

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4553

Appeal MA23-00788

Municipality of Middlesex Centre

August 13, 2024

Summary: The appellant asked for documents that he had signed regarding how a municipal property is maintained. The municipality responded that the request was frivolous and vexatious, and they would not be providing a response. It explained that the appellant had already been informed that the requested information does not exist.

The appellant appealed the decision to the IPC. The adjudicator finds that the request was made for a purpose other than to obtain access and that it is frivolous or vexatious within the meaning of the *Act*. He dismisses the appeal.

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

Orders Considered: MO-4519 and MO-4412.

OVERVIEW:

[1] The Municipality of Middlesex Centre (the municipality) received the following request for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

My signature on any document relating to the maintenance of the [specified location] Boulevard. I give you my express permission to release that information. Please provide of the existence of any

organization named "[specified location] Association" or "[specified location] Committee", its members, registration, if any, and structure.

[2] The municipality issued a decision letter stating that it will not be responding to the request. The letter stated that the municipality considered the request to be frivolous and vexatious, having been made in bad faith and for a purpose other than to obtain access (referencing section 4(1)(b) of the *Act* and section 5.1 of Regulation 823 of the *Act*). The letter stated that the appellant made four requests with the municipality in 2023, including one that was abandoned for non-payment, and another that the municipality considered to be frivolous and vexatious. It also stated that the municipality has previously provided all relevant documentation related to the maintenance of the specified location. It also referenced previous correspondence that the municipality had sent the appellant on the matter.

[3] The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC). The municipality maintained its position during mediation and the appellant continued to seek access to the records. No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process. I conducted an inquiry where I sought and received representations from the municipality. The appellant reiterated that he continued to seek the information but did not otherwise provide substantive representations. The municipality's representations were shared with the appellant in accordance with the IPC's *Code of Procedure*.

[4] For the reasons that follow, I uphold the municipality's decision and dismiss the appeal.

DISCUSSION:

[5] The sole issue in this appeal is if the appellant's access request is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*. Institutions should not exercise their discretion under section 4(1)(b) lightly, as this can have serious implications for access rights under the *Act*.¹

[6] Section 4(1)(b) says: "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."

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

¹ Order M-850.

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.

[8] Reading these sections together, there are four grounds under the *Act* for claiming that a request is frivolous or vexatious. Two of these grounds, claimed by the municipality in this appeal, are that the request is made in bad faith and that the request is for a purpose other than to obtain access.

[9] An institution that concludes that an access request is frivolous or vexatious has the burden of proof to justify its decision.² However, for requests made in both bad faith and for a purpose other than to obtain access, the institution does not need to demonstrate a "pattern of conduct."

[10] The IPC has defined "bad faith" as:

The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.³

[11] Similarly, a request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.⁴ The IPC has previously found that an intention by the requester to take issue with a decision made by an institution, or to take action against an institution, is not enough to support a finding that the request is "frivolous or vexatious."⁵ In order to qualify as a "purpose other than to obtain access," the requester would need to have an improper objective above and beyond an intention to use the information in some legitimate

² Order M-850.

³ Order M-850.

⁴ Order M-850.

⁵ Orders MO-1168-I and MO-2390.

manner.⁶

Representations

[12] The municipality provided background about the request, explaining that the appellant has complaints and concerns about the municipality relating to an ongoing matter originating with a 2001 subdivision agreement, and a subsequent agreement between area residents and the municipality regarding the maintenance of a “small private landscape island area” (the specified location identified in the appellant’s request). The municipality explains that area residents are responsible for maintaining the island and there is an agreement in place that the municipality provide for contractors to perform the maintenance on the island and bill those costs back to subdivision residents (which includes the appellant).

[13] The municipality states that the appellant does not agree with this maintenance model and initiated a court action against the municipality in 2021. It explains that as part of that process, all documentation related to the maintenance of the area, including any agreements, correspondence, and related materials were provided as part of the disclosure processes.

