

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4649

Appeal MA22-00087

The Corporation of the City of Brantford

April 30, 2025

Summary: An individual asked the Corporation of the City of Brantford for certain correspondence of a specified employee. The city denied the request on the basis that it was frivolous or vexatious (section 4(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act*).

The adjudicator finds that the request is frivolous or vexatious because it is part of a pattern of conduct that amounts to an abuse of the right of access. She upholds the city's decision but does not order the remedy the city seeks.

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

Orders Considered: Orders M-618, M-850, M-947, MO-1782, MO-4101, MO-4300, and PO-4189-F.

OVERVIEW:

[1] This order determines whether the request at issue is frivolous or vexatious under section 4(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] As background, the appellant in this appeal (the son) is a son of the appellant in Order MO-4300.

[3] Prior to the request at issue, the father filed two requests with the Corporation of the City of Brantford (the city) for correspondence from a specified individual. The city provided the father with responsive records in response to the first request. The city deemed the second request to be frivolous or vexatious because, among other reasons, it was duplicative of a previous request (the September request). The father appealed to the Information and Privacy Commissioner of Ontario (the IPC) the city's decision with regards to the September request. The appeal was considered in Order MO-4300, in which the adjudicator upheld the city's decision on the basis that the request was part of a pattern of conduct that amounted to an abuse of the right of access.

[4] The son filed with the city the following request (the October request) after the city issued a decision in response to the September request:

My request is to [the specified individual]

I request [specified individual], municipal employee, provide me with all correspondence including emails, text messages, municipal reports, voice mails, memorandums, or any information stored in various data files which he either was involved in either sending or received from any municipal staff member in respect to myself, [son's name], [specified street], [specified company] or my father [name of the father] during the period of August 1/21 to October 18/21.

[5] The city refused the October request on the basis that it was frivolous or vexatious. The city provided two reasons for its decision. First, it said that the son made the request to circumvent the city's decision in response to the September request. Second, it said that the October request was part of the father's pattern of conduct that amounted to an abuse of the right of access.

[6] The son disagreed with the city's decision and appealed it to the IPC. Mediation did not resolve the appeal, and the appeal was transferred to the adjudication stage of the appeals process where an adjudicator decided to conduct an inquiry under the *Act*.

[7] An IPC adjudicator sought, received and shared parties' representations in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*. The appeal was then transferred to me to continue the inquiry. I reviewed the materials filed by the parties and determined that I did not need to hear further from the parties before making my decision.

[8] For the following reasons, I find that the city has established that the October request is frivolous or vexatious within the meaning of section 4(1)(b) of the *Act* and uphold the city's decision.

DISCUSSION:

[9] The sole issue in this appeal is whether the October request is frivolous or vexatious.

[10] The frivolous and vexatious provisions of the *Act* provide institutions with a straightforward way of dealing with frivolous or vexatious requests. However, this power can have serious implications for access rights under the *Act*, and therefore institutions should not exercise their discretion under section 4(1)(b) lightly.¹ An institution that concludes that an access request is frivolous or vexatious has the burden of proof to justify its decision.²

[11] Section 4(1)(b) 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.

[12] 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.

[13] The institution is required to conclude that a request is frivolous or vexatious if it establishes that it is of the opinion on reasonable grounds that the request fits into one or more of the following categories:

- a. It is part of a pattern of conduct that,
 - i. Amounts to an abuse of the right of access, or
 - ii. Would interfere with the operations of the institution, or

¹ Order M-850.

² Order M-850.

- b. It is made in bad faith, or
- c. It is made for the purpose other than to obtain access.

[14] The city submits that the October request is frivolous or vexatious because it is part of a pattern of conduct that amounts to an abuse of the right of access and would interfere with the operations of the city. The city also submits that the son made the October request in bad faith or for the purpose other than to obtain access. Given my finding that the October 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 city's other arguments. For that reason, I focus the summary of parties' representations on arguments that are relevant to my finding.

