

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

Request for Authorization to Disregard Access Requests
under section 55(1) of the
Freedom of Information and Protection of Privacy Act

Alberta Justice and Solicitor General
(OIPC File Reference 006487)

February 12, 2018

Between September 7, 2017 and November 9, 2017, I received three requests from Alberta Justice and Solicitor General (Alberta Justice) under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to disregard a total of thirteen access requests received from an individual whom I will refer to as the Applicant.

Commissioner's authority

Section 55(1) of the FOIP Act gives me the power to authorize a public body to disregard certain requests. Section 55(1) reads:

55(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if

- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests, or*
- (b) one or more of the requests are frivolous or vexatious.*

Alberta Justice is a "public body" as defined by section 1(p)(i) of the FOIP Act, as it is a department of the Government of Alberta. "Head" in relation to a public body is defined in section 1(f)(i) of the FOIP Act to mean the member of Executive Council (the Minister) who presides over that department. The Minister of Alberta Justice and Solicitor General is the head of Alberta Justice.

The "head" (Minister) of Alberta Justice may make a request under section 55(1). The Minister typically has an employee of Alberta Justice make that request. Regardless of whether the Minister or the employee makes the request, my decision under section 55(1) is issued to the Minister of Alberta Justice, and not to the employee.

Background

On September 7, 2017, I received a request from Alberta Justice under section 55(1) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to disregard nine access requests received from the Applicant.

By letter dated September 19, 2017, my Office gave the Applicant the opportunity to provide comments regarding Alberta Justice's request. The deadline for the Applicant's comments was October 17, 2017.

On October 3, 2017, I received a second request from Alberta Justice to disregard an additional access request received from the Applicant. Alberta Justice asked to add this new access request to its original request under section 55, and added additional information about that access request.

The Applicant requested and was granted an extension to November 14, 2017 to provide a submission to my Office.

Subsequently, on November 9, 2017, I received a third request from Alberta Justice to disregard three additional access requests received by Alberta Justice from the Applicant on November 2, 3 and 8, 2017. Alberta Justice asked to add these three new access requests to its original request under section 55. It also asked to rely on its arguments outlined in its original request to disregard, and provided a further comment on these three access requests.

The Applicant was granted an extension to November 28, 2017 to provide a submission to my Office, and provided a submission on that date. My Office then sent a letter to Alberta Justice and the Applicant, advising that submissions were closed, and that no further submissions would be accepted unless specifically required or requested by me.

The Applicant's thirteen access requests that are the subject of Alberta Justice's three requests under section 55 are summarized below:

File number	Access request	Summary of records requested	Date range of records
2017-P-0680	August 9, 2017	...any and all emails (to and/or from), texts (to and/or from), BBM (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication of any kind, in any format, of the following individuals:	January 1, 2017 to present (August 9, 2017)

		-[name]..., Clerk Supervisor, General Filing Desk...of the Calgary Court Centre...; -[name] , Judicial Assistant to Madam Justice [name]...; involving myself [name]...	
2017-P-0683	August 10, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication of any kind, in any format, of the following individuals: -[name]..., member of security staff at the Calgary Court Centre...; -any and all security staff at the Calgary Court Centre...; involving myself [name]...	August 1, 2016 to present (August 10, 2017)
2017-P-0684	August 10, 2017	...any and all records (regardless of format) and/or related audio in relation to outgoing calls from the phone number...(Calgary Court Centre) or internal numbers linked and/or related to the phone number...made to the number ...[name]; involving myself [name]...	August 9, 2017 to present (August 10, 2017)
2017-P-0686	August 9, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication of any kind, in any format, of the following individuals: -any and all Sheriffs at the Calgary Court Centre...;	January 1, 2017 to present (August 9, 2017)

