



**Summary amended*

**OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for
Prince Edward Island**

Order No. OR-24-003

**Re: Department of Social Development and Seniors
(formerly the Department of Social Development and Housing)
(OIPC file No. FI-22-499)**

**Denise N. Doiron
Information and Privacy Commissioner**

March 27, 2024

Summary:

The Department of Social Development and Seniors (formerly the Department of Social Development and Housing) applied for authorization to disregard nine access requests made by an applicant, under subsections 52(1)(a) and 52(1)(b) of the *Freedom of Information and Protection of Privacy Act*. The Commissioner authorized the Department to disregard the nine requests under subsection. 52(1)(a), as well as any future requests for the same information.

Statutes cited:

Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, Cap. F-15.01, sections 6, 7, and 52

Freedom of Information and Protection of Privacy Act General Regulations, subsections 14(e) and 15(d)

Child Protection Act, R.S.P.E.I. 1988, Cap. C-5.1, sections 7, 8 and 10

Child Protection Act Regulations, sections 8 to 12

Cases Considered:

Order FI-22-004, *Re: Department of Justice and Public Safety*, 2022 CanLII 83331 (PE IPC)

Order P2010-RTD-01, *Re: Alberta Motor Association*, 2010 CanLII 151108 (AB OIPC)

Other Sources:

Blacks Law Dictionary, 7th Ed. 1999, *Sub verbo*, “abuse”, and “abuse of rights”

Oxford English Dictionary, 6th Ed. 2006, *Sub verbo*, “abuse”

I. BACKGROUND

[1] The Department of Social Development and Seniors, formerly the Department of Social Development and Housing, asked the Information and Privacy Commissioner for authorization to disregard several requests for access to information, pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01 (“*FOIPP Act*”).

[2] I am not considering the *Child Protection Act* or its regulations, but because I will be referring to these enactments in this decision, I will briefly describe how they relate to one another.

[3] Any entity designated as a public body under the *FOIPP Act* is subject to the access to information and protection of privacy provisions of the *FOIPP Act*. Decisions on *FOIPP Act* requests for access to information are made by the head of the public body. For most provincial government departments, it is the deputy minister of that department who is designated as the head of the public body.

[4] However, not all records in the custody and control of a public body are subject to the *FOIPP Act*. Some records are specifically exempt from the application of the *FOIPP Act*. The *FOIPP Act General Regulations* have a list of other legislation and regulations that apply despite the provisions in the *FOIPP Act*.

- [5] The *Child Protection Act*, R.S.P.E.I. 1988, Cap. C-5.1 ("*Child Protection Act*") has specific provisions for child protection records and sets up a mechanism to access those records separate from the *FOIPP Act*. Under the *Child Protection Act*, the Director of Child Protection has the obligation to keep child protection records and the authority to decide who may access those records. The *FOIPP Act* stipulates that the provisions in the *Child Protection Act* and its regulations that address access to child protection records prevail despite the *FOIPP Act*. Put simply, the access process under the *Child Protection Act* overrules the access process of the *FOIPP Act* for child protection records. This means the *FOIPP Act* does not apply to those kinds of records, and the head of the Department of Social Development and Seniors does not have authority to determine access to child protection records.
- [6] For ease of reference, I will refer to the head of the Department of Social Development and Seniors as "the Public Body", and the Director as "the Director".
- [7] An individual (the "Applicant") received child protection services when they were a minor child. As an adult, the Applicant requested a copy of their child protection file from the Director, which they were entitled to request under the *Child Protection Act*. The Director provided the Applicant with access to their child protection records but withheld some information pursuant to the provisions of the *Child Protection Act*, and the *Child Protection Act Regulations*. The Director provided the Applicant with reasons for the redactions at the time access was granted.
- [8] Among the records disclosed to the Applicant was a heavily redacted, two-page record dated September 27, 2005, entitled "Permanency Planning Conference" (the "PPC record"). The Director explained the redacted information was withheld under clause 7(5)(b) of the *Child Protection Act*, which prohibits the Director from disclosing information where the disclosure is prohibited by law. This is relevant to the current matter, as this is one of the records that is the subject of several of the access requests that the Public Body has requested authorization to disregard.

