

Section 6.1 of the Access to Information Act: Authorization to decline to act on an access request

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Authorization to decline frivolous/abusive/bad faith requests

- Section 6.1 of the federal *Access to Information Act* provides that institution may seek the Commissioner's approval to decline an access request, if, in the opinion of the head of the institution, the request is:
 - vexatious;
 - made in bad faith; or
 - otherwise an abuse of the right to make a request for access to records.
- Came into force June 21, 2019

General Guidance

- [PROCEDURE: Seeking the Information Commissioner's approval to decline to act on an access request](#)
- [INTERPRETATION: Seeking the Information Commissioner's approval to decline to act on an access request](#)

Premature application: duty to assist

- Institutions should only seek approval to decline to act on an access request after having made every reasonable effort to help the requester with the request, as is required under the duty to assist. (Subsection 4(2.1))
- This includes helping requesters clarify the substance of their access request (section 6) and, when appropriate, narrow its scope. (6.1-0004, 6.1-0005)
- When the Commissioner is not satisfied that the institution has fulfilled its obligation, she may find an application to be premature. (6.1-0004, 6.1-0005)

Does the request meet the requirements of section 6?

- Section 6 of the Act requires a requester to provide sufficient detail to enable an experienced employee of the institution to identify the requested record with a reasonable effort.
 - If institution determines - after fulfilling duty to assist - that the request does not meet the requirements of section 6, then it can respond as such to requester.
- An application under section 6.1 does not relieve requesters of their obligations under section 6, nor does it relieve an institution of its obligation under subsection 4(2.1). (6.1-0005)

Considerations for seeking approval

- The OIC expects applications to:
 - Be complete;
 - Explain how the access request satisfies one or more criteria under 6.1;
 - Be supported by **clear** and **compelling** evidence that is sufficiently detailed in the application.
 - Although contextual information may be helpful, it is unlikely to be a determinative factor (6.1-0005)

Considerations for seeking approval

- The OIC may consider the following factors when deciding if an access request is vexatious, made in bad faith, or otherwise an abuse of the right of access:
 - The nature and scope of the access request
 - The purpose of the access request
 - The wording of the access request
 - The timing of the access request to other possibly related events
 - The volume of similar access requests by the same requester or connected requesters

Questions to consider

- Is the primary purpose of the access request contrary to the purpose of the Act? Is there a motivation behind the request other than obtaining access?
- Has the access request been repeatedly submitted by one individual or a group of individuals working in concert?
- Is there a history or an ongoing pattern of access requests by this requester designed to harass your institution?
- Does the access request or related communication contain vulgar, offensive, intimidating, threatening, or insulting language that is not necessary in order for the request to be processed?
- Is the access request overburdening your institution to the extent that it is threatening or diminishing the legitimate exercise of the right of access by others?
- Has the requester intentionally misrepresented facts and circumstances in its dealings with your institution as you process their access request?

Vexatiousness

- **Vagueness:** if a request requires clarification, the institution has a duty to take reasonable measures to seek clarification before asking for approval to decline to act (6.1-0001)
- **Repetitiveness:** must show that all of the requested information was the subject of a previous request and there has been no change in circumstances impacting the prospective disclosure of that information (6.1-0001), (6.1-0002)
 - 6.1-0003: Commissioner found that, on a balance of probabilities, the request was vexatious where 11 previous requests were duplicative or substantially similar, all information requested was encompassed by a previous request, and no circumstances were raised warranting the duplication.
- **Abusive language:** consideration may be given to whether institution could segregate out the language considered to be offensive and/or ask that the requester refrain from using such language in the future (6.1-0001)
- **Safety of employees:** must show that this is related to the access request and the processing of the access request (6.1-0001)

Bad faith

- Requesters are entitled to explore and exhaust their legal rights in seeking legal remedies to oppose an institution. Evidence that the requester has pursued past administrative or legal actions against an institution falls short of demonstrating that the specific access requests were made in bad faith (6.1-0001)

Abuse of the right of access

- **Impact on rights of others:** Must explain how rights of other requesters have been diminished; e.g., how the request has prevented the institution from processing other requests or responding to those requests on time, how institution's other duties and responsibilities have been impacted. (6.1-0001)
- **Volume/repetitiveness:** large volume of requests, repetitive nature of 11 requests, particularly despite the institution advising the requester that in some cases no documents exist, and recurring complaints to the OIC about these requests, amount to an abuse of the right of access. (6.1-0003)

Other considerations

- Previous privacy requests and past behaviour may be included as contextual information, generally not sufficient on its own to be relied upon (6.1-0005)
 - There is no equivalent provision to section 6.1 under the *Privacy Act*
- Institutions must submit application within the 30-day period to initially respond to the request, or within a validly taken extension period (see section 9).
 - E.g., institution may choose to take a time extension for a voluminous request, if justified given the information it has from the requester during the initial 30 days, while also continuing to work with requester on scoping, and considering whether to submit an application under section 6.1.