		involving myself [name]...	
2017-P-0687	August 10, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication of any kind, in any format, of the following individuals: -[name], Administrative Assistant to [name] at the Calgary Court Centre...; involving myself [name]...	August 1, 2016 to present (August 10, 2017)
2017-P-0699	August 12, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), iMessages (to and/or from), audio and/or video, Livelink communications, records of any phone calls, briefings, transcripts, diaries, chat room (to and/or from), messenger service communication in any third party app (to and/or from), faxes, letters of any kind, written correspondence of any kind, files of any kind, written material of any kind, attachments to emails or any other type of attachments, PDFs, drawings, photos, reports of any kind, reporting(s); consultations, interpretations of any kind, reviews, written summaries of any kind, analyses of any kind, assessments of any kind, decisions of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication, records and/or material of any kind in any type of format of the following individuals: -[name], FOIP & Records Management... -[name], Director & FOIP Coordinator... -[name], Assistant Deputy Minister / CIO, Corporate Services Division... involving myself, [name]...	November 1, 2016 to present (August 12, 2017)
2017-P-0700	August 12, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind,	February 16, 2017 to present (August 12, 2017)

		documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), communication of any kind, in any format, of the following individuals: -[name], Probation Officer, Alberta Solicitor General and Public Security,... -[name], Probation Officer, Alberta Solicitor General and Public Security,... involving myself [name]...	
2017-P-0749	August 29, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), records and/or communication of any kind, regardless of format, of the following individual: -[name], Crown prosecutor; involving myself [name]..., and/or my two children, [name]... and/or [name]...	November 18, 2016 to present (August 29, 2017)
2017-P-0751	August 29, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material or any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any	August 2, 2014 to present (August 29, 2017)

		and all meetings (in person and electronic/video/teleconferences), records and/or communication of any kind, regardless of format, of the following: (the Crown Prosecutor’s Office, Alberta Human Services, Alberta Justice, Alberta Solicitor General and Public Security), and HomeFront; involving myself [name]..., and/or my two children, [name]... and/or [name]...	
2017-P-0861	September 28, 2017	...any and all emails, texts, bbm, LiveLink messenger, iMessage, SMS, MMS, any other type of chat room or messenger services, comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, draft documents and materials of any kind, briefing notes, files of any kind, records of phone calls, written material of any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), requests for meetings of any kind, records and/or communication of any kind, regardless of format, involving the following individual: -current “head” of the public body – Justice and Solicitor General (as defined in the Freedom of Information and Protection of Privacy Act of Alberta (“FOIP Act”).	June 1, 2016 to present (September 28, 2017)
2017-P-0929	November 2, 2017	...all audio and/or video and/or photos and/or surveillance of any kind in any format from the Calgary Court Centre from within and, outside of, courtroom 1202... involving myself, [name]...	October 19, 2017 – between the time period of 13:00 – 14:15
2017-P-0939	November 3, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material of any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and	October 1, 2017 to present (November 3, 2017)

		electronic/video/teleconferences), records and/or communication of any kind, regardless of format, of the following: Sheriff [name]...(Calgary Court Centre); Sheriff [name] (Calgary Court Centre); Sheriff [name] (Calgary Court Centre); involving myself, [name]...	
2017-P-0941	November 8, 2017	...any and all emails (to and/or from), texts (to and/or from), bbm (to and/or from), LiveLink messenger (to and/or from), any other type of chat room or messenger service (to and/or from), comments in any type of format, audio and/or video, written correspondence of any kind, documents of any kind, briefing notes, files of any kind, records of phone calls (to and/or from), written material of any kind, letters, drawings, photos, faxes, reports of any kind, reporting(s), surveillance of any kind, consultations, interpretations of any kind, reviews, written summaries of any kind, decisions of any kind, analyses of any kind, assessments of any kind, notes of any kind, minutes of any and all meetings (in person and electronic/video/teleconferences), records and/or communication of any kind, regardless of format, of the following: [name], Director, JSG PSU; involving myself, [name]...	March 1, 2017 to present (November 8, 2017)

