

INTERPRETATION BULLETIN

Frivolous or Vexatious Requests

This interpretation bulletin outlines factors for determining whether an access to information request is frivolous or vexatious, as set out in **section 10(1)(b)** of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and **section 4(1)(b)** of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). This interpretation bulletin explains the grounds for a frivolous or vexatious claim, and offers key considerations for whether an access request meets the threshold to be considered frivolous or vexatious.

Section 10(1)(b) FIPPA and Section 4(1)(b) MFIPPA read as follows:

...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.

Section 5.1 of Regulation 460 under FIPPA and **Section 5.1 of Regulation 823** under MFIPPA elaborate 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,



Information and Privacy
Commissioner of Ontario

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

- (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.

IS THE ACCESS REQUEST FRIVOLOUS OR VEXATIOUS?

The head of an institution must have reasonable grounds for coming to the opinion that an access request is frivolous or vexatious. As this is a significant discretionary power that can have serious implications for a requester's access rights, it should not be exercised lightly.¹ An institution that concludes that an access request is frivolous or vexatious has the burden of proof to justify its decision.²

These frivolous and vexatious provisions were enacted to provide institutions with a tool to enable them to address abuses of the processes under the *Acts*. They were not intended to be used by institutions or individuals to prevent disclosure of records that would otherwise be available because they do not like the nature of the request or the person requesting the information.³

GROUNDINGS FOR A FRIVOLOUS OR VEXATIOUS CLAIM

Pattern of conduct that amounts to an abuse of the right of access

The following factors may be relevant in determining whether a pattern of conduct amounts to an "abuse of the right of access":

- *Number of requests*: Is the number excessive by reasonable standards?
- *Nature and scope of the requests*: Are the requests overly broad and varied in scope or unusually detailed? Are they identical or similar to previous requests?
- *Purpose of the requests*: Are the requests intended to accomplish some objective other than to gain access to the requested information? For example, are they made for "nuisance" value, or is the requester's aim to harass the institution or to break or burden the system?
- *Timing of the requests*: Is the timing of the requests connected to the occurrence of some other related event, such as court proceedings?⁴

1 Order [M-850](#).

2 Order [M-850](#).

3 Order [PO-2050](#).

4 Orders [M-618](#), [M-850](#) and [MO-1782](#).

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.⁵

In determining whether a pattern of conduct exists, the focus should be on the **cumulative** nature and effect of a requester's behaviour. 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 to obtain access.⁶

In assessing an institution's claim that an access request is "frivolous or vexatious", the IPC may consider the institution's own conduct. In certain circumstances, the conduct of an institution may be so inappropriate as to outweigh any factors in favour of a frivolous or vexatious finding."⁷

Pattern of conduct that would interfere with the operations of the institution

A pattern of conduct that would "interfere with the operations of an institution" is one that would obstruct or hinder the range of effectiveness of the institution's activities.⁸

Interference is a relative concept that must be judged on the circumstances faced by the institution in question. For example, it may take less of a pattern of conduct to interfere with the operations of a small municipality than with the operations of a large provincial government ministry.⁹

Bad faith

If a request is made in bad faith, the institution does not need to demonstrate a "pattern of conduct."¹⁰

The IPC has adopted the following dictionary definition of "bad faith":

The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive. ... "bad faith" is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.¹¹

5 Order [MO-1782](#).

6 Order [MO-1782](#).

7 Order [MO-1782](#).

8 Order [M-850](#).

9 Order [M-850](#).

10 Order [M-850](#).

11 Order [M-850](#).

Purpose other than to obtain access

If a request is made for a purpose other than to obtain access, the institution does not need to demonstrate a “pattern of conduct.”¹²

A request is made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.¹³

In order to qualify as a “purpose other than to obtain access,” the requester would need to have an improper objective above and beyond a collateral intention to use the information in some legitimate manner.¹⁴

The IPC has previously found that a requester’s intention to take issue with a decision made by an institution, or to take action against an institution, is not sufficient to support a finding that the request is “frivolous or vexatious.”¹⁵

For additional information, please see the [Frivolous and Vexatious Requests fact sheet](#).

12 Order [M-850](#).

13 Order [M-850](#).

14 Order [MO-1924](#).

15 Orders [MO-1168-I](#) and [MO-2390](#).