- [9] Between 2018 and 2022, the Applicant made 19 access requests to the Public Body, 15 of which were for access to their child protection records. The 15 access requests for child protection records were of three types: access to an unredacted version of their full child and family services file (seven requests), access to an unredacted version of the PPC record (seven requests), and one request for access to their group home records.
- [10] In late 2018, the Applicant made their first access request under the *FOIPP Act* to the Public Body (then called the Department of Family and Human Services) for access to their child protection records, asking for an unredacted copy of the PPC. This was access request 2018-262 FHS. This is not one of the access requests the Public Body has asked for authorization to disregard pursuant to section 52 of the *FOIPP Act*, but I mention it because information arising from access request 2018-262 FHS is relevant to the Public Body's application under section 52 .
- [11] The Public Body advised the Applicant that child protection records were not available under the *FOIPP Act* and referred the Applicant to the Director to discuss access to the record. Sections 8 to 12 of the *Child Protection Act Regulations* have a separate procedure for someone to request access to child protection records. Subsection 14 of the *FOIPP Act General Regulations* states that sections 7 and 8 of the *Child Protection Act* prevail despite the *FOIPP Act*, and subsection 15(d) of the *FOIPP Act General Regulations* says section 8-12 of the *Child Protection Act Regulations* prevail over the *FOIPP Act*.
- [12] The Applicant requested that former Commissioner Karen Rose review the Public Body's decision refusing to give them access to their child protection records (review file FI-18-267). Former Commissioner Rose considered whether the Information and Privacy Commissioner has jurisdiction to review a decision on access to records subject to the *Child Protection Act*. She confirmed that sections 7 and 8 of the *Child Protection Act* applied to the Applicant's requested records, and that the Information and Privacy Commissioner does not have jurisdiction to review the Director's decisions under the access provisions of the *Child Protection Act* and its regulations. Although she did not

issue an order, former Commissioner Rose spoke with the Applicant directly about her determination and provided her decision and reasoning to the Public Body, in writing, and copied it to the Applicant.

- [13] Between 2019 and 2022, the Applicant made 14 more access requests to the Public Body seeking access to their child protection records. The Public Body responded to the Applicant's first six access requests for child protection records consistently, advising that such records were not available through the *FOIPP Act*, and referred the Applicant to the Director for access to those records. All but one of these access requests were for access to either the Applicant's full, unredacted child protection file or an unredacted version of the PPC record.
- [14] In May 2022, at the request of the Applicant, the Applicant met with the Minister, Deputy Minister, and the Director, to discuss access to their child protection records. The Director also followed up with the Applicant by email in June 2022.
- [15] In October 2022, the Applicant made three access requests for access to their whole child protection file in unredacted form, and for an unredacted version of the PPC record, and in November 2022, the Applicant made four access requests for the same records.
- [16] The Public Body responded to the three access requests the Applicant made in October 2022, and, as stated in paragraph 12 above, advised the Applicant that their child protection records were not available under the *FOIPP Act* and referred them to the Director. Over the next three weeks, in November 2022, the Applicant proceeded to make four more access requests to the Public Body for the same records.
- [17] On November 28, 2022, the Public Body applied for authorization to disregard the four access requests made by the Applicant between November 1, 2022 and November 17, 2022, pursuant to subsection 52(1)(b) of the *FOIPP Act*, alleging that the Applicant's access requests were frivolous or vexatious in nature.

- [18] The Applicant then made five more access requests to the Public Body, one asking for an unredacted copy of their child protection record, and four asking for an unredacted version of the PPC record.
- [19] On December 13, 2022, the Public Body amended their application, adding the five new access requests for the Applicant's child protection records to the request for authorization to disregard, and alleged, pursuant to clause 52(1)(a) of the *FOIPP Act* that the Applicant's access requests also amounted to an abuse of the right to access because of the repetitious or systematic nature of the requests.
- [20] The Applicant disputes that the nine access requests the Public Body is asking permission to disregard are either frivolous or vexatious, or an abuse of their right to access, and requests that I order the Public Body to give them access to the records they have been asking for.

