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Nunavut Information and Privacy Commissioner
Nunavunmi Tuhaqtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina
Commissaire à l’information et à la protection de la vie privée du Nunavut

Commissioner’s Final Report

Report Number:	22-243-RR
CanLII Citation:	Department of Justice (Re), 2023 NUIPC 10
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Summary

[1] The Department of Justice applied under section 53 for authorization to disregard the Respondent’s requests for records. The Commissioner considers the nature and number of requests filed by the Respondent, as well as the nature and volume of the Respondent’s communications with Justice, and concludes that the criteria in section 53 are met. Justice may disregard any uncompleted requests from the Respondent and is not required to communicate with the Respondent about them. Justice may also disregard future requests, unless the Respondent has obtained prior approval from the Commissioner. Only one such request will be approved at a time. The authorization to disregard expires at the end of 2025.

Nature of Review and Jurisdiction

[2] This is an application by the Department of Justice under section 53 of the *Access to Information and Protection of Privacy Act* (ATIPPA). The application is for authorization to disregard access requests, both present and future, filed by the Respondent.

[3] The Commissioner has jurisdiction over the Department of Justice: ATIPPA, section 2, definition of “public body”.

Issues

[4] The issues in this review are:

a. Does Justice's application meet the criteria in section 53 for authorization to disregard?
b. If so, what is the appropriate remedy?

Facts

[5] Because of the nature of this case, which is based on a pattern of conduct over many years, the facts I present here are unusually long. Even then, I am only scratching the surface of everything that has happened. It is not easy to relate the facts in any kind of chronological or logical way.

[6] The Respondent is a former resident of Nunavut. Some 20 years ago, there was an event, or a related series of events, that appears to have left the Respondent with a strong feeling of injustice. In this decision, I will refer to this event or events as "the original matter". The exact details of the original matter are not known to me, nor would it be productive for me to try to determine the details of the original matter because they are not relevant to this decision.

[7] Restricting myself to ATIPP matters, the records of the former Information and Privacy Commissioner show that in the 2001-03 period this office opened 30 separate files in relation to the Respondent. This was more than all other files put together. In 2007, this office opened another 23 separate files in relation to the Respondent. Last year saw another flurry of activity, with seven new files opened in this office in relation to the Respondent before this section 53 application was filed.

[8] It is not possible to know how many ATIPP applications the Respondent has filed over the years. The GN does not keep those sorts of records. The activity in this office is an indirect indicator of ATIPP activity, since this office would have records only on those matters on which the Respondent requested review.

[9] Some of the Respondent's recent ATIPP applications have been in connection with the original matter.

Nunavut courts

[10] The Respondent undertook an array of administrative and judicial proceedings in relation to the original matter and the people who were in any way connected to it. Again, the exact details of all these proceedings are not known to me, nor would it be productive or relevant for me to try to determine the details.

[11] As early as November 2003, Justice Browne of the Nunavut Court of Justice was considering invoking the court's inherent jurisdiction to declare the Respondent a vexatious litigant, but did not do so: *Mazhero v. Federation of Nunavut Teachers*, 2003 NUCJ 2 (CanLII).

[12] On August 14, 2009, Justice Sharkey (as he then was) of the Nunavut Court of Justice issued an order declaring the Respondent to be a vexatious litigant. The first part of the order applies to the Nunavut Court of Justice and reads as follows (transcript, page 151, lines 7-17):

> One, Mr. Mazhero has persistently and without reasonable grounds instituted vexatious proceedings in this Court and has as a result abused the process of the Court. Two, Mr. Mazhero is declared to be a vexatious litigant [in the] Nunavut Court of Justice. Three, Mr. Mazhero may not file any originating motion, statement of claim, petition, application, motion, affidavit or argument or any similar document in relation to any cause or matter 15 whatsoever without prior leave in writing from a judge of the Nunavut Court of Justice.

[13] Justice Sharkey went on to lay out, in detail, the procedure by which the Respondent could obtain leave of the court. He ordered that, to obtain approval, the filing must "substantially advance a material claim with a reasonable opportunity of success and have a reasonable nexus in law and fact". He then repeated the same order, with slight variations in details, for the Nunavut Court of Appeal. That court order, from 2009, still stands.