City's representations

[15] The city submits that the October request forms part of a pattern of conduct of the father because the son and his father acted in concert. The city lists a number of factors to support its position.

[16] First, the city submits that the son's requests are similar in nature, content and style to the father's requests. The city refers to three of the son's requests: the October request and two other requests that, based on the city's access decision and representations, I understand were submitted after the October request. (Only the October request is at issue in this appeal.)

[17] With respect to the October request, the city says that it is duplicative of the father's two previous requests (including the September request), with the exception of a slight difference with respect to the applicable time period. Given the similarity between the October request and the father's requests, the city says that it is reasonable to infer that the father drafted the October request and asked the son to submit it in the son's name. With respect to all other son's requests, the city says that they are similar in nature to the father's requests: they seek access to the same types of records for the same periods and target the same city employees.

[18] Second, the city points to the fact that the October request was received five days after the city issued a decision with respect to the September request, arguing that the son filed the request to undermine the city's decision.

[19] Third, the city argues that the requests of the son and the father are interrelated. As evidence of this, the city describes a number of requests made to the city by the father, including one joint request made together with the son after the date of the October request. As further evidence, the city says that the father responded to the city's decision with respect to the October request.

[20] Fourth, the city says that the son and the father share information obtained through access requests. To support this contention, the city relies on email

correspondence between its Supervisor of Records, Print & FOI Services (the FOI Supervisor) and the father in which the father raised concerns about the city's decision with respect to the October request.

[21] Finally, in addition to familial relationship, the city says that the son and the father share business interests. The city notes that the father indicated to it that the son would be the owner of the specified company on behalf of which the father submitted numerous requests.

[22] The city submits that since the October request forms part of the father's pattern of conduct, the conduct of the son and the father must be viewed together. The city submits that the father's pattern of conduct constitutes an abuse of the right of access. The city says that the sheer number of the father's requests constitutes an abuse of the right of access. The city also says that the father's requests represent a significant portion of the city's overall requests. In addition, the city says that the father's requests are repetitive, excessively broad and unusually detailed. To support its position, the city provides the same affidavit of the FOI Supervisor that it provided as part of its representations in appeal that dealt with the September request and that resulted in Order MO-4300.

[23] The city also provides a separate affidavit of its FOI Supervisor sworn specifically for this appeal, in which the FOI Supervisor provides information about the number of requests the father submitted, in how many of those requests the city provided records, and how many requests the city deemed to be frivolous or vexatious.

[24] The city submits that if the IPC does not uphold the city's decision that the October request is frivolous or vexatious, it will provide the father with an avenue to abuse access regime and force the city to make decisions on requests that it otherwise would have deemed to be frivolous or vexatious. This, the city says, would be affront to justice and inconsistent with the access regime.

Son's representations

[25] The son says that on its own, the October request is not frivolous or vexatious.

[26] The son submits that the October request relates to his business interests and concerns. The son seeks information about the specified street because its conditions adversely affect a property that he and his father co-own. The son argues that in order to prevent the disclosure of the information about the conditions of the specified street, the city improperly relied on the father's conduct to deny the son access to information. The son says that the conduct of certain of the city's employees, particularly the city solicitor and the FOI Supervisor, is frivolous, vexatious, vindictive and contrary to the *Act*.

[27] The son concedes that he has common business interests with his father. I understand from the son's representations that he and his father co-own a property which is owned by the specified company. The property is near the specified street. In addition

to being a co-owner, the son is a property manager of the property. The son has also submitted an application with his father for a development of an adjacent lot.

[28] The son submits that despite common business interests with his father, he is independent of his father, and therefore it is improper to consider the October request in the context of his father's conduct. The son says that he is not aware of his father's requests. At the same time, he says that he is aware of the city's decision with regards to the September request but not Order MO-4300 that dealt with the appeal of the city's decision.