Alberta Justice's submissions

In the September 7, 2017 submission that accompanied Alberta Justice's first request under section 55 of the FOIP Act, Alberta Justice says that, prior to these nine access requests, it had received six requests from the Applicant, dating back to November 2016. Of those, three are at review before my office (Case Files #005482, #005814, and #006042). Some of the records requested have been requested in previous access requests. Alberta Justice provides the following specific examples:

In two previous requests the Applicant requested records from [name of individual]

- 2017-P-0124, August 1, 2015 to February 23, 2017
- 2017-P-0342, February 1, 2017 to May 8, 2017. *Under OIPC Review 005814*

Now in new request:

- 2017-P-0687, August 1, 2016 to August 11, 2017, the Applicant is requesting records from [name of individual]'s assistant.

The time frames for the new and previous request overlap substantially.

Alberta Justice says that all of the Applicant's requests specifically name multiple employees from multiple program areas within Alberta Justice, as is the case with most of the new access requests. Alberta Justice says that, with three exceptions, it has noted a pattern to the Applicant's access requests of receiving records from one request and then making a new request for records of any individuals whose names appear in those records.

The three exceptions are the Applicant's having requested records from all Sheriffs and all staff in the Crown Prosecutor's Office, Alberta Justice, and Alberta Justice and Public Security (as well as Alberta Human Services and Homefront). Alberta Justice says, in part:

Further, in new request 2017-P-0686, the Applicant is requesting records from every Calgary Court Centre Sheriff and in new request 2017-P-0683, the Applicant is requesting records from every Calgary Court Centre Security Staff (this includes all Sheriffs). The Applicant does not provide any clarification or an issue, but rather the applicant is requesting a search be conducted by any and all Sheriffs and security staff of the Calgary Court Centre. His request is for all records, and would be in excess of 125 Calgary Court Centre employees. Additionally, these requests span a total of an overlapping 12 months. In totality, these requests would unreasonably interfere with the operations of the program area.

In new request 2017-P-0751, the Applicant is requesting all the same information as 2017-P-0683 and 2017-P-0686 however; [sic] he has included ALL Crown Prosecutors and ALL staff for Justice and Solicitor General. Search for all records within JSG would include nine divisions including, Sheriff's Branch and Crown Prosecution. The time frame for the request is four years.

Searching for and providing records responsive to these requests would: (1) take the Sheriff's [sic] away from their regular duties of providing security at the Calgary Court Centre, which may negatively impact the safety of the occupants (visitors, prisoners and staff). (2) Take Crown Prosecutors and their critical support staff across the province away from the essential services they provide in prosecuting criminal and civil cases. (3) Searching and providing records for the entire ministry, approximately 8000 staff members, would greatly interfere with the operation of JSG. Given the above, it may be necessary for the employees to complete the search outside normal working hours. This would require the Public Body to compensate those employees for overtime.

Based on the large scope and number of the Applicant's requests, it is unknown the amount of records that would be located for each new request, but given the details of each request it is conceivable that it could be a very large number. Due to the complex nature of this Applicant's history with JSG, and the amount of time taken to process the Applicant's past requests, it is reasonable to expect it will take longer than normal to review each page and therefore respond to the Applicant.

Nine requests submitted within a 2.5 week time period by the Applicant is a disruption to the operations of the FOIP unit. The Public Body advises that it would have to assign at least one advisor and one administrative support staff fulltime just to process these requests, taking them away from all other duties. As these requests would all be due around the same time, in order to be in compliance with the legislation, it would likely be necessary to temporarily re-assign further unit resources to assist with processing.

Efforts have been made in the past, to clarify and assist the Applicant in providing records. In one case, it resulted in his request being abandoned. Therefore, the Public Body believes that attempting to request clarification would not be feasible as the Applicant is aware of the confusing nature of his requests, and this forms part of the vexatious nature of his requests.

Finally, the Applicant has repeatedly demonstrated vexatious behaviour towards staff within JSG. As noted by the Commissioner in response to previous Section 55 #F3885, "A request is 'vexatious' when the primary purpose of the request is not to gain access to information but to continually or repeatedly harass a public body in order to obstruct or grind a public body to a standstill".