[14] Some of the Respondent's recent ATIPP applications have been in connection with these various court proceedings.

Amendments to the Judicature Act

[15] In 2010, the Minister of Justice introduced into the Legislative Assembly a bill to amend the *Judicature Act*, C.S.Nu. c. J-10. At the time it was Bill 16, and upon passage it became S.Nu. 2010, c. 10.

[16] Bill 16 added section 51.1 to 51.5 to the *Judicature Act* and instituted a statutory procedure for dealing with vexatious litigants. The amendments came into force on June 10, 2010.

[17] Some of the Respondent's recent ATIPP applications have been in connection with these amendments to the *Judicature Act*.

Other Canadian courts

[18] The Respondent did not restrict themselves to litigating in Nunavut courts. Again, the exact details of all these proceedings are not known to me, nor would it be productive for me to try to determine the details of this multiplicity of proceedings. When considering whether a litigant is vexatious, proceedings initiated in other courts may be considered: *Mazhero v. Fox*, 2011 FC 392 (CanLII) at paragraph 13, and the authorities cited there.

[19] Looking only at what is readily available on the public record, there are currently 46 judicial decisions in the CanLII database involving the Respondent, from Nunavut, Yukon, British Columbia, Quebec, the Federal Court, and the Supreme Court of Canada. I do not propose to go over them all, but I will note the decisions that are most relevant to the present application.

[20] One of the recurring features of the judicial decisions is the Respondent's allegations that others are lying, stonewalling, acting in bad faith, acting unethically, acting criminally, acting fraudulently, or in contempt of court: see, for example, *Mazhero v. Yukon (Human Rights Commission)*, 2001 YKSC 519 (CanLII); *Mazhero v. Yukon (Information and Privacy Commission)*, 2001 YKSC 42 (CanLII); *Mazhero v. Yukon (Ombudsman)*, 2001 YKSC 520 (CanLII); *Mazhero v. Peltz*, 2003 NUCA 1 (CanLII); *Mazhero v. Federation of Nunavut Teachers*, 2003 NUCJ 2 (CanLII); *Mazhero v. Richard*, 2010 FC 281 (CanLII); *Mazhero v. Fox*, 2011 FC 392

(CanLII); *Mazhero c. CBC Radio-Canada*, 2013 QCCA 538 (CanLII); *Mazhero c. CBC Radio-Canada*, 2013 QCCA 1225 (CanLII); *Mazhero c. CBC/Radio-Canada*, 2014 QCCA 107 (CanLII).

[21] Another recurring feature of the judicial decisions is the Respondent's tendency to launch, for any given matter, a plethora of proceedings and then to be consumed by procedural issues: see, for example, *Mazhero v. Yukon Human Rights Commission*, 2002 YKCA 5 (CanLII); *Mazhero v. Peltz*, 2003 NUCA 1 (CanLII); *Mazhero v. Federation of Nunavut Teachers*, 2003 NUCJ 2 (CanLII); *Mazhero v. Fox*, 2011 FC 392 (CanLII).

[22] Another recurring feature of the judicial decisions is the Respondent's request for payment information and other personal information about public service staff who are working on the proceedings he has filed: see, for example, *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BCSC); *Mazhero v. Federation of Nunavut Teachers*, 2003 NUCJ 2 (CanLII).

[23] I will also note *Mazhero v. Nunavut*, 2009 NUCA 4 (CanLII), in which the Nunavut Court of Appeal referred to the Respondent's "profound misunderstandings of court processes and jurisdictions". That is another theme of the judicial decisions involving the Respondent.

[24] The first decision in CanLII involving the Respondent is similar to the present case. In 1998, the British Columbia Supreme Court considered an application to disregard the Respondent's ATIPP requests: *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BCSC). The Respondent had filed some requests for records to a municipality, then filed 17 more requests within a four-month period. The municipality applied to disregard the requests that were not yet complete, as well as any future requests.

