

ACCESS FACT SHEET

Frivolous and Vexatious Requests

The *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the acts) give individuals the right to access their own information and general records held by an institution unless an exemption applies or the request is frivolous or vexatious.

An institution may refuse to give access to a record if it decides the request is frivolous or vexatious. The requester can appeal this decision to the Information and Privacy Commissioner (IPC).

This fact sheet explains what a frivolous or vexatious request is, what institutions should do when they receive this type of request, what a requester can do if an institution claims their request is frivolous or vexatious and the IPC's role in an appeal.

WHAT IS A FRIVOLOUS OR VEXATIOUS REQUEST?

A request is frivolous or vexatious if it is:

- part of a pattern of conduct that
 - amounts to an abuse of the right of access
 - interferes with the operations of the institution
- made in bad faith or
- made for a purpose other than to obtain access

Each of these grounds is explained below.



Pattern of Conduct—Abuse of the Right of Access

To determine whether a request is an abuse of the right of access, the IPC considers:

- the number of requests
- whether they are excessively broad and varied in scope or unusually detailed, or are similar to previous requests
- whether they are made for an unreasonable or illegitimate purpose, such as to annoy or harass the government or to burden the system
- whether the timing of the requests coincides with some other event, such as an ongoing complaint against the institution or its staff unrelated to the request
- any other factors that may be relevant

Pattern of Conduct—Interferes With the Operations of an Institution

A pattern of conduct that would interfere with the operations of an institution is one that would obstruct or hinder the institution's activities. The circumstances of the particular institution must be considered. For example, it would take less to interfere with the operations of a small municipality compared to a large ministry. It is up to the institution to show that the requester's pattern of conduct unreasonably interfered with the institution's operations.

However, it is the responsibility of the institution to ensure reasonably adequate resources are available to respond to access requests.

EXAMPLE: A university claimed a request was frivolous or vexatious because the requester had made 38 previous requests that were unusually broad and repetitive and represented over 20 percent of the total requests received by the university in an 18-month period. The university stated that the number of requests adversely affected its ability to meet the overall demand for access to information services. In upholding the university's decision in Order PO-3188, the IPC decided that a number of factors weighed in favour of a frivolous and vexatious finding including that the request was part of a pattern of conduct that interfered with the operations of the institution. The IPC added that it was unreasonable for the institution to be expected to allocate so much of its limited resources to respond to these numerous broad and similar requests.

Bad Faith

Bad faith refers to a requester's state of mind and not simply bad judgment or negligence, but requires intent.

EXAMPLE: The IPC found a request was made in bad faith in Order M-850 and was therefore frivolous and vexatious. The requester stated that he was testing or examining the boundaries of the act or was having fun in filing requests. The IPC also considered that some of the requests were made for the purpose of harassing an employee who was involved in an action brought by the requester in another forum.

Purpose Other Than to Obtain Access

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.

EXAMPLE: In Order MO-2488, the IPC found a request was made for a purpose other than to obtain access and was therefore frivolous or vexatious because:

- the requester made 54 requests with 372 parts in two years
- the requests were unusually detailed and excessively broad
- the requester sent more than 300 emails to the institution in a six-month period and telephoned staff almost daily, as well as increased the volume and complexity of the requests over time, as a court action against the institution progressed
- the requester was already in possession of many of the records she requested

Requesters do not need to justify a request and the acts do not place limits on what a requester can do with the information once access has been granted.

EXAMPLE: The fact that a requester intended to use a record for a purpose such as to dispute a number of the institution's land transactions did not mean that the request was for a purpose other than to obtain access. The IPC concluded in Order M-906 that to find that a request is frivolous or vexatious on the basis that a requester may use the information to oppose actions taken by an institution would be contrary to the spirit of the acts, which exist in part as an accountability mechanism for government organizations.

HOW SHOULD INSTITUTIONS RESPOND TO FRIVOLOUS OR VEXATIOUS REQUESTS?

The institution must provide written notice to the requester where it believes the request is frivolous or vexatious. The notice must include the reason for the decision and inform the requestor of their right to appeal to the IPC.

WHAT CAN A REQUESTER DO IF AN INSTITUTION DECIDES THAT THEIR REQUEST IS FRIVOLOUS OR VEXATIOUS?

Requesters can appeal the institution's decision to the IPC. Requesters should be prepared to respond to claims made about their conduct and to explain to the IPC how their request is not frivolous or vexatious.

For more information on the appeal process, see the IPC's publication, *The Appeal Process and Ontario's Information and Privacy Commissioner* at www.ipc.on.ca.

HOW CAN AN INSTITUTION ESTABLISH THAT A REQUEST IS FRIVOLOUS OR VEXATIOUS?

In an appeal to the IPC, it is up to the institution to establish that the request is frivolous or vexatious. Institutions should maintain detailed records of their interactions with requesters including information about the:

- number of requests
- nature and size of the requests
- timing of the requests and their relationship to other events
- apparent or stated purpose of the request
- nature and quality of the interaction between the requester and institution staff

WHAT CAN THE IPC DO WHEN IT RECEIVES AN APPEAL?

If the IPC agrees that a request is frivolous or vexatious, it may uphold the institution's decision not to process the request. The IPC may also impose conditions on a requester such as:

- limiting the requester to one request or appeal at any given time
- requiring the requester to notify the IPC and the institution if seeking to proceed with any existing appeals or requests
- setting a two-year time limit on pursuing any outstanding appeals

- restricting a request to specific information relating to a single subject matter
- prohibiting the requester from contacting the institution with respect to processing their requests unless the institution contacts the requester first
- requiring the institution to only respond to the requester if communication is received by mail and relates to filing an access request or responding to a request for clarification

If the IPC does not agree that a request is frivolous or vexatious, it may order the institution to respond to the request by issuing an access decision.

WHAT CAN INSTITUTIONS DO TO BETTER MANAGE REQUESTS?

Requests that do not meet the standard of frivolous or vexatious may still be challenging. An institution can take steps to help manage such requests including:

- publishing records disclosed in response to freedom of information requests on their websites (subject to privacy concerns)
- developing policies to enable proactive disclosure
- working with the requester to focus or clarify the request
- applying the fee provisions of the acts
- applying the time extension provisions of the acts

To learn more about making a freedom of information request and how to comply with privacy and access laws, visit the IPC's website: www.ipc.on.ca.