II. JURISDICTION

- [21] The Department of Social Development and Seniors, formerly Social Development and Housing, is a public body under the *FOIPP Act*. Under section 52 of the *FOIPP Act*, the head of a public body may request the Information and Privacy Commissioner (the "Commissioner") to authorize them to disregard an access to information request.
- [22] The Applicant made several access to information requests to the Public Body, and the Public Body has requested me to authorize them to disregard some of the Applicant's access requests, pursuant to section 52 of the *FOIPP Act*.
- [23] I am satisfied I have jurisdiction in this matter.

III. ISSUES

- [24] The Public Body has requested that I authorize them to disregard nine existing access

requests made by the Applicant pursuant to clauses 52(1)(a) and 52(1)(b) of the *FOIPP Act*, and that I authorize them to disregard future access requests for the same records.

[25] Subsection 52(1) of the *FOIPP Act* says:

- 52(1) If the head of a public body asks, the Commissioner may authorize the public body to disregard any request made under subsection 7(1), if the request
- (a) Would unreasonably interfere with the operations of the public body or amount to an abuse of the right to access, because of the repetitious or systematic nature of the request; or
 - (b) Is frivolous or vexatious.

[26] The issues in this review therefore are:

- (a) Are the nine access requests repetitious or systematic? If so, do the access requests unreasonably interfere with the Public Body's operations, or amount to an abuse of the right to access? [clause 52(1)(a)];
- (b) Are the nine access requests frivolous or vexatious? [clause 52(1)(b)];
- (c) If clause 52(1)(a) or clause 52(1)(b) applies, should I exercise my discretion to authorize the Public Body to disregard the nine access requests; and
- (d) Should I authorize the Public Body to disregard future access requests for the same records?

IV. BURDEN OF PROOF

[27] The *FOIPP Act* is silent on the burden of proof associated with a request to disregard an access request under subsection 52(1). However, in Order FI-22-004, *Re: Department of Justice and Public Safety*, 2022 CanLII 83331 (PE IPC), I held that the burden of proof rests with the public body who makes the application for authorization to disregard.

[28] I find that the burden of proof in this matter rests with the Public Body.

V. ACCESS REQUESTS AT ISSUE

[29] The Applicant made approximately 19 access requests to the Public Body between November 2019 and December 2022. Nine of these, made in late 2022, are the access requests that are at issue in this request for authorization to disregard.

[30] The nine access requests at issue are as follows:

| Public Body's Reference No. | Date Received | Text of the Access Requests |
|------------------------------------|----------------------|--|
| SDH 2022-344 | Nov. 1, 2022 | For Permanency Planning Conference dated Sept 27 2005 Unblacked out from my [child and family] file (date range for record search: From 9/27/2005 to 9/27/2005) |
| SDH 2022-345 | Nov. 1, 2022 | My whole Child and Family record un blacked out (Date range for record search: from 7/15/1988 to 11/1/2022) |
| SDH 2022-346 | Nov. 1, 2022 | Sit down with my [child and family] file and go page by page with it and the unblacked out copy (Date range for record search: from 7/15/1988 to 11/1/2022) |
| SDH 2022-347 | Nov. 17, 2022 | For the non blacked out version of the paper called permanency planning conference dated September 27 2005 (Date range for record search: from 9/27/2005 to 9/27/2005) |
| SDH 2022-364 | Nov. 30, 2022 | My whole child and family paper unblocked out. July 15 th 1988 to present |
| SDH 2022-367 | Nov. 30, 2022 | Copy of the non blacked out paper called permanency planning conference dated September 27, 2005 |
| SDH 2022-365 | Dec. 1, 2022 | Copy of the non blacked out paper called permanency planning conference dated September 27, 2005 from my [child and family] file. September 27 2005 |
| SDH 2022-366 | Dec. 2, 2022 | Copy of the non blacked out paper called permanency planning conference dated September 27, 2005 from my [child and family] file. September 27, 2005 |
| SDH 2022-369 | Dec. 8, 2022 | Copy of the non blacked out paper called permanency planning conference dated September 27 2005. September 27 2005 |

[31] Also at issue are any future requests the Applicant makes to the Public Body for the same records.