[25] The Information and Privacy Commissioner granted the municipality's application, but that decision was set aside, in part, by the B.C. Supreme Court. The judge concluded that the Commissioner should not have authorized the municipality to disregard future requests, since it could not be known in advance if a request would unreasonably interfere with the operations of the public body.

Nevertheless, wrote the judge, there might be other valid grounds to authorize a public body to disregard future requests. The judge referred that portion of the matter back to the Commissioner for reconsideration.

[26] The first judicial decision characterizing a filing by the Respondent as "scandalous, frivolous or vexatious" is *Mazhero v. Richard*, 2004 FC 1659 (CanLII). In that case a statement of claim, in which the Respondent purported to sue judges of the Nunavut courts and others, was struck in its entirety. The judge made similar comments about vexatious proceedings in a related decision: *Mazhero v. Richard*, 2010 FC 281 (CanLII).

[27] In *Mazhero v. Fox*, 2011 FC 392 (CanLII), the court granted a motion under section 40(1) of the *Federal Court Act*, which effectively designated the Respondent as a vexatious litigant. The judge reviewed, in detail, all of the proceedings instituted by the Respondent, and concluded (at paragraph 46) "I am satisfied that the respondent has persistently instituted vexatious proceedings and has conducted the underlying proceeding in a vexatious manner…". The first part of the judge's order states "The respondent, Francis Mazhero, is barred from bringing any further proceedings in this Court except with leave of the Court."

[28] In *Mazhero v. Fox*, 2014 FCA 238 (CanLII), which was an interlocutory motion on an appeal from 2011 FC 392, Justice Stratas of the Federal Court of Appeal referred to the Respondent's "persistent and continued defiance of orders of this Court" and concluded "he will not deviate from a pattern of abusive litigation behaviour and is ungovernable" (at paragraph 3). The judge added (at paragraph 18:

> Access to courts is important – hence the repeated guidance, warnings, and opportunities this Court has given to Mr. Mazhero. But there comes a point when enough is enough.

[29] In *Mazhero c. CBC Radio-Canada*, 2013 QCCS 4682 (CanLII), a defendant in a lawsuit instituted by the Respondent applied to have the Respondent declared a vexatious litigant. The judge granted the motion, saying "I have no hesitation or doubt in declaring Mr. Mazhero to be a quarrelsome litigant" (which is the

statutory language used in Quebec, rather than "vexatious" litigant). The court ordered that the Respondent not be permitted to continue or commence any legal proceeding in any court of first instance in Quebec, including any judicial or quasi-judicial body over which the Superior Court exercises supervision, without authorization by a designated judge.

[30] This decision was affirmed on appeal: *Mazhero c. CBC/Radio-Canada*, 2014 QCCA 107 (CanLII). The appeal court gave a lengthy overview of the Respondent's conduct and was harshly critical of it. The court concluded (at paragraph 44):

> …the time has come to show the door to Mr. Mazhero, and thus to put an end to his unfettered access to this Court.

The court prohibited the filing by the Respondent of any more proceedings without leave of a designated judge. It also directed the clerk of the court not to distribute to judges any more correspondence from the Respondent, "given his predilection for inundating the Court with letters and emails".

This application

[31] Justice filed this application on September 8, 2022.

[32] In support of its application, Justice referred to twelve ATIPP requests filed by the Respondent in the previous two years. The twelve applications may be summarized as follows:

a. JUS0453: Records of payments to the arbitrator who heard the Respondent's case in 2002/03, filed September 21, 2020.

b. JUS0661: Records regarding the enactment of section 51 of the *Judicature Act*, filed September 28, 2020.

c. JUS1390: Records sent by Justice to the cabinet regarding the enactment of section 51 of the *Judicature Act*, filed January 26, 2021.

d. JUS1491: Records related to Justice's response to JUS0661, filed January 31, 2021.

e. JUS19105: Names and education level of everyone who participated in the enactment of section 51 of the *Judicature Act*, filed February 23, 2021.

f. JUS22124: Records of communications about the Respondent between Justice and seven named entities over a 17-year period, filed March 22, 2021.