[29] The son argues that the *Act* does not prevent family members from submitting similar requests. Therefore, the similarity between his (either past or future) and his father's requests is irrelevant. The son adds that neither the IPC nor the city can prevent him from cooperating with his father with regards to their common business interests. The son submits that the city's attempt to prevent him from cooperating with his father is discriminatory under the *Ontario Human Rights Code* on the basis of family status.

[30] The son argues that the city is attempting to force him to abandon his requests. He provides an example of a letter he received from the city with respect to a separate request where the city extended the time for processing his request by 180 days. The son also says that the city has created a special protocol with respect to his requests.

[31] The son seeks that the IPC find that the city abused the appeal process by denying his access requests on the basis that they are frivolous or vexatious and/or improperly denied his access requests without providing sufficient reasons.

City's reply representations

[32] The city submits that the son's assertion that he is independent of his father is not credible. The city relies on some of the arguments it made in its initial representations and on two statements the son made in his representations. The city says that the son admitted that he was aware of the city's decision with respect to the September request before submitting his request. The city also says that the son admitted that his requests were similar to his father's requests, and that he would continue submitting such similar requests.

[33] The city says that prior to the October request, the son has not submitted requests related to his father or the specified company. The city argues that this fact, in and of itself, is evidence that the intent of the October request is to circumvent the city's decision with respect to the September request. The city also argues that the fact that the October request targets the city's specific employee further supports the conclusion about the intent of the request. The city notes that the son recently submitted a request seeking access to his father's communications with the city and one more request that is similar to a separate request of his father.

[34] In addition, the city points to the business relationship between the son and the

father, and the fact that the son and the father are in regular communication about their business interests.

[35] The city refers to the Order MO-4300 and says that the IPC has already found that the father engaged in conduct that is frivolous or vexatious. The city says that since the October request is almost identical to the September request at issue in Order MO-4300, the October request must be deemed to be frivolous or vexatious because otherwise the son would be able to circumvent the *Act* by engaging in an abuse of process.

[36] The city submits that its decision is not contrary to the *Ontario Human Rights Code*. The city provides representations in respect of this issue but also submits that it is the son who bears the onus of showing a *prima facie* case of discrimination. The city says that the son has not met the onus.

[37] The city denies the existence of a special protocol with respect to the son.

Son's reply representations

[38] The son was provided with an opportunity to respond to the city's reply representations but did not submit a response.

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

Pattern of conduct

[39] I find that the October request is part of the father's pattern of conduct.

[40] Prior IPC orders have considered conduct of individuals connected to a requester as a relevant factor in determining whether a request is frivolous or vexatious. Orders M-850 and M-947 support a conclusion that conduct of individuals connected to a requester could be relevant to determining whether there is a "pattern of conduct" or whether a request forms part of a "pattern of conduct." In Order M-850, former Assistant Commissioner Tom Mitchinson defined "pattern of conduct" as requiring "recurring incidents of related or similar requests on the part of the requester (*or with which the requester is connected in some material way*)."³ In Order M-947, Inquiry Officer Anita Fineberg considered whether the requests filed by an individual other than the appellant formed part of the appellant's pattern of conduct on the basis that the individual who submitted the requests acted in concert with the appellant.⁴

[41] In Order M-618, the conduct of an individual other than the appellant was relevant to determining the appellant's intent in filing access requests. Former Commissioner Tom Wright found that the appellant filed access requests with intent to burden the system

³ Order M-850.

⁴ Order M-947.

because he was acting in concert with an individual who publicly admitted that his goal was to harass government and burden or break down the system.⁵ In Order MO-4101, Adjudicator Marian Sami considered conduct of appellant's parents in determining whether the appellant's requests were filed for reason other than to obtain access.⁶

[42] In Order MO-4300, Adjudicator Steve Faughnan found that the September request formed part of the father's "pattern of conduct." In my view, the October request is part of the same pattern of conduct.

[43] First, the October request is materially the same as the September request. Both requests are for correspondence of a specified city employee. While the requests slightly differ with respect to the applicable time period, there is a consistency in the time period across the requests. Further, the style of the requests is virtually identical.