The Applicant has had multiple inquiries with numerous program areas and employees within JSG. Although each program area has attempted to resolve these inquiries [sic], the Applicant remains unsatisfied with the outcome and decisions made and continues to pursue these matters within each JSG

program area. Many program areas have done all they can to resolve the Applicant's inquiries and have had to advise him that no further communication regarding the issue will be provided. Based on the Applicant's past history and demonstrated behaviour, it is therefore anticipated that on-going requests will result in continued dissatisfaction and the Applicant will revert to seeking employee names which in our opinion is to further harass and intimidate. It is the Public Body's position that this is an abuse and misuse of the right to request information under section 6(1) (Information rights) of the *FOIP Act*.

Conclusion:

It is the Public Body's position that these requests are repetitious, systematic and vexatious in nature. To respond to these requests, would create a burden which would unreasonably interfere with the operations of the Public Body and take away time and resources that would normally be used to serve those who use the legislation and resources appropriately.

In the October 3, 2017 submission that accompanied Alberta Justice's second request under section 55 of the FOIP Act, Alberta Justice asks to rely on the arguments outlined in its first request under section 55, and also asks to add additional information. Alberta Justice says, in part:

...On September 7 and 8th, the applicant [sic] made a number of telephone calls and emails about the Public Body's request to the OIPC for authorization to disregard his access requests. On September 8th, I telephoned the applicant and advised him that he should raise any concerns with this process to the Office of the Information and Privacy Commissioner.

On September 21, 2017, the applicant sent emails requesting answers to a number of questions. This included an email for information about the "Head" of the Public Body. On September 28th, the Public Body emailed the applicant regarding his September 21st email and advised him that he should contact the OIPC directly in regard to his questions and concerns, as it related to the Section 55 request. (Copy attached)

The applicant's September 28th access request is for similar information as the questions in the email of September 21st.

Therefore, it is the position of the Public Body that the September 28th access request is motivated by the applicant's various attempts to obtain information he feels is necessary to respond to the Office of the Information and Privacy Commissioner. In this case, information related to the "Head" of the Public Body he asked about on September 21st.

The Public Body acknowledges that no response was sent regarding the September 21st request for answers to questions, until after the September 28th access request was made. However, the Public Body maintains that the applicant has previously been advised that he should direct his comments/questions to the OIPC in accordance with the requirements of the OIPC.

The Public Body believes this advice is consistent with the OIPC's own Practice Note: Authorization to Disregard Requests, which directs individuals to provide submissions directly to the Commissioner in response to a public body's request under section 55.

The Public Body maintains that the applicant is aware that he can and should make his submissions to the OIPC on these matters, but chooses to engage the Public Body for vexatious reasons.

The Public Body believes this is also necessary as any response to the applicant generates further questions and comments. As evidence, attached is the applicant's reply to the September 28 email

directing him to contact the OIPC. Even with the direct request, the applicant makes numerous statements and asks further questions.

Conclusion:

It is the Public Body's position that this new request is related to his previous access requests and the Public Body's section 55 request for authorization to disregard those access requests and as such is vexatious in nature.

In the November 9, 2017 submission that accompanied Alberta Justice's third request under section 55 of the FOIP Act, Alberta Justice says, in part:

The Public Body would like to rely on the arguments outlined in its original request for authorization to disregard the access requests.

We require a decision from the OIPC on these matters. These three new access requests occurred while we are requesting a decision under section 55 in regard to his other access requests. As such, it is the position of the Public Body that all of these requests meet the requirements outlined in section 55.

