGCO conduct searches of their individual files for records responsive to his request. However, he advised this was a non-exhaustive list. The AGCO submits this indicates the scope of the request is overly broad and the search required would be “virtually endless and without any kind of boundaries.”

[42] The AGCO also submits the purpose of the appellant’s request is other than to gain access to information. The AGCO submits the appellant believes the ORC disclosed records about him to the college between March 1, 2013 and April 1, 2016. The AGCO asserts it was the OPP and not the ORC that disclosed these records about the appellant to the college during this period. The AGCO submits the appellant has demonstrated his concern with how the college received records about him through his complaint to the AGCO, his ethics complaint in 2020 and the privacy complaint filed to the IPC.

[43] The AGCO submits the appellant’s current request is so broad it would “ensnare AGCO in a virtually endless task of searching” for responsive records. The AGCO submits the request became a live matter concurrently with other access requests handled by the AGCO, the Ministry of the Solicitor General and the Ministry of Agriculture, Food and Rural Affairs, as well as the complaints the appellant submitted. Given these circumstances, the AGCO submits the current request is the appellant’s way of expressing his frustration and protesting the disclosure of records relating to him to the college.

[44] The AGCO also submits the appellant’s request is a way for him to express his frustration at the ORC’s decision to suspend his racing license and the college’s revocation of his veterinary license. The AGCO submits the overly broad request that is related to the investigations relating to his conduct is how the appellant is maintaining a form of protest. The AGCO submits the appellant is using the *Act* to harass it.

[45] Finally, the AGCO submits the timing of the request further supports its claim that there is a pattern of conduct that amounts to an abuse of process. As discussed above, the AGCO submits the appellant took over a year to respond to its fee estimate and

interim access decision. The AGCO submits the appellant's interest in this request was revived at the same time the request he filed in May 2017 was resolved. The AGCO submits this timing is not a coincidence and the appellant is using this request to force the AGCO to continue to engage in searches for records relating to him.

### ***Appellant's representations***

[46] In his representations, the appellant submits there have been "a series of investigations and interactions" by the ORC and the college over the past 20 years. The appellant states he filed an Application for Reinstatement with the college on the basis of fresh evidence, alleged fraud before the tribunal, and obstruction of justice. The appellant submits he seeks access to all relevant documentation in the possession of any investigative body which was then "shared" with the college. The appellant submits it is important all evidence be provided to the appellant so he can defend his position at his Reinstatement proceeding before the college.

[47] The appellant submits there is no evidence to suggest his requests are a result of his dissatisfaction with the regulatory decisions with the ORC and the college. The appellant also refutes the AGCO's claim that his requests are excessive and an abuse of process. The appellant submits each of his requests under the *Act* have a "specific narrow focus, but they all relate to the same subject, that being prosecutions coordinated, conducted and propagated by the Ontario Racing Commission."

[48] The appellant also refutes the AGCO's claim that the purpose of his requests is part of a pattern of conduct that amounts to an abuse of the right of access. The appellant states he "began this exercise to obtain the full complement of evidence which was used in prosecutions, to make full and complete representations both in his defense, as well as in an Application for Reinstatement [with the college] .... It is not a matter of dissatisfaction, but more so to support the notions of evidence withheld, records severed, and fraud and obstruction which have plagued the prior proceedings." The appellant submits his purpose is to access information in preparation for his upcoming proceeding before the college to reinstate his license.

[49] With regard to the timing of his request, the appellant submits he made his request prior to his filing an Application for Reinstatement. The appellant submits the AGCO did not provide any evidence to support its theory that he submitted the request as part of a pattern of conduct that amounts to an abuse of the right of access.

### ***AGCO's reply representations***

[50] In its reply representations, the AGCO reiterates the appellant made an "excessive number of requests on the topic of investigatory records concerning himself." The AGCO notes the individual identified in the appellant's request is referred to in the regulatory proceedings between the ORC and the appellant. Given these circumstances, the AGCO submits the appellant's request for records relating to the named individual is simply

another request for investigatory records relating to himself. The AGCO submits the various complaints filed by the appellant and the cumulative batch of access requests for investigatory records relating to him serve as a means for the appellant to express protest and frustration about the outcomes of his licensing hearings. Accordingly, the AGCO submits the primary intent of the appellant's current request is for a purpose other than access and, as such, the request was made in bad faith.