VI. ANALYSIS

- [32] Section 6 of the *FOIPP Act* gives individuals a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the person themselves. This right of access to information is a significant statutory right. However, this right is not absolute. There are some records that are not subject to the *FOIPP Act*, and for records that are subject to the *FOIPP Act*, the right to access is subject to specific and limited exceptions set out in the legislation. There are also provisions in the legislation, such as section 52, to address circumstances where a request for access may be outside the intent and function of the legislation, or be a misuse of the legislation, or where an access request may be regarded as an abuse of the right to access.
- [33] The purpose of the *FOIPP Act's* section 52 procedure is to preserve the proper intent and functioning of the legislation, and protect against the misuse or abuse of the right of access to information. Public bodies do not have the authority to disregard access requests on their own. The *FOIPP Act* permits a public body to ask the Commissioner for authorization to disregard a request for access under certain conditions.
- [34] Authorizing a public body to disregard an access request is part of the Commissioner's oversight function and serves the important purpose of guarding against the abuse of the right of access. But, authorization to disregard an access request involves removing an individual's right to access. For this reason, a request to disregard is a serious matter, and is a decision that cannot be taken lightly. Each case must be carefully evaluated, and a decision to authorize a public body to disregard an access request should be an exception, not a mechanism for public bodies to avoid their obligations under the *FOIPP Act*.
- [35] The Commissioner can only authorize a public body to disregard an access request if the public body can establish to the Commissioner's satisfaction that the access request is

either frivolous or vexatious, or because of its repetitive or systematic nature it would unreasonably interfere with the operations of the public body or amount to an abuse of the right of access.

[36] In this matter, the Public Body alleges that the nine access requests at issue are repetitive and systematic and amount to an abuse of the Applicant's right of access, and/or the access requests are frivolous or vexatious. They ask that I exercise my discretion and authorize them to disregard the nine access requests at issue, as well as any future access requests for the same records.

[37] Both the Public Body and the Applicant have made submissions. I will only address submissions that are relevant to the issues in this review.

ISSUE A: Are the nine access requests repetitive or systematic? If so, do the access requests unreasonably interfere with the Public Body's operations, or amount to an abuse of the right to access? [clause 52(1)(a) of the FOIPP Act]

[38] I must first determine if the nine access requests at issue are repetitive or systematic. They need not be both. If I find they are either repetitive or systematic, I must then assess if they would unreasonably interfere with the Public Body's operations or if they amount to an abuse of the Applicant's right to access. If I find that they are neither repetitive nor systematic, the analysis ends there, and I move on to assess if they are frivolous or vexatious.

(i) Are the access requests at issue repetitive or systematic?

[39] With regard to the nine access requests at issue, the Public Body states:

...we submit that a pattern has emerged. The Applicant is submitting requests that are both repetitive and systematic in nature and we believe that this amounts to an abuse of access.

- [40] The term “repetitious” is not defined in the *FOIPP Act*. However, our office has accepted that an access request is “repetitious” when a request for the same records or information is made more than once (Order FI-22-004, *supra*, at para. 17). Evidence of previous requests made by the Applicant are relevant to assess whether a request has been made more than once.
- [41] Between 2018 and 2022, the Applicant made seven access requests to the Public Body asking for access to their full, unredacted, child protection file. During the same period, the Applicant made seven other access requests specifically for an unredacted version of the PPC record from their child protection file. All of the access requests are the same or substantially the same wording, including the nine access requests at issue. The Applicant acknowledges that they have made the same requests on multiple occasions, asserting that they will continue to do so until the Public Body gives them what they want.
- [42] I am satisfied that the nine access requests at issue are repetitious.
- [43] Because I have found that the nine access requests at issue are repetitious, I do not need to consider whether they are systematic in nature.

(ii) Do the access requests at issue unreasonably interfere with the Public Body’s operations or amount to an abuse of the right to access?

- [44] The Public Body did not provide any substantive evidence regarding whether responding to the Applicant’s access requests would unreasonably interfere with the Public Body’s operations, and neither party made submissions on that point. As such, I will not make a determination on whether responding to the nine access requests at issue would unreasonably interfere with the Public Body’s operations. However, that is only one consideration. I must also consider whether the Applicant’s access requests amount to an abuse of the Applicant’s right to access.