g. JUS0104: Based on a reference in a ministerial briefing note, a list of the Respondent's claims in the Nunavut Court of Justice and a copy of the 19,781 pages of material the Respondent allegedly submitted to the Nunavut Court of Justice from 2002 to 2010, filed April 8, 2021.

h. JUS27162: Records relating to communications about the Respondent between Justice, the RCMP and the Nunavut Court of Justice starting in 2003, filed February 1, 2022.

i. JUS0207: Request for two specific documents, filed April 26, 2022.

j. JUS0412: Records relating to communications between Justice and the Nunavut Court of Justice, and within Justice, about section 51 of the *Judicature Act*; payments made to a named individual for work on the legislative proposal for amending the *Judicature Act*; reports of the standing committee of the Legislative Assembly about the amendments to the *Judicature Act*, filed April 25, 2022.

k. JUS1053: Notes taken by a named individual during court proceedings during a six-year period starting in 2003; memos related to the same court proceedings, filed July 27, 2022.

l. Unnumbered file: Records related to JUS0661; list of all deputy ministers and their dates of appointment from 1999 to the present, filed September 6, 2022.

[33] In addition to the foregoing formal requests, Justice says the Respondent engaged in a voluminous correspondence with Justice staff. This correspondence

sometimes included requests for records or information that were not included in a formal request, including (for example) records showing when the ATIPP Coordinators were appointed to their position and payments made to them in that position. The tone of the correspondence was often critical and accusatory.

[34] On September 12, 2022, I issued an interim decision: *Department of Justice (Re)*, 2022 NUIPC 22 (CanLII). That report authorized Justice to suspend processing all requests for information from the Respondent under the ATIPPA, and to disregard all communications from the Respondent concerning the Respondent's requests for information under the ATIPPA: paragraphs 21 and 22. The interim authorization to disregard expires with the release of this decision: paragraph 23.

[35] I then invited the Respondent to make a written submission in response to the section 53 application. The Respondent requested extensions of time on October 3, 2022; November 7, 2022; December 12, 2022; and February 12, 2023. Various grounds were advanced by the Respondent in support of these requests. I granted all of these requests. The last extension was to April 17, 2023.

[36] On April 17, 2023, I received a written submission from the Respondent on a novel issue of law, which I will discuss in the Analysis section below. I asked the Respondent if they had any further submissions to make. On April 19 I received a written submission from the Respondent that elaborated on the same issue of law. I asked the Respondent if they had any further submissions to make. I received no further response.

Law

[37] This case turns on the interpretation of section 53 of the ATIPPA. It reads as follows:

> 53. The Information and Privacy Commissioner may, at the request of the head of a public body, authorize the public body to disregard a request under section 6 that
>
> (a) is frivolous or vexatious;
> (b) is not made in good faith;
> (c) concerns a trivial matter;
> (d) amounts to an abuse of the right to access; or

> (e) would unreasonably interfere with the operations of the public body because of its repetitious or systematic nature.

[38] There is similar wording, with the omission of paragraph (e), in section 31(2) of the ATIPPA. That section authorizes the Information and Privacy Commissioner to refuse to conduct a review, or to discontinue a review, if the conditions in paragraphs (a) to (d) are met.

[39] In Nunavut, there is only one previous decision on a section 53 application: *Review Report 17-120 (Re)*, 2017 NUIPC 7 (CanLII). The former Commissioner wrote:

> The Information and Privacy Commissioner will not give this authorization lightly but nor will the section be so narrowly interpreted as to make it meaningless. As noted by Coultas, J. In *Crocker v. British Columbia (Information and Privacy Commissioner) et al* (1997) CanLII 4406 (BCSC) in discussing the equivalent British Columbia section to our Section 53:
>
>> … Section 43 is an important remedial tool in the Commissioner's armoury to curb abuse of the right of access. That section and the rest of the Act are to be construed by examining it in its entire context bearing in mind the purpose of the legislation. The section is an important part of a comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance. The legislative purposes of public accountability and openness contained in s. 2 of the Act are not a warrant to restrict the meaning of s. 43. The section must be given the "remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects" that is required by s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238.
>
> … In my opinion, we must look at all of the circumstances to determine whether a particular request for information is frivolous or vexation or amounts to an abuse of the access to information system.

