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Disregarding Access Requests Under FIPPA

This practice note supports public bodies in making decisions under section 13 of FIPPA. Before a request can be disregarded, public bodies must fulfill their duty to assist under section 9 of the Act. For more information on the duty to assist see the [Duty to Assist](#) practice note.¹

Section 13 of FIPPA recognizes that the exercise of the right of access cannot be unlimited and that there are situations where the right of access can be misused. It is not intended to restrict legitimate information requests or the right to access information. A request may be disregarded if it is:

- a) trivial, frivolous, or vexatious;
- b) for information already provided to the applicant;
- c) abusive in nature, including if it is:
 - o unduly repetitive or systematic,
 - o excessively broad or incomprehensible, or
 - o not made in good faith; or
- d) so burdensome that responding would unreasonably interfere with operations.

If one or more of these conditions is met, a public body may exercise discretion to disregard an access request. Discretion must be exercised with consideration of all relevant factors, including fairness, context, and the purpose of the act.

Disregarding requests as trivial, frivolous, or vexatious

Clause 13(1)(a) provides public bodies with the discretion to disregard a request that is trivial, frivolous, or vexatious.

¹ The Duty to Assist Under FIPPA - Elements of the Duty to Assist

A request may be considered **trivial** if it relates to information of minimal significance or utility, such that it does not reasonably advance the applicant's access to records. This may include:

- requests focused on a small item of information or minor details within a large volume of records (that may not be readily retrievable)
- information the requester already knows
- information that is of insignificant value with limited relevance to the applicant's stated purpose

In determining whether the requested information is trivial, the public body should consult with the requester who can clarify the information sought. What may appear to be trivial to the public body, may be of importance to the requester.

A request may be considered **frivolous** if it lacks serious purpose or value, such as when the information sought is secondary to an ulterior motive. In the context of FIPPA, this means the request is not primarily for the purpose of accessing information but is for another purpose, like expressing frustration. However, a request that merely appears to have an ulterior motive is not enough, and additional facts must exist in order to support that conclusion. When an applicant makes what appears to be a frivolous request, the public body should exercise its duty to assist obligation.

A **vexatious** request goes further, involving bad faith or a malicious intent to disrupt the public body's operations. This may include frequent or overlapping requests designed to overwhelm staff or obstruct regular business, or repeated requests that have already been addressed. Assessing the motive behind a request is central to whether a request is frivolous or vexatious. Assessing motive is based on the nature of the request and not the identity of the person who made the request. Public bodies should consider the applicant's purpose and the context of the request, and make reasonable efforts to clarify their needs before making the decision to disregard the request.

Disregarding where information has already been provided

Clause 13(1)(b) allows public bodies to disregard a request if the same information has already been provided to the applicant. Before exercising discretion to disregard, public bodies must be sure that the information that would be responsive to the request has actually been provided, whether under FIPPA or through another

process. If information has previously been requested but the request wasn't processed or access was refused to some or all of the information, the public body cannot say this information has previously been provided to the applicant. Where information has previously been provided, public bodies should still communicate with the applicant to seek to understand why the request was made, to determine if the circumstances warrant exercising discretion to process the new request, rather than disregard it. The applicant may no longer have the records or may no longer have ready access to the records, due to any number of reasons, some of which may be beyond the applicant's control.

Disregarding a request as an abuse of the right to make a request

A public body may disregard an access request if it amounts to an abuse of the right to make a request. This generally includes a pattern of conduct that is excessive or improper, outlined in these three specific circumstances

(i) Unduly Repetitive or Systematic Requests

- Requests may be considered unduly repetitive or systematic when submitted in a way that, based on timing, content, and context, suggests a pattern of misuse rather than a legitimate effort to access updated records. They may form a pattern intended to overwhelm staff or disrupt normal operations. A single repeated request may not qualify, but a sustained pattern likely will.
- The public body should seek to understand if reasonable circumstances exist that justify a repetitive request and they should carefully assess whether the current request is truly duplicative, by considering not only the wording of the request, but also the records that would be responsive to the request. We note that two separate access requests that are similar are not on their own sufficient to establish a deliberate pattern. Public bodies should assess whether the repetition is reasonable and serves a legitimate purpose or if it is being used to harass or obstruct.

Even if the wording of the request is the same, the response may differ due to new records, added context, or changes over time.

