

**FOI Assist Seminar Series 2026  
Seminar #2**

# Frivolous and Vexatious Requests

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# FOI Assist

**FOI Assist Seminar  
Series 2026,  
Seminar #2:  
Frivolous and  
Vexatious Requests**

**Program:** March 24, 2026, 10:00 am – 11:00 am Eastern Time

**Learning Objectives:**

- Statutory framework & definitions of “frivolous” and “vexatious”
- Learn the four criteria that allow institutions to refuse a request
- Consider how IPCO decisions interpret the statutory test
- Understand how to respond to requesters

# The FOI Assist Seminar Series

# The FOI Assist Seminar Series (2026)

- Throughout 2026, FOI Assist is hosting a series of live, online seminars exploring Ontario's Freedom of Information legislative framework.
- Each seminar will focus on practical tools and best practices to help FOI professionals improve their workflows and strengthen legislative compliance.
- Today's seminar is the second in the series.
  - The first seminar was on Third Party Information and The Affected Person Process
- Four more will follow throughout 2026.
- Future seminars and registration information will be announced via the FOI Assist Knowledge Base
  - (Everyone attending today should already be an FOI Assist Knowledge Base subscriber.)

# The FOI Assist Seminar Series (2026)

- You will receive a link to the **post-seminar quiz**.
- Please submit the quiz to confirm your name and attendance.
- Participants will receive:
  - A Certificate of Attendance for those who attend and submit the quiz, or
  - A Certificate of Completion for those who attend and pass the quiz.
- Participants will also earn credit toward the **FOI Practitioner Certificate — FOI Assist Seminar Series (2026)**
  - The **FOI Practitioner Certificate** is awarded to FOI Assist Knowledge Base subscribers who complete five or more seminars during the 2026 calendar year.

# Frivolous and Vexatious Requests

Understanding When FOI Requests Cross the Line



# Frivolous and Vexatious Requests

## Today's Agenda:

- Statutory Framework
  - FIPPA, MFIPPA and General Regulations 460 & 823
- The Four Ways a Request can be Frivolous or Vexatious
- Notice Requirements & Best Practices
- Decisions & Appeals
- Conclusions & Takeaways
- Additional Resources
- Next Steps
- Questions

# Statutory Framework

# Frivolous and Vexatious Requests

- **FIPPA s.10(1)** and **MFIPPA s.4(1)** set out the public’s “Right of Access” to records
- But such right is immediately limited by clauses (a) and (b)
- Clause (a) brings in all of the traditional exemptions
- Clause (b) states there is no right of access if “**the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.**”

# Frivolous and Vexatious Requests

## PART I FREEDOM OF INFORMATION

### ACCESS TO RECORDS

#### Right of access

4 (1) 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,

- (a) the record or the part of the record falls within one of the exemptions under sections 6 to 15; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

# Frivolous and Vexatious Requests

- That makes “frivolous and vexatious” a **fundamental limitation**
- And yet, there are no definitions in the Acts for “frivolous” or “vexatious”
- These words are both common-law concepts imported from civil court procedure
- The term “frivolous or vexatious” predates Canadian FOI legislation
- Under Ontario’s *Rules of Civil Procedure*, which govern civil litigation across the province, the Court may stay or dismiss a proceeding or a motion if it appears to be “frivolous or vexatious” or otherwise an abuse of process

# Frivolous and Vexatious Requests

## Stay or Dismissal of Proceedings

### *Court May Stay, Dismiss*

**2.1.01** (1) The court may make an order staying or dismissing a proceeding that appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

*Ontario's Rules of Civil Procedure*

# Frivolous and Vexatious Requests

- Though the words “frivolous” and “vexatious” are commonly seen together, each has its own meaning.
- A “**frivolous**” request is one made not for a genuine need (such as obtaining helpful information), but rather for some other, frivolous purpose.
- A “**vexatious**” request, on the other hand, is a request that is intended merely to create frustration or annoyance.

# Frivolous and Vexatious Requests

**FRIVOLOUS.** An answer or plea is called "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff. *Erwin v. Lowery*, 64 N. C. 321; *Strong v. Sproul*, 53 N. Y. 499; *Gray v. Gidlere*, 4 Strob. (S. C.) 442; *Peacock v. Williams* (C. C.) 110 Fed. 916.