[44] The son does not dispute that there is similarity between the October and September requests. Instead, he argues that the similarity is not relevant to the issue in this appeal. Prior IPC orders considered similarity between an appellant's request and requests of other individuals in determining whether two individuals acted in concert.⁷

[45] Second, the October request is overall similar to the father's requests that were found by Adjudicator Faughnan in Order MO-4300 to constitute a "pattern of conduct." In reaching his conclusion that the requests at issue in MO-4300 (including the September request) form part of a "pattern of conduct," the adjudicator relied on the following city's evidence: the father's requests were for various types of correspondence between city employees as it relates to the father, the specified company and the son; the requests in many cases were duplicative, repetitive and unusually detailed; and the requests were based on earlier or concurrent requests. The October request seeks access to similar type of information as the father's requests that are part of a "pattern of conduct" and is similarly duplicative of prior requests.

[46] Third, the timing of the October request further supports a conclusion that the October request is part of the father's pattern of conduct. The son concedes that he was aware of the city's decision to deem the September request to be frivolous or vexatious. The son filed the October request shortly after the city's decision.

[47] Fourth, I am not persuaded by the son's assertion that he submitted the October request to obtain information about the specified street. Given the events preceding the October request, the son would have already had access to most of the information that the October request seeks. Prior to the September request, the father made a request to the city for very similar information and received responsive records. I understand from the son's representations that he and his father share same business interests and concerns about the specified street. It is also evident that they discuss their shared

⁵ Order M-618.

⁶ Order MO-4101.

⁷ Orders M-618 and M-947.

interests and concerns. Therefore, it is reasonable to conclude that the father would have shared with the son records he received from the city in response to his similar request.

[48] Further, the evidence does not support a conclusion that the son was previously interested in the information about the conditions of the specified street. I accept the city's assertion that the October request was the first request the son submitted about the specified street. Despite the October request being the son's first request about the specified street, it seeks very specific information: correspondence of one specific employee. It is also telling that it was the father, and not the son, who questioned the city's decision to deem the October request to be frivolous or vexatious.

[49] The son submits that the city or the IPC cannot prevent him and his father from cooperating with each other with respect to their business interests. Nothing in this order prevents the son from discussing his business interests with his father. A finding that the October request is frivolous or vexatious is only relevant to the son's right of access under the *Act*.

The pattern of conduct that constitutes an abuse of the right of access

[50] Having found that the October request is part of the father's pattern of conduct, the next issue to determine is whether the pattern of conduct constitutes an abuse of the right of access.

[51] The IPC has found that the focus of the assessment of whether a pattern of conduct constitutes an abuse of the right of access should be on the cumulative nature and effect of a requester's behaviour. The number of requests, nature and scope of the requests, purpose of the requests, and timing of the requests may be relevant in determining whether a pattern of conduct amounts to an "abuse of the right of access."⁸ Other factors specific to the case can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.⁹ In many cases, ascertaining a requester's purpose requires the drawing of inferences from their behaviour because a requester seldom admits to a purpose other than access.¹⁰

[52] In MO-4300, Adjudicator Faughnan found that the father's pattern of conduct amounted to an abuse of the right of access. The adjudicator considered that the father submitted an excessive number of requests; the nature and the scope of the father's requests were excessively broad; and the father submitted the requests to burden the system.

[53] The finding in MO-4300 about the father's pattern of conduct is applicable and relevant to this appeal because I have found that the October request is part of the father's pattern of conduct. Given that the October request is part of a pattern of conduct

⁸ Orders M-618, M-850 and MO-1782.

⁹ Order MO-1782.

¹⁰ Order MO-1782.

that amounts to an abuse of the right of access, it is frivolous or vexatious for the purpose of section 5.1 of Regulations 823.