The Applicant's submissions

The Applicant provided his submission to my office on November 28, 2017. In his submission, the Applicant says, in part:

First off, I will simply state that the request of [name of individual] is nonsensical and without merit – moreover, [name of individual] has only made such a request once, I, [name of Applicant], had made an access request to JSG involving himself, certain members of his own staff and his direct supervisor, [name of individual]. It is very clear that [name of individual] (or other parties within JSG) have something to hide. I, [name of Applicant], have already come across much concerning material involving various staff of JSG in prior access to information requests. Such material has led me to file valid formal complaints against certain staff, including certain Sheriffs at the Calgary Court Centre. All of which is well within my right as a citizen and a taxpayer. [Name of individual] is hindering my ability to exercise my own rights; more importantly, [name of individual] has clearly and intentionally interfered with formal investigations that fall under the Peace Officer Act. This is illegal. [Name of individual] has intentionally broken various sections of the FOIP Act and wishes to hide various actions of himself and other staff members of JSG (as well as among other public departments). All of this has been clearly demonstrated by the ongoing actions of [name of individual].

Furthermore, [name of individual] was a prior employee of the OIPC of Alberta and personally knows current workers of the OIPC extremely well and [name of individual] was a prior close colleague. This information was verbally provided to me by a long term current employee of the OIPC to which I have already complained about to the Commissioner directly. No evidence need to be provided by myself as it is a simple fact that the OIPC of Alberta must admit. Hence, I will not provide any evidence of [name of individual]'s past relationship with the OIPC as his prior employee [sic] – although, this evidence has been verified and is public.

[Name of individual]'s primary argument for the section 5([sic] request is that my access to personal information requests will create too much work for his department and cause an interference within JSG. This, again, is nonsensical. The JSG FOIP Unit exists to provide information under the FOIP Act. Access requests cannot simply be denied because they take effort. This would be a very dangerous area to introduce if such an excuse could arbitrarily be used against each and every access request. Various individuals within the Canadian government have expressed this same cause for concern with respect to

access requests. Certain access requests by journalists, etc. can be enormous in time and effort; nonetheless, they must be fulfilled by law. To dissuade or disregard such requests is an attack on democracy. Therefore, the main argument of [name of individual] simply does not hold up. Also, I would be most willing to clarify certain of my prior access requests; unfortunately, [name of individual] did not provide me with such an opportunity – he went directly to a section 55 request and my requests have been on hold as a result.

[Name of individual] also states that some of my requests are repetitive or overlap. That is not fully correct, I have made requests of certain employees of JSG and of their assistants – involving myself. These are different requests, involving different employees and they do not overlap. Also, in certain requests my time periods overlapped because I had thought that it would be easier to combine such a request into one longer list of individuals – I was actually attempting to reduce work for the FOIP Unit – instead [name of individual] has attempted to use the overlap against me as part of his section 55 rationale to the Commissioner.

[Name of individual] has stated that one request would require a search involving over 8,000 employees of JSG. Given the information that I already possess from prior FOIP requests and, responses thereto, I am quite certain that [name of individual] could significantly reduce such a search – [name of individual] never provided me with an opportunity to help him reduce the workload related to this specific request. [Name of individual] has also never explained why he took such a step and did not contact me directly as he is required to do so under the Act and within his legislated duties. Instead, [name of individual] went directly to a section 55 request to the Commissioner of the OIPC.

Please consider this and, my subsequent emails, as my response to the OIPC's request for my comments in relation to [name of individual]'s section 55 initial request (along with his subsequent requests related to same).

Application of section 55(1) to the access requests

1. Section 55(1)(a) – repetitive or systematic in nature

In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007, available on my Office's website at www.oipc.ab.ca), the former Commissioner said that “repetitious” is when a request for the same records or information is submitted more than once, and “systematic in nature” includes a pattern of conduct that is regular or deliberate.

In *Request for Authorization to Disregard an Access Request – Alberta Motor Association* (March 8, 2010, available on my Office's website at www.oipc.ab.ca), the former Commissioner decided that where a person applying to disregard an access request relies on previous complaints and requests for review made by a respondent as part of the evidence to be considered by the Commissioner, the Commissioner would consider that evidence because it was relevant to his analysis of whether the application should be granted. In that case, the Commissioner included a brief summary of the issues the respondents had brought before his Office, as against the person applying to disregard the access request.