**VEXATIOUS.** A proceeding is said to be vexatious when the party bringing it is not acting *bona fide*, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result. Such a proceeding is often described as "frivolous and vexatious," and the court may stay it on that ground. Sweet.

Black's Law Dictionary, 2<sup>nd</sup> Ed. (1910)

# Frivolous and Vexatious Requests

- The general regulations under FIPPA and MFIPPA explain how the terms “frivolous” and “vexatious” are to be applied to FOI requests:
  - **FIPPA, Regulation 460 (General), s.5.1**
  - **MFIPPA, Regulation 823 (General), s.5.1**
- Helpfully, the section numbers and relevant wording are identical in both general regulations
  - I will just refer to them as “the regulation”

# Frivolous and Vexatious Requests

**5.1** 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,

(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. O. Reg. 21/96, s. 1.

*FIPPA Regulation 460 (General) / MFIPPA Regulation 823 (General)*

# The Four Ways a Request can be Frivolous or Vexatious

# Frivolous and Vexatious Requests

- Section 5.1 of the general regulation is split into two clauses, (a) and (b), but sets out **four criteria**:
- (a) is there a **pattern of conduct** which:
  - Amounts to an abuse of the right of access?
  - Would interfere with the operations of the institution?
- (b) **was the request itself made**:
  - In bad faith?
  - For a purpose other than to obtain access?

# Pattern of Conduct

# Pattern of Conduct

- Section 5.1 clause (a) deals with the requester's **pattern of conduct**
- A single request may appear reasonable on its face
- But context matters — including the requester's past interactions with the institution

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# Pattern of Conduct

- Institutions can consider their history and interactions with the requester and their previous FOI requests
- Clause (a), which deals with the **pattern of conduct**, is further split into two parts:
  - **Abuse of the Right of Access**
  - **Interference with Operations**

**5.1** 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,

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# Pattern of Conduct, part 1: Abuse of the right of access

- A pattern of conduct may amount to an abuse of the right of access
- Various criteria to be considered:
- **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?*

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# Pattern of Conduct, part 1: Abuse of the right of access

- **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?*
- *(Sept. 2023 IPCO Interpretation Bulletin, citing Orders M-618, M-850 and MO-1782)*

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# Pattern of Conduct, part 1: Abuse of the right of access

- *“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.**”*
- *(September 2023 IPCO Interpretation Bulletin)*

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# Pattern of Conduct, part 2: Interference with Operations

- A pattern of conduct can also simply be overwhelming for the institution
- **No need to prove intent to harass or abuse** in this case — only that the requester's conduct would disrupt operations
- **Even valid requests can be refused** if the volume or pattern causes operational interference
- Applies especially where the requester submits dozens of requests or more

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# Pattern of Conduct, part 2: Interference with Operations

- A pattern of conduct may impose delays responding to other FOI requesters
- “[I]t 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” (September 2023 IPCO Interpretation Bulletin)
- **Smaller institutions** without FOI-dedicated staff **may have stronger grounds**
- Larger institutions can still make the case, but must provide more compelling evidence

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# The Two Patterns of Conduct Compared

## Abuse of Right of Access

- Repeated harassing requests
- Very similar or overlapping requests
- Unclear whether the requests serve any purpose, especially when considered together
- Suspicious timing:
  - E.G., after someone's permit application is refused, they begin filing numerous requests about expense claims and catering costs

## Interference with Operations

- Many requests arriving over a relatively short period
- Generally, each request would be legitimate on its own
- The total volume (e.g., the number of requests and the level of detail) renders the requests frivolous/vexatious, not their content
- Smaller institutions are more susceptible

# The Request Itself

# The Request Itself

- Now, we're into clause (b), where we consider the **request by itself**
- Because we don't have the benefit of a pattern of conduct, the request has to be comparatively worse **on its own**
  - i.e., worse than typical frivolous/vexatious requests making up a pattern of conduct

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(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.** O. Reg. 21/96, s. 1.

# The Request Itself

- Clause (b), dealing with **the request itself**, is further split into two parts:
- **Bad Faith**
- **Purpose Other Than to Obtain Access**

**5.1** 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,

(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.** O. Reg. 21/96, s. 1.