[45] The misuse or abuse of the right of access by an applicant is a serious matter. It can effectively obstruct the exercise of this same right by other applicants, can overburden a public body, and harm the public interest by both diminishing the ability of other citizens to exercise their own statutory rights of access and unnecessarily adding to the cost and time burdens of public bodies in complying with their statutory duties under the *FOIPP Act*.

[46] The Public Body states that the Applicant has been given access to their records directly by the Director under the *Child Protection Act*, with redactions as required by the *Child Protection Act*. The Public Body submits that the Director has tried to explain their reasons for redacting the information they withheld in accordance with their authority under the *Child Protection Act*, but that the Applicant does not accept those explanations.

[47] The Public Body also indicates that they have advised the Applicant repeatedly that the Public Body cannot give them access to their child protection records and, in May 2022, at the insistence of the Applicant, they arranged and held a meeting between the Applicant, the Minister, the Deputy Minister, and the Director.

[48] The Public Body submits the Applicant's continued access requests to the Public Body for their child protection records:

...are a misuse of the right to access information and we note that the Applicant is or ought to be aware that they must access this information under child protection laws. As such, these requests amount to an abuse of right to access and its process.

[49] The Applicant confirms that the Director gave them access to their child protection records prior to them making access requests to the Public Body for the same records, but the Director withheld some information from the records that were disclosed. They acknowledge that the Director explained the information was withheld under the *Child Protection Act* provisions, but they do not agree the information should have been withheld and do not accept the Director's explanation. The Applicant indicates they

started making the access requests to the Public Body to get the withheld information, and to make sure the Director had given them all of their records.

[50] The Applicant also acknowledges in their submissions that former Commissioner Rose found that sections 7 and 8 of the *Child Protection Act* prevail over the *FOIPP Act*, but states they still believe they should have full access to the records.

[51] The Public Body has consistently advised the Applicant that they do not have authority under the *FOIPP Act* to give the Applicant access to child protection records because those records are subject to the *Child Protection Act*. The Applicant does not accept this, believing rather that the Public Body can give them access but chooses not to. The Applicant speaks frequently about why they want their unredacted child protection records and why they believe the Public Body should give the records to them. The Applicant states:

“...what does the government believe they have to hide by not allowing me to have my whole file unredacted is it lies or information that they made up and that they could be taken to court over for if the information is released?. I think if the government would allow me this opportunity that it would help me to heal and move on and forgive the government for all the pain and suffering they have caused me...As all i’m trying to do is heal and forgive and move on from this and i know what i want and need to heal and i would like for the government to help me by giving me the things i request in order to do so which i think is a simple request that won’t cause much harm to anyone and it would allow both parties (Me and the Government) to move on from this.”

[52] I am not unsympathetic to the Applicant’s position, but we are all confined to the scope of the relevant legislation. I agree with the Public Body’s and former Commissioner Rose’s assessments that child protection records are not available to access under the *FOIPP Act* because they are subject to the provisions of the *Child Protection Act* and its regulations, and that legislation and its regulations prevail despite the *FOIPP Act*. I note that the *Child Protection Act* and its regulations specify that the Director has the authority over those records, and there is a separate process for access to child protection records. I also confirm former Commissioner Rose’s assessment that the

Information and Privacy Commissioner does not have authority to review a decision of the Director on access to child protection records. The *Child Protection Act Regulations* have a separate review system in place if someone wishes to make a complaint about a decision of the Director.

[53] I also agree with the Public Body's position that the Applicant knew or ought to have known that the Public Body was not able to give them access to their child protection records under the *FOIPP Act*. The Public Body made great efforts to explain this to the Applicant on many occasions. However, the Applicant refuses to accept this answer.

[54] Further, the first time the Public Body gave them this answer, the Applicant asked former Commissioner Rose to review it, and she confirmed that the records were subject to the *Child Protection Act*, that those provisions prevailed over the *FOIPP Act*, and the Information and Privacy Commissioner did not have jurisdiction to review a decision on access to those records.

[55] Respectfully, whether the Applicant agrees with it or not, and regardless of the reasons why they want their unredacted child protection records, this does not affect whether the Public Body can give them access to those records. The Public Body has no authority to give the Applicant access to child protection records under the *FOIPP Act*. The Public Body is bound to comply with the legislation, and cannot act outside their authority.