I will also consider such evidence, since matters that an individual has brought to my Office as against a public body may be relevant where those matters demonstrate a pattern or type of conduct under consideration for the purposes of section 55(1) of the FOIP Act.

The Applicant's matters concerning Alberta Justice appear to go back to August 2, 2014, based on the earliest date range of records that the Applicant has requested. Since 2016, the Applicant has brought

four matters to my Office that concern Alberta Justice (Case Files 004938, 005482, 005814 and 006042). Two of those matters are at mediation/investigation, one has been received in Adjudication, and an order has been issued on one other (Order F2017-35, a deemed refusal order). All of these four matters concern access requests made to Alberta Justice.

In my view, the pattern appears to be the same for each of these access requests, namely, the Applicant has contact with particular individuals, and then makes access requests for records about himself and often his children, in relation to those individuals. In Alberta Justice's view, the Applicant makes access requests in relation to individuals whose names appear in records that he receives. In either case, I note that there is duplication of some names in these access requests and the ones that are currently the subject of the section 55(1) request, although the date range is different. It may be that the Applicant either has ongoing contact with those individuals, or is seeking to know whether those individuals are generating any further records about him.

Alberta Justice's evidence before me is that some of the Applicant's access requests are repetitious, as the Applicant has asked for records relating to certain employees within units of Alberta Justice and has also asked for records relating to all employees in those units. I agree that the Applicant's access requests are repetitious to the extent that specific individuals would be included within the larger access requests, depending on dates. The Applicant says that he is prepared to narrow those larger access requests. Later in this decision, I will deal with the Applicant's offer to narrow those requests.

There is no doubt that all of the Applicant's access requests are systematic in nature. The access requests are part of a pattern of conduct in which the Applicant appears to make access requests for his personal information in relation to every employee either with whom he has contact or whose name appears in records. I note that the Applicant does not deny Alberta Justice's submission that the Applicant asks for records concerning those individuals whose names appear in any records the Applicant obtains in an access request.

I find that the Applicant's access requests are systematic in nature, as they are part of a pattern of conduct that is regular or deliberate.

Under section 55(1)(a), the requests must also unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests.

2. Section 55(1)(a) – unreasonably interfere with the operations of the public body

This provision requires that Alberta Justice provide me with evidence about how the particular access requests it is seeking to disregard will unreasonably interfere with its operations. I have set out that evidence above.

I agree with Alberta Justice that tying up all 125 Sheriffs in the Calgary Court Centre so that they can search their own email addresses for records encompassing a one-year period would unreasonably interfere with the operations of Alberta Justice (Access Request 2017-P-0686). The same can be said of that part of the Applicant's access request for records of "any and all security staff at the Calgary Court Centre" (Access Request 2017-P-0683).

I agree with Alberta Justice that having all 8,000 of its employees search for records encompassing close to a four-year period would unreasonably interfere with the operations of Alberta Justice (Access

Request 2017-P-0751). My finding is based on the Applicant's own submission, in which the Applicant says that, given records "...I already possess from prior FOIP requests...", he is prepared to narrow that access request. It would unreasonably interfere with the operations of Alberta Justice to require Alberta Justice to respond to such an extensive access request when the Applicant is prepared to narrow the request and, moreover it is evident from the bulk of the Applicant's access requests that he is primarily interested in records in relation to specific individuals.

Furthermore, in 2017-P-751, I note that the Applicant has improperly asked Alberta Justice for access to records of Alberta Human Services (another public body) over which Alberta Justice would not have custody or control.

I find that Alberta Justice has met its burden of proving that Access Requests 2017-P-0686, 2017-P-0751 and that part of Access Request 2017-P-0683 dealing with records of "any and all security staff" would unreasonably interfere with the operations of Alberta Justice. Therefore, section 55(1)(a) is met for those access requests.

However, I find that Alberta Justice has not met its burden of proving that the remaining access requests would unreasonably interfere with the operations of Alberta Justice. I will consider the remaining access requests below.

