

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 MO-4646

Appeals MA22-00160 and MA22-00587

The Corporation of the Township of South Glengarry

April 23, 2025

**Summary:** The township received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to the appellant. The request also asked for information about the township's personal information banks and associated indices. The township attempted to clarify the appellant's access request but was not able to do so, and decided to deny the request on the basis that it was frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*. The appellant then submitted a substantially similar request, which the township also deemed to be frivolous or vexatious.

In this order, the adjudicator upholds both of the township's decisions, finding that the requests were made for a purpose other than to obtain access.

**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:** Orders MO-4159, PO-2381, and MO-3208.

### OVERVIEW:

[1] An individual submitted an access request to the Corporation of the Township of South Glengarry (the township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

Appeal MA22-00160/Request file number FOI 02-2022

Please identify and provide access to inspect and correct all of my personal information records from 2018-01-01 includes emails, TOMRMS, etc...also includes any personal information Bank index or records relating to my personal information and S35 links. NB: I cannot find Legal records, email records, TOMRMS records, etc. in the new PIB index. Please provide a sample record from each PIB or other record source, to help me understand PIB index."

[2] The township issued a decision for this request, stating that it is frivolous or vexatious pursuant to section 20.1(1) of the *Act* and refusing the request on that basis.<sup>1</sup> The individual then submitted the following request:

Appeal MA22-00587/Request file number FOI 07-2022

1. A list of all emails, with available fields to, from cc, bcc, subject, date, including listing attachments – from 2018/02/01 to date,

- that contain my name or my personal information

- to and from: MFIPPA Clerks, CAO, and elected officials.

2. Please identify all PIB records and indices which contain, relate to or will help me identify responsive records

[3] The township issued a decision for this request, stating that it was also frivolous or vexatious.

[4] Separate decision letters issued by the town with respect to each of the requests included explanations of why the township considered the requests to be frivolous or vexatious. The individual (now the appellant) appealed the decisions to the Information and Privacy Commissioner of Ontario (IPC).

[5] During mediation, the parties confirmed their positions. No further mediation was possible, and the files were moved to the adjudication stage of the appeals process. The adjudicator originally assigned to the appeals conducted a single inquiry to adjudicate the appellant's two appeals together. The township and the appellant each provided representations. The files were then assigned to me to complete the inquiry. I reviewed the parties' representations and determined that I did not need to seek additional representations.

[6] For the reasons that follow, I find that the appellant's requests were made for a

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<sup>1</sup> Section 20.1 sets out the information that an institution is required to provide when notifying a requester that it has deemed a request to be frivolous or vexatious under section 4(1)(b) of the *Act*.

purpose other than to obtain access, and I uphold the township's decisions.<sup>2</sup>

## **DISCUSSION:**

[7] The only issue in these appeals is whether the appellant's requests are frivolous or vexatious within the meaning of section 4(1)(b) of the *Act*. If they are frivolous or vexatious, the township is not required to respond to them.

[8] Section 4(1)(b) of the *Act* states:

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.

[9] 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.

[10] 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.

[11] An institution that concludes that an access request is frivolous or vexatious has the burden of proof to justify its decision.<sup>3</sup> 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."

[12] A request is made for a purpose other than to obtain access if the requester is

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<sup>2</sup> During the inquiry, the appellant also raised concerns about other township decisions. This order only addresses appeals MA22-00160 and MA22-00587.

<sup>3</sup> Order M-850.

motivated not by a desire to obtain access, but by some other objective.<sup>4</sup> 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.”<sup>5</sup> 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 manner.<sup>6</sup>

### **Township representations**

[13] The township provided an overview of the history of both requests and its reasons for finding them frivolous or vexatious. As explained below, I find that the requests were made for a purpose other than to obtain access, and accordingly I will only outline the parties’ representations that are relevant to this finding.<sup>7</sup>

[14] The township submits that after receiving the request for MA22-00160, it emailed the appellant to clarify and narrow the request, followed by an hour-long virtual meeting to discuss the request. The township submits that the request was overly broad and varied in scope, and despite multiple emails between the township clerk and the appellant, the appellant failed to identify the specific records that he sought. The township provided copies of the email correspondence between the clerk and the appellant documenting the township’s attempts to clarify the appellant’s request. The township also notes that during the process, prior to an access decision being issued, the appellant served the township with a statement of claim, alleging that the township had failed to respond to his access request.