[54] I have also considered son's other arguments. The son did not provide any evidence or submissions to support his assertion that the city discriminated against him. Similarly, the son's suggestions that certain city employees acted in bad faith, including by imposing certain communication protocols, is speculative and not grounded in evidence. With respect to the son's argument that the city improperly denied his access requests, my finding above upholds the city's decision with respect to the October request. City's decisions with respect to other son's requests are not before me.

Remedy

Parties' representations

[55] The city submits that it does not seek an order preventing the son from making access requests. Rather, the city seeks an order preventing the son from duplicating the father's requests, acting in concert or as an agent for his father in access requests, and requesting access to records that have been previously denied or produced to his father.

[56] Specifically, the city seeks the order that:

- a. Limits the son to one active access request and one active appeal with the IPC in regard to any form of a record passing between any current or former city employee, contractors, volunteers or elected officials about specified streets, specified company, himself and his father;
- b. Requires the son to limit his requests to two parts, or to choose two parts of a multi-part request to proceed; and
- c. Places on hold all existing IPC appeals and permits the son to inform the IPC which appeal he wishes to proceed. Only one appeal will proceed at a time.

[57] The son submits that the IPC should not impose any restrictions on him and should order the city to conduct a search for responsive records.

[58] In response to the son's arguments, the city relies on several prior IPC orders for the proposition that the IPC can impose limits on multiple actors where those actors acted in concert.¹¹ The city says that the orders confirm that the IPC can tailor a remedy in a manner that prevents the abuse of the access process. The city also says that the orders confirm that the IPC can consider the conduct of individuals who act in concert with each other in determining appropriate remedy.

[59] The city emphasizes that the remedy it seeks does not fully restrict the son's ability

¹¹ The city relies on Orders M-618, MO-4241, and MO-4257.

to submit access requests. It permits the son to make requests that pertain to his own interests.

[60] The city argues that it has provided evidence to support a conclusion that if the IPC does not grant the order that it seeks, the son will continue submitting requests on his father's behalf. This, in turn, will circumvent Order MO-4300, which limited the ability of the father to submit access requests, leading to an unreasonable and untenable result.

Analysis and finding

[61] I find that the appropriate remedy in this appeal would be to uphold the city's decision to deem the October request to be frivolous or vexatious and dismiss the appeal. I do not find that it is appropriate at this time to impose the remedy the city seeks.

[62] Where an access request is found to be frivolous or vexatious, the IPC may determine an appropriate remedy, which may include limiting the number of active requests and appeals the appellant may have in relation to a particular institution.¹² However, conditions placed on a requester's right of access should be carefully considered.¹³

[63] I am not satisfied that it is appropriate in the circumstances of this appeal to impose restrictions on the son's requests to the city or appeals to the IPC. The city's decision concedes that the October request is the son's first request to the city. In my view, one access request in the circumstances of this appeal does not warrant a remedy that limits the son's right of access to the extent requested by the city.

[64] Based on the parties' representations, I understand that during the appeal, the son submitted at least four more requests. I accept the city's evidence that one of those requests was submitted by the son jointly with his father, and another one is duplicative of his father's request. I do not have evidence about the nature of the third request. The son's fourth request is for communications of his father. Even if I consider these four requests, I am not satisfied that these requests justify imposing the remedy the city seeks.

[65] I acknowledge the city's concerns that without the remedy it seeks, the son may continue to submit requests that are duplicative of his father's requests in an attempt to circumvent city's decisions with respect to father's requests. In my view, there is insufficient evidence before me for me to reasonably conclude that the son will act in this manner. While the son references future requests in his representations, it would be improper for me to rely on a speculation to impose a remedy that would restrict the son's right of access at this time. However, there is nothing to preclude the city from seeking the same remedy in the future.

¹² Orders MO-1782 and PO-4189-F.

¹³ Order PO-4189-F.

ORDER:

I uphold the city's decision and dismiss the appeal.

Original Signed by: _____

Anna Kalinichenko
Adjudicator

April 30, 2025