3. Section 55(1)(a) – amount to an abuse of the right to make those requests

In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007), the former Commissioner defined "abuse" to mean misuse or improper use. In that case, the Commissioner found that the applicant was not using the FOIP Act for the purpose for which it was intended, but as a weapon to harass and grind the College. He found that the applicant's requests were part of a long-standing history and pattern of behavior designed to harass, obstruct or wear the College down, which amounted to an abuse of the right to make those requests.

My Office's 2011-2012 Annual Report summarized the Court's judicial review of a section 55 decision of the former Commissioner in *Clarence J. Bonsma v. The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office* (Bonsma, an oral decision of Clackson J. in Action Number 1103-05598), as follows:

Alberta Employment and Immigration (the Public Body) applied to the Commissioner under section 55 of the FOIP Act to disregard the Applicant's access request. The Commissioner decided to authorize the Public Body to disregard the request.

On judicial review of the Commissioner's decision, the Court of Queen's Bench quashed the decision. The Court said that if requests are not the same, then the fact that there are numerous requests made regularly cannot run afoul of section 55 in the absence of compelling evidence of ulterior improper motive. That is where the second part of section 55 becomes important. The ulterior motive is what establishes the abuse.

Since the request here was not repetitious, summary dismissal was dependent upon regular and deliberate requests and motivation. On the record, there was no basis to conclude that the Applicant was improperly motivated. Therefore, the Commissioner's conclusion that the Applicant's request was abusive was not reasonable.

Furthermore, the Court expressed its view that a person defending what amounted to a summary dismissal application under section 55 need do no more than show merit. In other words, that person did not have a burden to show that the request was for a legitimate purpose.

Based on the Court's decision in *Bonsma*, I find that Alberta Justice has the burden to prove that the Applicant's access requests amount to an abuse.

There is nothing on the record in Alberta Justice's application to establish that the Applicant has an ulterior improper motive for making the access requests. The Applicant has explained that he makes access requests to determine whether there is wrongdoing. The Applicant says that he has used that information to file formal complaints against certain staff. The Applicant has not told me the results of those complaints.

However, my finding that the Applicant does not appear to have an ulterior improper motive does not end of the issue of whether there is abuse. Section 55(1)(a) clearly contemplates that the systematic nature of access requests, in and of themselves, may amount to an abuse of the right to make those access requests. Section 55(1)(a) says nothing about motive, although an improper motive would clearly establish abuse.

As stated above, the former Commissioner defined abuse to mean misuse or improper use. The issue I have to decide is whether there is something about the systematic nature of the Applicant's access requests that is a misuse or improper use of the FOIP Act.

On Alberta Justice's record and the record before my Office, the Applicant's issues appear to arise on August 2, 2014, as that date is the common denominator in many of the access requests. Since then, it appears that the Applicant has had numerous contacts with individuals (most of whom appear to be employees of Alberta Justice) both inside and outside of the Calgary Courts Centre, although the Calgary Court Centre appears to be his focus. Those contacts have included many within the justice system, such as judges and their assistants, lawyers and their assistants, probation officers, security personnel and Sheriffs. More recently the list has expanded to FOIP staff of Alberta Justice and the head of the public body (the Minister).

The Applicant appears to have ongoing matters with the justice system. As a result, on balance, for now I am unable to conclude that the systematic nature of the Applicant's access requests constitutes abuse for the remaining access requests that I am considering here (with one exception, dealt with below). As Alberta Justice has not met the burden of proving that the Applicant's access requests amount to an abuse of the right to make those requests, section 55(1)(a) is not met for those requests.

The one exception is Access Request 2017-P-0861. That access request was triggered by the Applicant's trying to get Alberta Justice to answer his questions about the "head" of Alberta Justice before providing his submission under section 55(1) to my Office (September 29, 2017 email evidence contained in Alberta Justice's second request under section 55(1)).