[56] The Applicant continued to submit essentially the same access requests to the Public Body over and over, expecting perhaps that at some point the Public Body would give in and give them the unredacted records. The Applicant's submissions, statements made in numerous emails, and public statements, demonstrate that the Applicant's intent is to continue to make access requests to the Public Body for their unredacted child protection records until they get them.

[57] The Applicant's submissions demonstrate that the Applicant firmly believes they should have all of the information in their child protection records, with no redactions. The Public Body has consistently advised the Applicant that the requested records are

subject to the *Child Protection Act*, and they do not have authority to give the Applicant access to their child protection records under the *FOIPP Act*. The Applicant does not accept that the Public Body cannot give them access to their unredacted child protection records.

[58] “Abuse” is not defined in the *FOIPP Act*. But, in its ordinary meaning, abuse would be an action that could be considered a misuse or improper use of something. The *Oxford English Dictionary* defines abuse as “to use badly or wrongly” or “the wrong use of something”. From a legal perspective, *Blacks Law Dictionary* defines abuse as “a departure from legal or reasonable use; misuse...” and “to depart from legal or reasonable use in dealing with (a person or thing); to misuse...”. Other jurisdictions have interpreted “abuse” in similar provisions to mean misuse or improper use (see for example: *Re: Alberta Motor Association*, 2010 CanLII 151108 (AB OIPC) at paragraph 28).

[59] *Blacks Law Dictionary* also defines “abuse of rights” as the “...exercise of a right either in a way that impedes the enjoyment by other[s] of their own rights or for a purpose different from that for which the right was created”.

[60] Since 2018, the Applicant has made 14 access requests to the Public Body for the same records, nine of which were made over a six-week period in late 2022. Even after the Public Body applied for authority to disregard the Applicant’s four access requests made on November 1, 2023 and November 17, 2023, the Applicant proceeded to make five more access requests for the same records. All nine access requests were the same or substantially the same as multiple previous access requests to the Public Body for the same records, and which the Public Body had repeatedly advised the Applicant they did not have authority to give to the Applicant.

[61] The Applicant continued to make access requests to the Public Body for records they were told multiple times over several years that the Public Body did not have authority to give them access to. It appears the Applicant understood that the Public Body did not

have authority to give access to the requested records, but in their correspondences to the Public Body and their submissions to our office in this inquiry, the Applicant indicated it was their intention to continue to make access requests for the same records anyway.

[62] After the Public Body denied access as the records were not subject to the *FOIPP Act*, and the former Information and Privacy Commissioner confirmed this as accurate, the Applicant proceeded to re-submit similar access requests hoping the Public Body would provide more information than the Applicant had already received. The Applicant has been persistent in making the same or substantially the same access requests to the Public Body when they are aware or ought to be aware the Public Body cannot give them access, and has stated an intention to continue to do so until such time as the Public Body gives them the records they want. This is not reasonable. This is a misuse of the Applicant's right to access. It also impedes the enjoyment by others of their own rights to access, as described in the definition in the *Blacks Law Dictionary*.

[63] The Public Body also submits the Applicant's behaviour toward the Public Body is harassing in nature and should be a relevant consideration when deciding whether to authorize the Public Body to disregard the access requests at issue. An applicant's behaviour toward a public body is not among the specific criteria set out under section 52 of the *FOIPP Act*, but I accept that it can be a relevant consideration when determining if the repetitive or systemic nature of an access request amounts to an abuse of an applicant's right of access, or when determining if an access request is frivolous or vexatious.

[64] In support of their assertions, the Public Body provided 26 examples of emails they received from the Applicant between June 10 and November 24, 2022, often the same email sent repeatedly and sometimes more than once a day. Almost all the emails were sent to multiple recipients within the Public Body. The Applicant confirmed they sent more emails to the Public Body than those provided as examples.

[65] The Public Body also states that the Applicant has subjected Public Body's employees to profane and abusive language during phone calls. Most, if not all, of the Applicant's interactions with the Public Body are related to their seeking access to their child protection records.