[14] The municipality submits that the present appeal and underlying facts are similar to those in Order MO-4519, issued May 9, 2024 and involving the same parties, where the municipality’s decision to find the request frivolous or vexatious was upheld by the adjudicator, with the adjudicator finding that the request was being done for a purpose other than to obtain access. It submits that the same finding should be made here, stating that all documentation related to the matter has been previously communicated in previous correspondence, access requests, and court disclosures, and the information being sought by the appellant in this particular request does not exist.

[15] The municipality also states that the request is made for a purpose other than to obtain access, in this case to unreasonably burden and create a nuisance for municipal staff, council members, and legal counsel. It explains that previous requests were submitted and abandoned for non-payment after the municipality responded to them, with the requests being related to the same subject matter and excessively broad. It references Order MO-2488, where the adjudicator found that excessively broad requests and voluminous correspondence with the municipality in the context of a court action were factors in finding a request to be made for a purpose other than to obtain access. It states that the appellant appears to be motivated by some other objective than obtaining access to information.

[16] Overall, the municipality submits that the particulars of the matter underlying the request have been made clear to the appellant through previous requests, communications, and document disclosures. It states that all documentation related to

⁶ Order MO-1924.

this matter has been provided, and it is of the view that the continued requests are frivolous and vexatious.

[17] The appellant was provided the municipality's representations but did not provide a substantive response, only stating that he continued to seek access to the information in his request.

Analysis and finding

[18] While the two situations are not identical, I agree with the municipality's position that the underlying facts in this appeal are similar to those in Order MO-4519. In Order MO-4519, it was found that the same appellant's request, related to questions about how the specified location was repaired by a company, the costs associated with the repairs, and the maintenance structure of the island generally, was made for a purpose other than to obtain access. I make the same finding here.

[19] At first glance, the request at issue appears to be for records that may exist, and it is understandable why the appellant may seek access to them. However, having considered the representations of the municipality (and with no representations from the appellant disputing them), it is clear that the appellant has been informed by the municipality, and was aware prior to making the request, that the records he is seeking do not exist. As such, as was the case in Order MO-4519, I find that the appellant made the request for a purpose other than to obtain access, and it is therefore frivolous or vexatious within the meaning of section 4(1)(b) and Regulation 823.

[20] Based on the information provided by the municipality, the purpose of the appellant's request, although not stated directly by the appellant, appears to be to compel the municipality to reiterate to the appellant that the records do not exist. The records' lack of existence may potentially be relevant to the appellant's issues with how the island is maintained. However, these issues are not before me in this appeal, and are clearly outside of the IPC's jurisdiction. Rather, the issue before me is if the request is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act* and, as claimed by the municipality, made in bad faith or for a purpose other than to obtain access to information.

[21] As outlined above and discussed in Order MO-4519, an intention by the appellant to take issue with a decision made by the municipality, in this case the island's maintenance model and fee structure, is not enough to support a finding that the request is frivolous or vexatious under the *Act*. It is clearly the case that individuals file access requests under the *Act* in order to obtain documents that would assist them in various endeavours, such as litigation against municipalities. As described in Order MO-4412 and others, access to information legislation exists to ensure government accountability.⁷ However, based on the information the municipality provided, which the

⁷ This principle has also been articulated in, for example, Order MO-1924.

appellant did not dispute, I accept that the appellant has previously been told, through correspondence with municipal staff, court disclosures, and in response to previous access requests, that the information that he is seeking does not exist.

[22] As such, any response from the municipality would be a repeat of what they have already told the appellant. I find that if an access request is made for information that the requester knows does not exist, and he has previously been informed that it does not exist, it is being done for a purpose other than to obtain access. Here, as was the case in MO-4519, I am satisfied that this specific request is not being made to obtain access to the information requested but rather to demonstrate a point relevant to the appellant's other concerns about the municipality's actions or to inconvenience the municipality by requiring it to repeatedly confirm to the appellant that the requested information does not exist. As such, I find that it is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*.

[23] Having found that the request was made for a purpose other than to obtain access, I do not need to consider if it was also made in bad faith.

ORDER:

I uphold the decision of the municipality and dismiss the appeal.

Original signed by _____
Chris Anzenberger
Adjudicator

August 13, 2024