[15] The township submits that, based on its “cumulative experience” in dealing with the appellant and the emails provided by the appellant, the appellant is “testing the system,” rather than identifying any specific records that he is seeking access to. It submits that it considered the nature and scope of the request, the purpose of the request, and the timing of the request, and concluded that the request was frivolous or vexatious.

[16] For the request for MA22-00587, made after the statement of claim was served, the township explains that it deemed the request frivolous and vexatious for similar reasons, specifically the timing of the request, previous correspondence with the appellant, and a failure by the appellant to identify specific records that he is seeking.

### **Appellant representations**

[17] The appellant submits that an abuse of the right of access as described by section

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<sup>4</sup> Order M-850.

<sup>5</sup> Orders MO-1168-I and MO-2390.

<sup>6</sup> Order MO-1924.

<sup>7</sup> The township also claimed that the requests were part of a pattern of conduct that amounts to an abuse of access, and that they would interfere with the operations of the township.

5.1(a) of Regulation 823 only refers to the access process under the *Act*, rather than additional proceedings in other forums. He submits that he has relied on the *Act*, previous IPC decisions, and “fundamental principles underlying the *Act*” in his dealings with the township. He also states that the township clerk’s “conduct and allegations” give rise to a reasonable apprehension of bias, and submits that the township’s decisions should be voided due to the clerk’s personal interest in whether his personal information records are disclosed. He explains that the clerk previously delegated authority to the deputy clerk due to a conflict of interest, and submits that decisions regarding records related to the clerk and ongoing litigation between the appellant and the township should be delegated to another individual.

[18] For appeal MA22-00160, the appellant submits that his request relied on Order MO-4159, which involved the same parties and addressed the township’s personal information banks. He submits that as a result of the order, the township staff should be fully versed with personal information banks and their corresponding indices. He submits that both of the township’s decisions appear to be adverse to the findings in MO-4159, as the order, when outlining the process for correcting information in the personal information banks, first required him to access the information. He submits that the request in MA22-00587 complied with Order MO-4159 by “identifying specific TOMRMS (S25) records and PIB indices” and asked the township to advise if it required additional information. He submits that his requests for clarification were ignored by the township, and states that the township clerk only provided suggestions on how to reformulate the email portion of his access request, while ignoring the “PIB portion.”

[19] The appellant takes issue with the clerk’s characterization of his request as an abuse of process, and states that he does not understand what more he could do to demonstrate that he is not being frivolous and vexatious. He states that he is seeking access to his own records, refuting the township’s allegation that he is “testing the system.” He says that the township’s allegations that his intent is to break or burden the system is contrary to his freedom of expression rights under the *Canadian Charter of Rights and Freedoms*.<sup>8</sup> Referring to Order MO-1924, he highlights that a requester’s motives such as seeking information to assist the requester in a dispute with the institution, or publicizing what the requester considers to be an inappropriate decision or process are examples of permissible motives. He also submits that the clerk made her decision in response to his complaint under the Ontario *Human Rights Code*,<sup>9</sup> which he submits is a reprisal under that Act.

[20] Referring to the request for MA22-00587, he submits that he formulated the request based on the township clerk’s advice. He submits that he is seeking a list of email records, and notes that he “requested/expected all attachments to be listed/identified ‘all PIB records and indices which contain, relate to or will help me identify responsive

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<sup>8</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24).

<sup>9</sup> R.S.O. 1990, c. H.19.

records.”

[21] He further submits that the township’s decision that ongoing litigation makes access requests frivolous or vexatious means that all future access requests under the *Act* will be denied, due to his ongoing litigation against the township.

### **Township reply representations**

[22] The township was asked to provide representations on the appellant’s allegations that the township clerk had a personal or special interest in the records. The township submits that the township clerk (who also drafted the representations) does not have a personal interest in whether the appellant’s records are disclosed. Referencing Order MO-3955, it describes a conflict of interest as “a situation in which a person, such as an elected official or public servant, has a private or personal interest sufficient to appear to influence the objective exercise of his or her duties.”

[23] The township explains that it deemed the request frivolous and vexatious due to the nature of the request, rather than any personal or special interest of the decision maker. It explains that it attempted to assist the appellant with formulating his request in a manner that could be responded to, including meeting with him for a one-hour virtual call. Referring to the request for MA22-00160, it explains that the request fails to identify the records the appellant is seeking, asks that the township identify records on his behalf, and asks that “sample records” be provided.