[66] The Applicant denies they have behaved inappropriately toward the Public Body. The Applicant asserts they are just trying to get what they believe they are entitled to from the Public Body and feel they "...have every right to email them and say what I feel like and make requests..."

[67] The Applicant states:

As for the public body asking you for authorization to disregards my access to requests i believe it shows to me that the public body does not want to help me in the healing process that im trying to go through and it does make me want to fight even more to get what I want and need in order to heal and move on from this many years of hurt im going through and I do believe that if they do listen to my request and give me everything i want than we wouldnt have to be going through this process today.

[68] The Applicant also submits:

...im not trying to do anything bad to them or anything bad with my request im just a 34 year old male that has been in permanent care of the department when he was a child that was hurt and is still hurt and who is just trying to get over that and i believe i know what i need to get over that and these request are just some of the stuff i believe i need in order to do just that to heal and move on and forgive . i just wish the government would see that and see that i have no bad intentions. Yes i have made many attempts of trying to contact people and what not but i do expect an timely answer and im just like anyone else who will keep reaching out till they hear back.

[69] I accept the Applicant does not deliberately mean harm to the Public Body, and likely does not perceive their behaviour as inappropriate. However, the Applicant's behaviour is not appropriate. Although the content of the emails the Public Body provided as examples in and of itself is not abusive, the emails are repetitive and frequent, which could be considered harassing. This, along with the phone calls, and the language the

Applicant uses in the phone calls, is not appropriate behaviour toward the Public Body. The Applicant's inappropriate behaviours alongside the frequent access requests for their child protection records is a misuse of the access process, and an abuse of their right to access.

[70] For all of the above reasons, I find that the nine access requests at issue are repetitious in nature, and amount to an abuse of the Applicant's right to access.

ISSUE B: Are the nine access requests frivolous or vexatious? [clause 52(1)(b) of the *FOIPP Act*]

[71] While it is possible that an access request meets all the criteria set out in both clauses 52(1)(a) and 52(1)(b) of the *FOIPP Act*, a public body is only required to satisfy the criteria of one of the clauses to trigger the Commissioner's discretion to authorize the public body to disregard an access request.

[72] In light of the fact that I found the Applicant's nine access requests are repetitious and amount to an abuse of the Applicant's right of access under clause 52(1)(a) of the *FOIPP Act*, I do not need to also consider whether the access requests are frivolous or vexatious under clause 52(1)(b) of the *FOIPP Act*. A finding that clause 52(1)(a) applies is sufficient to permit me to consider whether to exercise my discretion to authorize the Public Body to disregard.

ISSUE C: Should I exercise my discretion to authorize the Public Body to disregard the nine access requests at issue?

[73] The Public Body asks that I authorize them to disregard the nine access requests at issue. As I have found that the Public Body has established that section 52(1)(a) of the *FOIPP Act* applies, I must now turn my mind to whether I should exercise my discretion to authorize the Public Body to disregard the Applicant's nine access requests.

- [74] As I stated before, authorizing a public body to disregard an access request is a serious matter. Before exercising my discretion, I must be satisfied that the exercise of the discretion is reasonable and appropriate in the circumstances.
- [75] I have no doubt that the Applicant has a sincere desire to access the information in their child protection records. A significant amount of the Applicant's submissions addresses why they believe they should have full access to their child protection records, with no information withheld. However, whether they believe they should have access to their child protection records is not the issue. The issue is whether the Public Body should be required to keep responding to the Applicant's requests for the same records since the Public Body does not have authority to give access to the records, and repeatedly having to refer the Applicant to the Director.
- [76] The Applicant has exercised their rights under the *FOIPP Act* to request access to records. The Public Body has responded to the Applicant. The Applicant did not get the information they requested and is therefore not satisfied with the Public Body's responses. But this does not mean their right of access has not been honoured.
- [77] The Public Body has told the Applicant they cannot give them access to this information as the Applicant is not entitled to access it under the *FOIPP Act*, and has directed them to the Director, who has the authority to make decisions on access to child protection records. Our office has also confirmed that the *FOIPP Act* does not apply to the records the Applicant is requesting, and that our office does not have the jurisdiction to review the Director's decision.
- [78] The Applicant keeps re-submitting similar access requests for the same records, hoping the Public Body will provide more information, even though they have been told the Public Body cannot do this. I am satisfied that the Public Body has responded within the scope of their capacity under the *FOIPP Act*. The Applicant's concerns about their history with child protection services cannot be addressed through additional access requests under the *FOIPP Act*.