# The Request Itself, part 1: **Bad Faith**

- IPCO has adopted the following 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.  
(cont’d on next slide)*

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# The Request Itself, part 1: **Bad Faith**

*‘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.”*

*(Order M-850, Citing Black’s Law Dictionary, 6<sup>th</sup> Ed.)*

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# The Request Itself, part 1: **Bad Faith**

- That said, any time we're required to establish someone's state of mind, we're facing a very high bar

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# The Request Itself, part 1: **Bad Faith**

- “Bad faith” might apply if you can establish the requester intended:
  - merely to put the institution through extra work (where the requester doesn’t really care about receiving the information requested)
  - to annoy certain employees of the institution, or
  - to ask for information that the requester knows does not exist or knows he has no legal right to obtain.

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# The Request Itself, part 1: **Bad Faith**

- In *Order M-850*, the requester took the position that there was “nothing wrong with testing or examining the boundaries of the Act or **having fun in filing requests.**”
- IPCO found this indicated the request was filed in **bad faith.**

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# The Request Itself, part 1: **Bad Faith**

- Statements from the requester could be helpful here:
  - E.G., “The staff at City Hall have made my life miserable, now it’s my turn to make their lives miserable” would be suggestive of bad faith
- But it is a very high bar to meet.
- IPCO does not want you to **assume** bad faith.

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# The Request Itself, part 1: **Bad Faith**

Here are some things that IPCO has found insufficient to indicate bad faith:

- That the requester may have lacked “clean hands” in dealing with the institution (they had obtained confidential information from an employee)
- That the requester might want to use the information in a manner which is “disadvantageous to the institution”

(From *Interim Order MO-1168-I*)

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# The Request Itself, part 1: **Bad Faith**

## More things that IPCO found insufficient to indicate bad faith:

- That the requester was seeking an earlier draft of a report which was known to contain errors (*Order MO-1377*)
- That the requester has been vocal about future litigation against the institution (*Order MO-3278*)
- **Legitimate “adversarial” behaviour isn’t “Bad Faith”**

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# The Request Itself, pt. 2: **Purpose other than to Obtain Access**

- The reason access to information requests exist is to allow requesters to access information
- Therefore, institutions shouldn't have to respond to requests **made for a purpose other than to obtain access** to records

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# The Request Itself, pt. 2: Purpose other than to Obtain Access

- Possible frivolous or vexatious “other” reasons could include:
  - To make the institution or a specific employee work harder
  - For the amusement of the requester
  - To bring attention or notoriety to the requester or their pet cause

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# The Request Itself, pt. 2: Purpose other than to Obtain Access

- Possible frivolous or vexatious “other” reasons could include:
  - To “get back” at or “hurt” the institution, or to “teach them a lesson”
  - To test or probe an institution’s record-keeping practices (MO-4646)
  - To ask for information that the requester knows does not exist, and has been told does not exist (MO-4553)

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# The Request Itself, pt. 2: Purpose other than to Obtain Access