[51] The AGCO reiterates the appellant's request is overly broad and would adversely affect the operations of the institution if it is required to complete the search.

[52] The AGCO also refers to the appellant's representations and notes that he submits the ORC improperly disclosed records relating to him to the college. The AGCO submits this demonstrates the appellant's continued interest in pursuing this issue, which has been resolved.

### ***Appellant's sur-reply representations***

[53] In his sur-reply representations, the appellant submits his request was not submitted in bad faith, but to obtain access to the investigatory records relating to the named individual to assist with any regulatory proceeding he may be contemplating. The appellant also submits the AGCO has improperly grouped complaints and access requests into "one basket." The appellant submits the complaints and access requests should be considered separately and not grouped together to demonstrate there has been an abuse of the right of access.

[54] The appellant maintains his request is narrow and is not similar to his previous requests. The appellant submits the "specific focus" of his current request is different from his previous requests, which related more broadly to the investigative records from the 2013 investigation into his activities. The appellant submits that "frequent requests for access to information related to [himself] with different foci of interest do not amount to excessive requests."

[55] The appellant submits it is the AGCO and not he that is vexatious in this appeal. The appellant submits the AGCO's actions in refusing to disclose information to him and labelling him as vexatious "stem from the frustrations of the AGCO in unsuccessfully destroying" him.

[56] The appellant also submits the AGCO should have a "Master File" that relates to him, which would make the records requested "reasonably retrievable." Given this situation, the appellant submits the AGCO's claim that locating records responsive to his request would interfere with its operations is without merit.

[57] Finally, the appellant refers to Order MO-3278, in which the adjudicator found an individual's request was not frivolous or vexatious. The appellant notes the adjudicator found the Municipality of Waterloo (the municipality) did not provide sufficient evidence to conclude the appellant in that case submitted her request in bad faith. The adjudicator

also noted the appellant is entitled to pursue legal remedies against the region and that intention is not sufficient to support a finding that the request is frivolous or vexatious. The appellant also refers to the adjudicator's finding that even if there was a direct connection between the appellant's request and their plans to pursue future litigation against the region, there is nothing improper about the appellant's request.

### ***Analysis and Findings***

[58] In determining whether there are reasonable grounds to conclude the 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 460. I will consider whether the facts relevant to this case establish that a "pattern of conduct" exists first.

[59] The request in this appeal is a two-part request. For ease of reference, I reproduce it here:

(a) With regards to the Ontario Provincial Police and the AGCO, the former Ontario Racing Commission conducted an investigation into an individual, [named individual], in 2004 and 2005. I hereby request access to all investigative records and evidence of the Ontario Racing Commission in the investigation of [named individual].

(b) With regards to the AGCO and former Ontario Racing Commission, I hereby request access to any and all investigative records and evidence along with the case materials from any matter that may invoke my name in the proceedings or make me implicit in the matter of concern. This request encompasses complaints made to the Commission by confidential informants.

[60] The AGCO says the appellant has filed four multi-part, broadly worded and intertwined requests to the AGCO (or the ministry, as its administrator) under the *Act* for investigatory records relating to him, all of which were processed and some of which resulted in appeals before the IPC. The first request was filed in May 2016, the second in May 2017, the third in October 2019 and the fourth in June 2020. All of these requests concern investigatory records relating to the appellant. In addition to these requests, the appellant filed a complaint regarding the alleged disclosure of police investigation records from the ORC to the college. In April 2020, the appellant made an ethics-based complaint to the AGCO alleging the ORC disclosed the aforementioned police investigation records to the college. Finally, the appellant filed a privacy complaint with the IPC against the AGCO, alleging his privacy was breached due to the ORC's alleged disclosure of the appellant's police investigation records to the college.