Key considerations include:

- **Nature of the information:** Is the substance of the request the same, even if the format or source of the records differs?
- **Timing of the requests:** Has a significant amount of time passed since the original response, allowing for new records to be created?
- **Completeness of the original response:** Was the prior disclosure full and accurate? Could the applicant have misunderstood or misplaced it?
- **Contextual changes:** Do new records provide additional context or clarification that may be relevant to the applicant?
- **Opportunity to clarify:** Can the public body offer to reissue the records or explain the prior response before disregarding?
- **Reasonable Circumstances to make same request:** Is the same request being made due to exceptional or other circumstances beyond the control of applicant?
- **Reasonable expectation of different decision:** It is not unreasonable to request the same information again at a later date if there is a reason to believe the exception no longer applies to the information or that the public body may exercise discretion differently due to the passage of time. It is important to note that some exceptions to access apply only temporarily until an action is taken, a decision is made, or some other condition is fulfilled, and some exceptions cease to apply after specified time limits. If an applicant is making a request again because they expect a different response, the public body can ask the applicant to explain why they expect the response to be different.

As a general rule, each request must be evaluated on its own merits, with attention to whether the applicant is seeking genuinely new or updated information.

(ii) Excessively Broad or Incomprehensible Requests

- Requests that are too vague, expansive, or unclear may impede the public body's ability to fulfill the access to information request. Examples include asking for "all records" without specifying a topic, timeframe, or context. Incomprehensible requests may contain contradictory terms or lack identifiable subject matter. Before disregarding, the public body should attempt to clarify and/or narrow the request with the applicant.

(iii) Requests Not Made in Good Faith

- These are requests made with dishonest, malicious, or obstructive intent. Bad faith implies a deliberate attempt to misuse the access process, for an illegitimate or malicious purpose. Examples include flooding the public body with requests to grind operations to a halt or provoke staff. The public body should consider the applicant's motive, and history of engagement.

Disregarding a request that unreasonably interferes with operations

Clause 13(1)(d) permits public bodies to disregard an access request if responding would unreasonably interfere with its operations. This threshold is met when the time, effort, or disruption caused by processing the request would hinder the range of effectiveness of the institution's activities or overburden the public body's ability to carry out its regular functions, including serving other applicants. Repetitious or systematic requests may contribute to this interference by unnecessarily consuming a disproportionate share of resources, delaying responses, and inflating costs in processing a request and/or infringe on the access rights of other applicants.

The impact is not limited to inconvenience—it must materially affect the public body's operations. One practical way to assess this is through starting to develop a fee estimate, which helps quantify some of the time and resources required to process the request. If the process of creating an estimate reveals that fulfilling the request would significantly disrupt operations, the public body may decide not to issue the fee estimate and instead exercise its discretion to disregard. However, this discretion should be used cautiously and only after considering whether the request can be narrowed or clarified to reduce its impact.

Considering the number of requests or related requests

When assessing whether a request is an abuse of the right to make a request or unreasonably interferes with operations public bodies may consider the following contextual factors:

- **(a) The number of requests made by the same applicant.** This includes evaluating whether the volume or frequency of requests suggests an abuse of access rights, a pattern of repetitive or excessive filings, or an intent to burden the public body's operations.

- **(b) Whether the request is reasonably related to requests made by two or more applicants who are associated within the meaning of the regulations.**

Public bodies may consider whether multiple individuals or entities are coordinating requests in a manner that collectively meets the threshold for being frivolous, vexatious, or abusive, even if each request appears reasonable in isolation.

Notification

If a public body decides to disregard an access request under subsection 13(1), it must notify the applicant and include:

- **13(2)(a):** A statement that the request is being refused.
- **13(2)(b):** The reasons for the decision to disregard.
- **13(2)(c):** Notice that the applicant may file a complaint with the Manitoba Ombudsman.

Recordkeeping and Documentation

When exercising discretion to disregard an access request under section 13, public bodies should maintain clear records of their decision-making process. This includes documenting the rationale, relevant facts, and any efforts made to clarify the request with the applicant under the duty to assist.

Strong record-keeping is essential for transparency and accountability. It enables public bodies to explain their decisions to applicants and respond effectively to oversight inquiries. FIPPA files should contain enough detail to demonstrate how the decision was reached and why the criteria for disregard were met.

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