In that case, the section 53 application was granted in part. I adopt this analysis for purposes the present case.

[40] Across Canada, there is a substantial amount of precedent on the interpretation of one or more elements of section 53. In Ontario, for example, factors that may be relevant in determining whether a pattern of conduct

amounts to an “abuse of the right of access” include the number of requests; the nature and scope of the requests; the purpose of the requests; and the timing of the requests: Orders M-618, M-850 and MO-1782. The focus should be on the cumulative nature and effect of a requester’s behaviour: Order MO-1782.

[41] Finally, I note that the ATIPPA gives me the authority to issue recommendations, not orders: section 35 (for access reviews) and section 49.5 (for privacy reviews). After I issue my report and recommendations, the minister is required to issue a written decision in response: sections 36 and 49.6. An authorization under section 53 is neither a recommendation nor an order. A written response from the minister is not required.

Analysis

[42] The access to information system is an important component of accountable government. A citizen’s right to information should not lightly be taken away. The bar for a section 53 application is high, and properly so. For the reasons that follow, I conclude that the bar has been met in this case.

[43] The Respondent submitted a flurry of ATIPP applications to Justice. The number of applications filed over a two-year period was unusual but not extraordinary. The Respondent does, however, have a history of submitting much larger flurries of applications. Justice is entitled to take into account an ATIPP applicant’s history. Based on the Respondent’s history, it was reasonable for Justice to believe that the flurry would grow unless Justice applied for authorization to disregard under section 53.

[44] Apart from the volume, there are four challenges posed to Justice by the Respondent’s official and unofficial requests for records.

[45] The first challenge is that the requests tend to overlap. They are not identical, but they are variations on a theme. For some of them, Justice told the Respondent that it had already (a) disclosed the requested records, or (b) searched for responsive records and found nothing. It was not always easy for Justice to separate the strands of the Respondent’s applications.

[46] The second challenge is that the requests often (not always) have an element of triviality about them. The Respondent would, for example, ask for records about the appointment and the pay of those who were processing the ATIPP requests, or how much an arbitrator was paid twenty years ago, or the educational attainment of those involved in the *Judicature Act* amendments. While there is a time and place for those sorts of request, cumulatively they are not a serious use of the ATIPP process.

[47] The third challenge is that the applications often (not always) were looking for very old records. The original matter and events flowing from it are now about twenty years old. Again, there is a time and place for that sort of request, but the Respondent was typically looking for records about details of long-ago events, many of which had been the subject of previous ATIPP requests. It can take a long time, for example, to determine that there are no responsive records from a meeting that may or may not have happened twenty years ago.

[48] The fourth challenge is that the Respondent's applications are often accompanied by communications that are harshly accusatory, questioning the character and competence of those processing the ATIPP requests. The Respondent came down hard on any procedural irregularity, whether real or perceived. There are also frequent references to a wide-ranging conspiracy against the Respondent. I accept that this steady drumbeat of accusatory correspondence took a toll on Justice staff who were required to deal with it.

[49] These challenges are intertwined on any given application. It is not possible to separate the Respondent's applications into neat piles, and to say "these are vexatious" or "these are trivial" or "these are systematic and repetitious". These elements are present in varying degrees in all of the Respondent's requests.

[50] It is regrettable that the Respondent did not provide a written submission on the merits of this application. The Respondent was given every opportunity to do so, including four extensions totalling about six months. After all that time, the Respondent advanced only one jurisdictional argument. That argument is difficult to understand but I will try to summarize it.

[51] The Respondent prepared a clause-by-clause comparison of the ATIPP legislation in the Northwest Territories and Nunavut. The comparison shows there are numerous differences between the two laws. The Respondent argues that these differences are attributable to the Nunavut Department of Justice. Because Justice has usurped the role of the Legislative Assembly (argues the Respondent) the Nunavut ATIPP Act is “void”. Because the Act is void, so is Justice’s section 53 application.