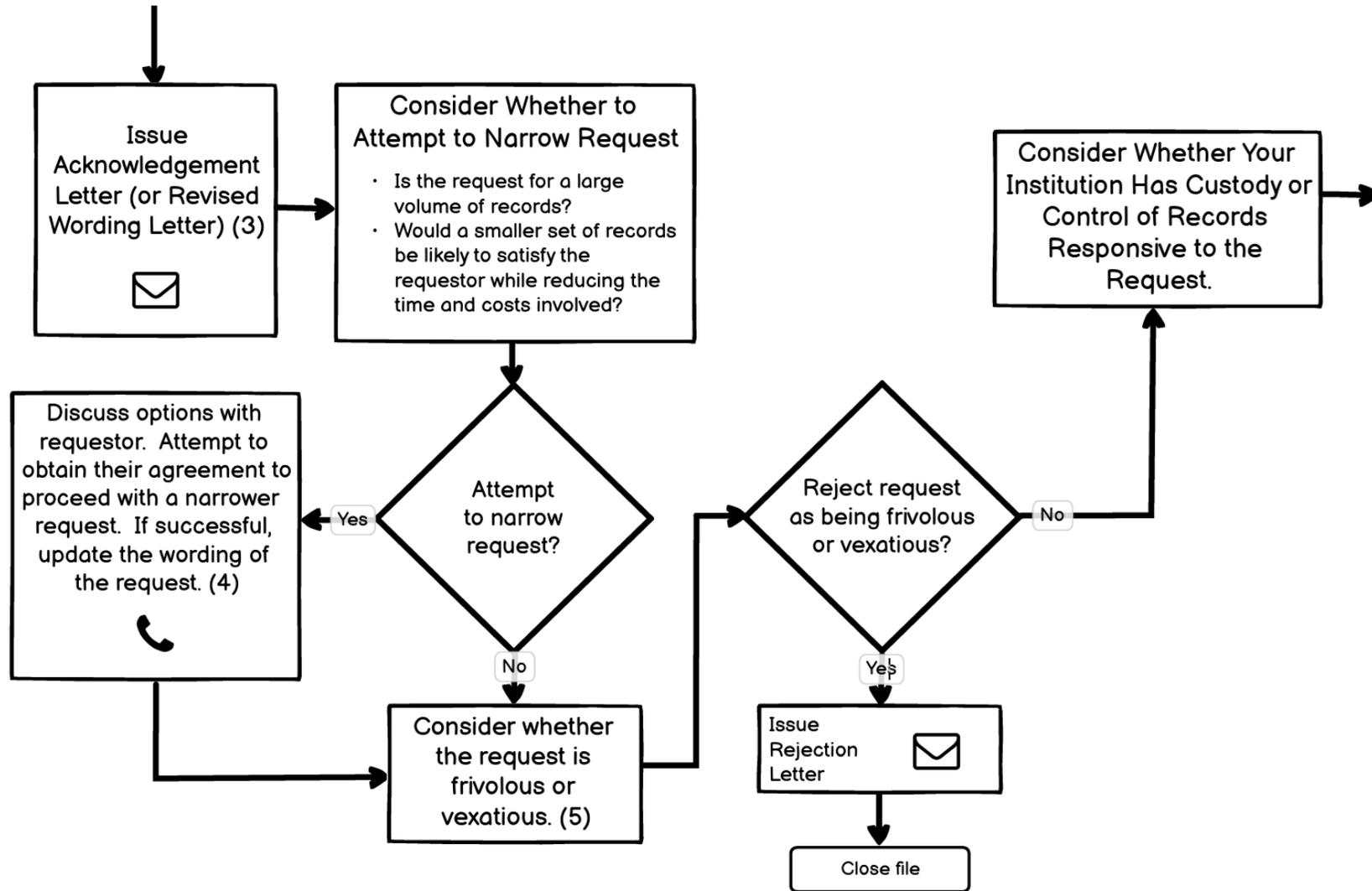
- However, a request made to obtain access to use the record for another legitimate purpose is not, on that basis alone, frivolous or vexatious.
- For example, a requester may intend to:
  - publish a record (*Order MO-3049*)
  - use it in litigation (*PO-2648*)
  - file a complaint (*M-860*)
  - challenge an assessment (*P-1311*)
- These are all valid reasons to seek and obtain access.

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# Notice Requirements and Best Practices



# Notice Requirements

- If an institution deems a request frivolous or vexatious, it must provide **written notice to the requester providing reasons for the decision** and letting them know of their **right to appeal** the decision to the IPCO.
- Once the letter has been sent, the file can be closed, subject to the possibility of the requester filing an appeal.



Thursday, February 12, 2026

Mary MacLemore  
111 Franklin Blvd  
Windsor, Ontario  
N8W 3T6

Dear Miss MacLemore:

**Re: Request is Frivolous and/or Vexatious (FOI File Number: 2026-04)**

Your request is for the following information:

*I am looking for any records which show purchases of plastic partitions by your institution in 2020, 2021 or 2022.*

I am writing to inform you that we are unable to process your request as we have concluded that the request is frivolous and/or vexatious.

We have determined that the request is part of a pattern of conduct that amounts to an abuse of the right of access and would interfere with the operations of the institution. Additionally, we believe that the request is being made in bad faith or for a purpose other than to obtain access.

The person responsible for making this determination is Victoria Bartok, Clerk.

You may request the Information and Privacy Commissioner to review this decision within thirty days from the date of this letter. You can do so by filing an appeal online at [www.ipc.on.ca](http://www.ipc.on.ca). The appeal fee is **\$25.00** (for general record requests) or **\$10.00** (for personal information requests). Alternatively, appeals can still be mailed with a cheque or money order payable to "Minister of Finance" to: Registrar, Information and Privacy Commissioner of Ontario, 2 Bloor Street East, Suite 1400, Toronto, ON, M4W 1A8.