[24] The township submits that the appellant’s failure to “properly understand the *Act* and processes available to him do not constitute a conflict of interest on the [clerk’s] part.” It submits that the clerk’s attempts to assist the appellant demonstrate a good faith effort to help him understand the *Act*’s processes.

[25] For MA22-00587, the township submits that the appellant is asking the township to create and identify records on his behalf. It submits that the request was deemed frivolous and vexatious on this basis, rather than any personal or special interest. The township also notes that the clerk has previously identified a conflict of interest in her dealings with the appellant, and removed herself from the decision-making process where appropriate.

[26] Referencing Orders MO-3672 and MO-3208, the township submits that the IPC has previously determined that a conflict of interest is not established where a clerk in a small municipality is required to process requests for records relating to matters in which the clerk was involved. The township submits that this is also the case for the present appeal, and submits that a conflict of interest has not been established.

### **Appellant sur-reply representations**

[27] The appellant submits that the records he is requesting from the township contain the township clerk’s information, and the township’s “bald denial” of a conflict does not

rebut the conflict-of-interest claim. He references Order PO-2381, noting that the adjudicator reviewed the decision-maker's compliance with their obligations under the *Act* and the exercise of their discretion in good faith. He submits that the same obligations apply to the township clerk here.

[28] He submits that the clerk referencing his application under the *Human Rights Code* as a reason for finding the request frivolous or vexatious (in the context of the volume of applications brought by the appellant) constitutes a reprisal, contrary to section 8 of the *Human Rights Code*. He submits that this is not a reasonable ground to decide that his request is frivolous or vexatious. He also states that his small claims court action and human rights complaint against the clerk also give rise to a private pecuniary interest for the clerk. He cites MO-3955, and appears to state that the clerk did not comply with "precise procedural obligations." He submits that the records he is requesting are relevant to the other actions he has against the clerk, establishing the conflict of interest, with the clerk having an interest in the records not being disclosed.

[29] The appellant reiterated his concerns with the township's response to his access request, stating that he did not receive appropriate assistance throughout the process. He submits that the township stating that his request is frivolous and vexatious is itself an abuse of process. He states that a person well-informed of all of the context of the requests would reasonably perceive a conflict of interest on behalf of the township clerk.

### **Analysis and finding**

#### ***The appellant has not established that there is a reasonable apprehension of bias or a conflict of interest***

[30] Before considering the township's access decisions, I will first consider the appellant's allegations of a reasonable apprehension of bias and a conflict of interest on behalf of the clerk. Previous orders have considered the issue of conflict of interest or bias.<sup>10</sup> In determining if there is a conflict of interest, these orders considered the following:

- Did the decision-maker have a personal or special interest in the records?
- Could a well-informed person, considering all of the circumstances, reasonably perceive a conflict of interest on the part of the decision-maker?

[31] These questions are not intended to provide a precise standard for measuring whether or not a conflict of interest exists in a given situation. Instead, they reflect the kinds of issues that need to be considered in making such a determination.

[32] For the first question, the core of the appellant's submissions is that the records he is seeking involve the clerk. He further submits that the actions that he has initiated

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<sup>10</sup> See, for example, Orders M-640, MO-1285, MO-2605, MO-3208, MO-2867, and PO-2381.

against the clerk, which relate to his interactions with the township generally and the clerk specifically, and where he seeks damages, give rise to a pecuniary interest on behalf of the clerk.

[33] In Order PO-2381, referenced by the appellant, the adjudicator explained that the fact that a decision-maker had a personal involvement in a matter related to the request at issue was not sufficient to disqualify them from carrying out their statutory function of deciding access requests under the provincial equivalent of the *Act*, nor was the fact that the institution and the requester were involved in litigation related to the matter underlying the request. Similarly, as the township submits, the IPC has previously determined that a conflict of interest is not established where a clerk in a small municipality is required to process requests for records relating to matters in which the clerk was involved.<sup>11</sup>

[34] Adopting this reasoning, I find that a conflict of interest has not been established here. While the appellant has commenced multiple actions in different forums against the clerk, if this were sufficient to establish a conflict of interest, it would also apply to the township itself, which has also been named a respondent in the appellant's actions. Aside from a general assertion that the appellant is seeking damages from multiple parties, the appellant has not explained how the claims give rise to a conflict of interest on behalf of the clerk.

[35] Furthermore, if the only requirement for a conflict of interest was to initiate a claim in another forum against a decision-maker personally, this would enable requesters to essentially choose who they want their decision-maker to be in any given request. This is particularly the case for a small municipality, where, as was articulated in Order MO-3208, there is often a limited number of staff available for processing access requests, and these staff often have other roles in the municipality. Additionally, I find that the fact that the records the appellant is seeking relate to the township clerk (along with other individuals) is not enough to establish a conflict of interest or a reasonable apprehension of bias.