[61] I acknowledge four requests are not, on their own, excessive. Further, I note the appellant argues the requests he has filed are not all similar and have "different foci." Nonetheless, I find the breadth of the appellant's requests and the number of complaints

filed by the appellant, all of which involve the same issue (i.e. the alleged disclosure of police investigatory records relating to the appellant by the ORC to the college), together form a pattern of conduct that amounts to an abuse of the right of access within the meaning of section 5.1(a) of Regulation 460 of the *Act*. I am satisfied the request at issue before me, together with the appellant's previous requests to the AGCO for investigatory records relating to him, is part of a recurring incident of related or similar access requests on the part of the appellant. As the AGCO submits, the appellant's previous requests are intertwined with the current request as part of a larger chain of requests for investigative records relating to him. The appellant has submitted a number of requests to the AGCO for investigatory records relating to himself either directly or tangentially, as with the case of part one of the current request. Based on my review, the cumulative nature and effect of the appellant's behaviour amounts to a pattern of conduct that amounts to an abuse of the right of access.<sup>15</sup>

[62] Although all the requests are not identical because some, such as the part one of the request before me, pertain to another individual, it is indisputable the type of information he seeks in all of his requests is substantially similar, or at the very least, related. Furthermore, the individual named in the appellant's request was involved in proceedings the appellant was also involved in. As such, it is likely the records generated from the request before me and other requests to the AGCO for investigatory records involving the appellant would generate duplicative records. Overall, the appellant appears to seek investigatory records relating to him directly and tangentially, in the case of the records relating to the individual identified in his request. It is clear from the appellant's representations that he seeks access to records related to his application for reinstatement with the college. Furthermore, it is clear from a review of the appellant's representations he is attempting to collect evidence to assist in relitigating various issues he has with the AGCO, including whether the ORC improperly disclosed his information to the college.

[63] Given these circumstances, I find the request at issue in this appeal is part of a "pattern of conduct" as contemplated by section 5.1(a) of Regulation 460. In its representations, the AGCO indicated the appellant submitted a number of requests to other institutions, including the Ministry of the Solicitor General and the Ministry of Agriculture, Food and Rural Affairs, for investigatory records relating to him. However, my finding that the appellant's request is a part of a pattern of conduct is not based on the access requests he filed with different institutions. My findings are based on the appellant's pattern of conduct with the AGCO alone.

[64] I will now consider the factors noted above that previous IPC orders have found may be relevant to a determination of whether the request forms part of a pattern of conduct that *amounts to an abuse of the right of access*.

[65] As the AGCO submits, the appellant has been submitting access requests to the

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<sup>15</sup> Orders MO-1782 and MO-1850.

AGCO for investigatory records relating to him either directly or indirectly (i.e., those that could potentially implicate him) since 2016. Based on my review of the requests, it is clear the appellant seeks access to the same or substantially similar information; that is, investigatory records relating to him in any manner, whether they be found in his own file or in a file relating to other identified individuals. In addition to these requests, the appellant has filed a number of complaints against the AGCO and the ORC, which is now a part of the AGCO, in relation to his allegation that the ORC improperly disclosed his information to the college. The AGCO also notes it issued an interim access decision to the appellant in October 2019, but the appellant did not respond to or pay the fee deposit until April 2021, which the AGCO claims is evidence the appellant is not truly interested in obtaining access to the information at issue.

[66] Upon review of the parties' representations, I find the appellant's pattern of conduct in relation to the AGCO to amount to an abuse of the right of access. The number of requests filed by the appellant is not, on its own, excessive. However, I agree with the AGCO that the appellant's two-part request before me is broad and duplicative in nature. I find the nature of the request is broad, particularly the second part, which reads, "I hereby request access to any and all investigative records and evidence along with the case materials from any matter that may invoke my name in the proceedings or make me implicit in the matter of concern." While the appellant submits his request has a "specific focus," the wording of his request, particularly part two of his request, is very broad and would require the AGCO to locate any and all records relating to him. The appellant has submitted a number of requests to the AGCO for investigative records relating to him; this is merely a reiteration of a previous request. I note the appellant appeared to agree to narrow request to records relating to specific individuals; however, he indicated the list was "not exhaustive." Therefore, it appears the appellant has not actually narrowed his request with to the AGCO.

[67] It is clear from both his history of requests and complaints with the AGCO and a review of his representations that the appellant is focused on proving his allegation that the ORC improperly disclosed his information to the college or to collect evidence to support his reinstatement application with the college. I acknowledge the appellant should not be prevented by making an access request to obtain information relating to litigation<sup>16</sup> or his reinstatement application with the college. In any case, the appellant has submitted a number of repetitive and duplicative requests to the AGCO for investigative records relating to him, which suggests the purpose for the appellant's requests is more than simply collecting information to substantiate his case for reinstatement of his veterinary license.