# Notice Requirements



Typically, the written notice will mention:

- A pattern of conduct amounting to an abuse of the right of access
- A pattern of conduct that would interfere with the operation of the institution, and/or
- That the request was submitted “in bad faith or for a purpose other than to obtain access”

(The last two reasons are hard to distinguish and are often conflated – there’s really no need to cite just “one or the other” in the letter.)

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# Notice Requirements



- **Defective notices can undermine otherwise solid cases!**
  - See “Are Your Written Notices Defective?” article at [foiassist.ca](https://foiassist.ca)
  - See also *Order MO-3570 (Township of Carling)*
  - IPCO found the institution’s correspondence did not follow guidance
  - The township lost the appeal and was ordered to issue new correspondence which complied with the guidance
  - The township’s assertion that the requests were frivolous or vexatious also failed for lack of evidence and sufficient details

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# Be Prepared for Appeals

- The requester **can appeal** the institution's decision to declare a request frivolous or vexatious
- Therefore, **institutions should maintain detailed records of their interactions with the requester**, including:
  - How many requests the requester has filed
  - The complexity of the requests
  - The frequency of the requests
  - Whether the requests appear to be filed in response to surrounding events
  - The requester's conduct in relation to the institution and its staff



# Be Prepared for Appeals

If the IPCO agrees with the institution, it may uphold the determination that the request was frivolous or vexatious and the institution will not have to process the request.

From IPCO August 2017 Fact Sheet:

Further, **IPCO may impose conditions on the 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*

**It's potentially a very worthwhile appeal to pursue!**



# Recent Appeals

## MO-4760 and MO-4761

(City of Brantford, Feb 6, 2026)

- The requester's father had previously had conditions imposed upon him for filing frivolous and vexatious FOI requests
- The father had:
  - “regularly and routinely posted printed posters in locations around the city which name certain city staff members who have been the subject of his access requests and accuse them of various forms of malfeasance and public corruption” and
  - “regularly attended at city council meetings and its committees and engaged in conduct towards elected officials and staff that has resulted in his removal from meetings”



# Recent Appeals

## MO-4760 and MO-4761

(City of Brantford, Feb 6, 2026)

- Now the son (who is the appellant in both decisions under discussion) starts filing similar FOI requests which overlap in whole or in significant part with requests made by the father.
- The City of Brantford took the position that the father and son were acting in concert.
- IPCO agreed, finding the father and son had “by their pattern of conduct [acted] in concert to attempt to burden the system with their access requests” and imposed the following conditions on the son:



# Recent Appeals

## MO-4760 and MO-4761

(City of Brantford, Feb 6, 2026)

- *“For a period of one calendar year from the date of this order, I am imposing a one, single-part, request limit on the number and type of requests submitted by the appellant under the Act that may proceed at any given point in time, including any requests that are outstanding as of the date of this order. I also limit the appellant to one active appeal with the IPC involving the city that may proceed at any point in time for a period of one calendar year from the date of this order.*
- *Subject to the one-request limit described in provision 2(a), if the appellant wishes any part of his requests that currently exist with the city to proceed to completion, the appellant shall notify the city and to advise as to which matter he wishes to proceed.*
- *Pending this notification, any outstanding requests with the city are stayed.”*



# Conclusions & Takeaways

# Frivolous and Vexatious Requests

- **Remember your relevant legal references:**
  - FIPPA s.10(1)(b) and Gen. Reg. 460, s. 5.1
  - MFIPPA s.4(1)(b) and Gen. Reg. 823, s. 5.1
- **There are four ways** to find requests frivolous or vexatious:
  - PoC amounting to an abuse of the right of access
  - PoC that would interfere with operations
  - Request made in bad faith or with a purpose other than to obtain access
- Written notice is required (which must meet certain requirements)
- Keep good notes & file history, in case there's an appeal!

# Additional Resources

- *IPCO September 2023 Interpretation Bulletin*
- *IPCO August 2017 Access Fact Sheet*
- *David Goodis: Annotated Ontario Freedom of Information and Protection of Privacy Acts*
- FOI Assist Knowledge Base Articles (free online):
  - “When is an FOI request frivolous or vexatious?”
  - “Are Your Written Notices Defective?”
- The FOI Assist software



## 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.

# Next Steps

You will receive two separate emails:

- one later today with the link to the quiz, and
- another at a later date with information about the next seminar in the FOI Assist Seminar Series.

Please keep an eye on your inbox (and your junk/spam folder, just in case!)

# Thank you for attending!

Justin Petrillo  
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