[36] Considering the evidence before me, I do not find that a well-informed person, considering all of the circumstances, could reasonably perceive a conflict of interest on behalf of the township clerk. In other situations with the appellant, the clerk found that a conflict of interest existed, and appropriately transferred the request to other municipal staff. Here, the clerk considered the situation before her and determined that there was no conflict of interest for these requests.

[37] I agree with the appellant's position that a human rights complaint or other actions issued against an institution is not a reason to determine that a request is frivolous or vexatious. However, I find that the frivolous or vexatious determination was not made because of a conflict of interest or another improper purpose, but because the appellant

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<sup>11</sup> Orders MO-3672 and 3208.



was making the requests for a purpose other than to obtain access.

[38] Reviewing the circumstances in their entirety, I note that the township clerk spent a significant amount of time assisting the appellant with formulating his access request in MA22-00160. When, despite numerous attempts to clarify the request, this was not successful, she determined that the request was frivolous or vexatious within the meaning of the *Act*. When the appellant then made a substantially similar request in MA22-00587, the clerk made the same determination. As I discuss below, I find that this was an appropriate decision in the circumstances.

***The requests were made for a purpose other than to obtain access***

[39] If a request is made for a purpose other than to obtain access, the institution does not need to demonstrate a “pattern of conduct.”<sup>12</sup> 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.<sup>13</sup>

[40] As the appellant states, 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.”<sup>14</sup> 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 manner.<sup>15</sup>

[41] In both of the requests at issue, the appellant is broadly seeking information that the township holds that relates to him. Notwithstanding that it is not clear how the second request would produce information that is not already captured by the first request, there are clearly portions of each request that the township can respond to. Reviewing the correspondence provided by the township and the appellant as well as the general representations, it is clear that the township attempted to clarify the first request with the appellant. Given the broad nature of the request, I agree that this was appropriate.

[42] As part of its clarification efforts, at one point the township clarified the request underlying MA22-00160 as follows:

Copies of emails containing my name, [appellant], from 2018-01-01 to present, from the accounts of current and previous CAOs, Clerks, Deputy Clerks, Councillors, Mayors and Deputy Mayors, including send/cc/bcc.

[43] In my view, this was a reasonable characterization of the first part of the appellant’s request. However, the appellant disputed this clarification, stating that it did

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<sup>12</sup> Order M-850.

<sup>13</sup> Order M-850.

<sup>14</sup> Orders MO-1168-I and MO-2390.

<sup>15</sup> Order MO-1924.

not appropriately capture the “PIB portion of the request.” Based on the information provided by the parties and the context surrounding the request, it is not apparent to me that the “PIB portion” of MA22-00160 could be characterized in a way that the township could actually respond to as part of the access process under the *Act*. In his correspondence with the township, the appellant indicates that he is seeking to understand how the township organizes its various personal information banks and associated indices, which were the subject of Order MO-4159.

[44] Reviewing the correspondence in its entirety, this appears to be the purpose of the “PIB portion” of the appellant’s request, where he repeatedly asks the township to assist him by identifying records and providing sample records to demonstrate how the township maintains its records. While there may be valid reasons for assessing the township’s record retention practices generally, it is not the purpose of the freedom-of-information process under the *Act*. As described above, accessing records to scrutinize an institution is a valid reason to seek access to records. However, regardless of the reason, a request must still be for records themselves, rather than to provide an overview of an institution’s record keeping practices. Here, I find that the appellant is seeking the latter, and as such, the request was made for a purpose other than seeking access.

[45] I make the same finding for MA22-00587, where the portion of the request that differs from the township’s attempt to clarify the MA22-00160 request solely relates to the township’s record organization practices, rather than specifying records for which the appellant is seeking access. While the township did not seek to clarify the request prior to declaring it frivolous or vexatious, given that it previously attempted to do so with a substantially similar request in MA22-00160, I find that it was not required to do so here.

[46] Having found that the requests were made for a purpose other than to obtain access, I do not need to determine if they are also an abuse of the right of access, or if they would interfere with the operations of the institution.

## **ORDER:**

I uphold the township’s decisions and dismiss the appeals.

Original Signed by: \_\_\_\_\_  
Chris Anzenberger  
Adjudicator

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April 23, 2025