[52] When I asked the Respondent for any further submission, the Respondent sent a compilation and analysis of Hansard from the Nunavut Legislative Assembly, purporting to show that the Legislative Assembly had not made the amendments to the ATIPPA. Therefore (argues the Respondent) the amendments must have been made unlawfully by the Department of Justice.

[53] This argument does not, of course, have any merit. Upon division in 1999, Nunavut adopted NWT laws, including the ATIPPA. After division, the Legislative Assemblies of Nunavut and NWT were free to amend their ATIPPAs as they saw fit, and they did so. Those amendments are duly recorded in each jurisdiction’s annual volumes of statutes. Over the years, as amendments have been adopted by the Legislative Assembly in one territory or the other, the two laws have diverged, in some respects substantially. The fact that today the two laws are different has no bearing whatsoever on the validity of the Nunavut ATIPPA. The Respondent’s jurisdictional argument shows only the Respondent’s profound misunderstanding of the legislative process.

[54] The Respondent’s argument is in some ways emblematic of the problem posed by the Respondent. It is evident that the Respondent has spent a very substantial amount of time comparing the two laws, handwriting an annotation of the Nunavut law, and searching through Hansard. All of that time was wasted. The product of the Respondent’s work has no bearing on any relevant legal point. One might say that the Respondent is free to waste his own time. But does the Respondent have the right under the ATIPPA to waste other people’s time? In all of the circumstances, the answer has to be No.

[55] It is apparent that, over a period of twenty years, an extraordinary amount of the GN's time has been expended on the Respondent's ATIPP requests. There have been long lulls between the Respondent's flurries of activity, but those flurries are intense. Lately it is Justice that has been the subject of the Respondent's attention. Justice had good reason to be concerned about the nature and number of the Respondent's ATIPP requests, as well as the nature and volume of the Respondent's communications with Justice's ATIPP staff.

[56] The Respondent's requests might be saved if they had objective merit, but they do not. The Respondent's ATIPP requests do nothing "to make public bodies more accountable to the public", which is the foundational objective of the ATIPPA. The Respondent long ago exhausted any legitimate avenues of redress that they had for the original matter. Twenty years later, the Respondent is pursuing tangents to tangents to tangents, and doing so in a way that is of no conceivable benefit to anyone, including the Respondent.

[57] At some point in the ATIPP process, someone has to say "Enough". That job, according to section 53, falls to me. I conclude that this section 53 application should be allowed. The only remaining question is the appropriate remedy.

Remedy

[58] Although I am allowing the section 53 application, I am not willing to bar the ATIPP door completely. I note from the court precedents, for example, that conditions may be imposed that leave the door open, even if just a crack, for any future application that has objective merit. I propose something analogous in this case.

[59] The authorization I am granting is also limited to the Department of Justice. I may expand the authorization to disregard if the same pattern of conduct re-emerges in relation to one or more other public bodies. It would, in my view, be premature to extend the authorization to disregard to all public bodies under the ATIPPA.

[60] The authorization I am granting is also limited in time. An expiry date ensures a fresh look, if necessary and appropriate, in future.

Conclusion

[61] The Department of Justice's application meets the criteria in section 53.

Authorization

[62] I authorize the Department of Justice to disregard all current ATIPP applications from the Respondent. For greater certainty, all uncompleted ATIPP applications filed by the Respondent are deemed to be closed, and Justice is not required to communicate with the Respondent about those applications.

[63] I authorize the Department of Justice to disregard all future requests for information from the Respondent unless the Respondent has first sought and received from the Information and Privacy Commissioner approval to file the request. The Information and Privacy Commissioner's approval will apply to no more than one request at a time. The Information and Privacy Commissioner will not consider a new request for approval until ATIPP proceedings for the previously approved request have been completed or the previously approved request has been withdrawn.

[64] This authorization to disregard expires on December 31, 2025.

[65] Finally, the Respondent's requests for review that are open in this office under file numbers 22-149 (GN file 1029-20-JUS27162) and 22-150 (GN file 1029-20-JUS0207) are, pursuant to section 31(2) of the ATIPPA, discontinued.

Graham Steele
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