[79] I find that these circumstances warrant me exercising my discretion to authorize the head of the Public Body to disregard the nine access requests at issue.

ISSUE D: Should I exercise my discretion to authorize the Public Body to disregard future access requests for the same records?

[80] The Public Body has also requested that I authorize them to disregard any future requests by the Applicant for the same records. The Public Body has not requested a blanket authorization to disregard all access requests the Applicant may make in future, only access requests for their child protection records.

[81] The *FOIPP Act* does not give anyone a right to access a child protection file. Section 14 of the *FOIPP Act General Regulations* stipulates that sections 7 and 8 of the *Child Protection Act* prevail despite the *FOIPP Act* provisions. The records the Applicant wants access to are child protection records and therefore subject to sections 7 and 8 of the *Child Protection Act*. Because the records are subject to sections 7 and 8 of the *Child Protection Act*, which specifically give the Director the authority over disclosure of information in child protection records, and those provisions prevail over the *FOIPP Act* provisions, the Public Body does not have authority to give the Applicant access to the requested records.

[82] Despite the Public Body advising the Applicant they do not have authority to give access to child protection records, the Applicant has persisted in making access requests to the Public Body for access to their unredacted child protection records.

[83] I believe, based on the Applicant's submissions, that the Applicant will make more access requests to the Public Body asking for their child protection records. The Applicant has made such statements as "I'm not giving up till I get everything I want no one will stop me or tell me differently..." and "...I'm not giving up ill fight the whole fight till I get everything I want and need so I hope you guys are in for a long battle."

[84] For the same reasons outlined above, I find that any future requests the Applicant makes to the Public Body for their child protection records, or for an explanation of the decisions of the Director for withholding some information from their child protection records, would be of a repetitious nature and would also amount to an abuse of the Applicant's right of access. It would be an absurd result if I were to not authorize the Public Body to disregard future access requests made by the Applicant to the Public Body for the same information.

[85] In considering the Public Body's request to disregard future access requests made by the Applicant for the same information, I considered the fact that such an authorization would not deprive the Applicant of the right to make other access requests under the *FOIPP Act*.

[86] For these reasons, I am persuaded that it is reasonable and appropriate that I authorize the head of the Public Body to disregard any future access requests from the Applicant to the Public Body for their child protection records.

VII. FINDINGS

[87] I find that the Applicant's requests to the Public Body for access to their child protection records are repetitive and amount to an abuse of the Applicant's right to access, as set out in clause 52(1)(a) of the *FOIPP Act*.

[88] I find that the Public Body has met their burden of proof for authorization to disregard the nine access requests at issue, as well as any future requests for the same records.

VIII. ORDER

[89] Pursuant to clause 52(1)(a) of the *FOIPP Act*, I order that the Public Body is hereby authorized to disregard the following access requests made by the Applicant: SDH-2022-

344, SDH 2022-345, SDH 2022-346, SDH 2022-347, SDH 2022-364, SDH 2022-365, SDH 2022-366, SDH 2022-367, and SDH 2022-369.

- [90] Pursuant to clause 52(2)(a) of the *FOIPP Act*, the Public Body's processing of access requests SDH-2022-344, SDH 2022-345, SDH 2022-346, SDH 2022-347, SDH 2022-364, SDH 2022-365, SDH 2022-366, SDH 2022-367, and SDH 2022-369, which ceased when the Public Body made the request for authorization to disregard, shall not resume.
- [91] Pursuant to clause 52(1)(a) of the *FOIPP Act*, I authorize the Public Body to disregard future access requests made by the Applicant for any records from their child protection files.
- [92] In accordance with section 67 of the *FOIPP Act*, this decision is final. However, an application for judicial review of the Order may be made pursuant to section 3 of the *Judicial Review Act*, R.S.P.E.I. 1988, Cap. J-3.

Signed: Denise N. Doiron

Denise N. Doiron
Information and Privacy Commissioner