[68] I note the appellant takes the position the search conducted in response to his request should be relatively straightforward because there should be a "Master File" relating to the appellant. However, not only is there no evidence to suggest a "Master File" relating to the appellant exists, but even if one did, I do not accept it would

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<sup>16</sup> See in this regard section 51(1) of the *Act*.

necessarily contain records responsive to the first part of the appellant's request, that is, records relating to the named individual. Furthermore, the appellant clearly asked the AGCO to search the record holdings of specific individuals employed by the AGCO or the former ORC and the records relating to specific individuals, such as the individual named in his request. Given these circumstances, it is clear the appellant does not wish the AGCO to merely search a "Master File" as, if such file were to exist, it would contain records about him.

[69] It is not clear to me the appellant is, as the AGCO claims, using the access regime to express protest and frustration about the outcomes of his licensing hearings. In any case, I find the impact of the appellant's pattern of conduct, which include his excessively broad requests, to have resulted in an abuse of the right of access.

[70] Accordingly, I accept the AGCO has provided me with sufficient evidence to establish 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 460 of the *Act*.

## **Conclusion**

[71] For the reasons set out above, I find the AGCO established reasonable grounds for making a finding that the appellant's request is frivolous or vexatious pursuant to section 5(1)(a) of Regulation 460 and I uphold its decision to deny the appellant's request on that basis under section 10(1)(b) of the *Act*.

[72] Specifically, I find the AGCO established the appellant's request is part of a pattern of conduct that amounts to an abuse of the right of access. Accordingly, the AGCO, through the ministry, was entitled to refuse access to the responsive records on the basis the request was frivolous or vexatious and I uphold its decision to do so.

[73] As a result of my finding, it is not necessary for me to consider whether the request is frivolous or vexatious on any other grounds.

[74] Despite my finding, the appellant is not precluded from making future requests to the AGCO for access to information under the *Act*. However, where an access request is found to be frivolous or vexatious, the IPC may determine an appropriate remedy. This may include imposing conditions such as limiting the number of active requests and appeals the appellant may have in relation to a particular institution.<sup>17</sup>

[75] In this case, I have decided to limit the number of the appellant's active requests with the AGCO to one, single-part, request for information at any given time. The decision to limit the appellant's active matters in this way does not preclude a finding, where appropriate, that any current or future request is frivolous or vexatious. The appellant may apply to the IPC for an order varying the terms of this order after one year has

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<sup>17</sup> Order MO-1782 and Order PO-4158-I.

passed from the date of this order.

[76] I encourage the appellant and the AGCO to take a collaborative approach to the processing of any future requests by the appellant for information to help reduce the workload placed on the AGCO resulting from a request that might generate duplicate records or encompass records already in the appellant's possession.

[77] With respect to any future requests made by the appellant, I remind the AGCO of the fee and time extension provisions in sections 27(1) and (2) and 57 of the *Act*. I also refer the AGCO to section 6, 6,1, 7 and 9 of Regulation 460 under the *Act*.

[78] The appeal is dismissed.

**ORDER:**

1. I uphold the AGCO's (and the ministry's) decision that the request is frivolous or vexatious under section 10(1)(b) of the Act. 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 the AGCO:
  - a. For a period of one year following the date of this order, I am imposing a one, single-part, request limit on the number of requests under either act that may proceed at any given point in time, including any requests that are outstanding as of the date of this order.
  - b. Subject to the one-request limit described in provision 2(a), if the appellant wishes any part of his requests that currently exist with the AGCO to proceed to completion, including any portion of the request that gave rise to this appeal, the appellant shall notify the AGCO and advise as to which matter he wishes to proceed.
  - c. Pending this notification, any outstanding requests with the AGCO are stayed.
3. The terms of this order shall apply to any requests made by the appellant or by an individual, organization or entity acting on his behalf or under his direction.
4. At the conclusion of one year from the date of this order, the appellant, the AGCO 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: \_\_\_\_\_

February 29, 2024 \_\_\_\_\_



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Justine Wai  
Adjudicator