Numerous orders of my Office have said that a public body has no obligation to answer questions on an access request under the FOIP Act: see, for example, Order 2001-033, para. 9; Order F2008-006, paras. 56, 57; and Order F2017-04, paras. 9, 10. Therefore, Alberta Justice was within its rights not to answer the Applicant's questions posed on the section 55(1) application, and properly declined to do so. That resulted in the Applicant's making an extensive access request for records of the "head" in relation to

him. In that circumstance, the Applicant's access request is in effect retaliatory and constitutes abuse. Therefore, section 55(1)(a) is met for that access request.

Finally, my view is that the systematic nature of the Applicant's access requests is fast approaching abuse, based on the escalating nature of those access requests in relation to the matter that triggered his involvement with the justice system on August 2, 2014. If this escalating behavior continues, Alberta Justice may consider whether to apply to me again in the near future and provide sufficient evidence to meet its burden under section 55(1) of the FOIP Act.

4. Section 55(1)(b) – frivolous or vexatious

In *Request for Authorization to Disregard Access Requests – Edmonton Police Service* (November 4, 2005, available on my Office's website at www.oipc.ab.ca), the former Commissioner reviewed the meaning of "frivolous", which the *Concise Oxford Dictionary* (9th Edition) defined as paltry, trifling, trumpery; lacking seriousness, given to trifling, silly.

The Commissioner considered Ontario Order M-618 [1995], in which the Ontario Information and Privacy Commissioner stated:

"...Frivolous" is typically associated with matters that are trivial or without merit. Information that may be trivial from one person's perspective, however, may be of importance from another's...

The Commissioner also reviewed the meaning of "vexatious", which *Black's Law Dictionary* (7th Edition) defined as without reasonable or probable cause or excuse; harassing; annoying.

The Commissioner was further mindful of the following comments from Ontario's Information and Privacy Commissioner in Ontario Order M-618:

...Government officials may often find individual requests for information bothersome or vexing in some fashion or another. This is not surprising given that freedom of information legislation is often used as a vehicle for subjecting institutions to public scrutiny. To deny a request because there is an element of vexation attendant upon it would mean that freedom of Information could be frustrated by an institution's subjective view of the annoyance quotient of a particular request. This, I believe, was clearly not the Legislature's intent.

The Commissioner then stated in the *Edmonton Police Service* decision:

[25] A request is not "vexatious" simply because a public body is annoyed or irked because the request is for information the release of which may be uncomfortable for the public body.

[26] A request is "vexatious" when the primary purpose of the request is not to gain access to information but to continually or repeatedly harass a public body in order to obstruct or grind a public body to a standstill.

In *Request for Authorization to Disregard Access Requests – Calgary Police Service* (November 29, 2017, available on my Office's website at www.oipc.ab.ca), I considered the types of behaviors that the Court considers to be vexatious, such as hostility towards the other side, extreme and unsubstantiated allegations, and conspiracies involving large numbers of individuals and institutions. I also considered a

history or an ongoing pattern of access requests designed to harass or annoy a public body, excessive volume of access requests, and the timing of access requests.

Alberta Justice has not provided me with much in the way of evidence of hostility, or extreme or unsubstantiated allegations, or evidence that the access requests are designed to harass or annoy. Based on the submission that the Applicant provided, I am also unable to conclude that the access requests have reached the point of being frivolous or vexatious. However, the Applicant's escalating access requests and behavior could change my finding in the future.

My decision

For the reasons stated above, I authorize Alberta Justice to disregard the following access requests of the Applicant:

- that part of 2017-P-0683 for records of "any and all security staff"; and
- 2017-P-0686 (records of "any and all Sheriffs at the Calgary Court Centre");
- 2017-P-0751 (records of ("the Crown Prosecutor's Office, Alberta Human Services, Alberta Justice, Alberta Solicitor General and Public Security), and Homefront");
- 2017-P-0861 (records relating to the "head").

I do not authorize Alberta Justice to disregard the remaining access requests of the Applicant.

Jill Clayton
Information and Privacy Commissioner