



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision F06-12

**MINISTRY OF LABOUR AND CITIZENS' SERVICES
AND MINISTRY OF EDUCATION**

David Loukidelis, Information and Privacy Commissioner
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Summary: The respondent's past and outstanding requests are systematic and would unreasonably interfere with the Ministries' operations. They are entitled to relief, in the circumstances, even in relation to requests to which they had not responded when required under FIPPA. The Ministries are authorized to disregard the outstanding and certain other requests.

Key Words: repetitious—systematic—unreasonably interfere with operations.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 43(a).

Authorities Considered: B.C.: Auth. (s. 43) 99-01 <http://www.oipc.bc.ca/orders/section43/dec-22-1999.html>; Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 47; Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26; Decision F05-01, [2005] B.C.I.P.C.D. No. 4; Decision F06-03, [2006] B.C.I.P.C.D. No. 6.

Cases Considered: *Crocker v. British Columbia (Information and Privacy Commissioner), et al.* (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.); *Mazhero v. British Columbia (Information and Privacy Commissioner)* (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

1.0 INTRODUCTION

[1] The Ministry of Skills Development and Labour ("MSDL") has requested authority, under s. 43 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), to disregard certain access to information requests that the respondent made under FIPPA. At the time of the s. 43 request, the respondent had 12 outstanding access requests, 11 with MSDL and one with the Ministry of

Education (“MOE”).¹ Of these, five with MSDL were past the FIPPA deadline for a response. The respondent had requested reviews by this Office of the failure to respond in time to four of these requests. After the s. 43 application, the respondent made one further access request to MSDL, which MSDL added to its s. 43 application.

2.0 ISSUES

[2] The notice issued by this Office to the parties sets out the following issues:

1. Whether the Commissioner can, under s. 43, authorize a public body to disregard certain requests made under s. 5 of the Act where, at the time of the application, the public body has failed to meet the requirements of s. 7 with respect to those requests? If the answer to the first issue is yes, should MSDL be authorized under s. 43 to disregard those requests? If the answer to the first issue is no, did MSDL fail to respond to those requests in accordance with the timelines for response set out in s. 7 of the Act?
2. Regarding the access requests respecting which the Ministries were not late in responding, should the Ministries be authorized under s. 43 to disregard them?

[3] Previous decisions have established that the public body is responsible for demonstrating that it is entitled to relief under s. 43.

3.0 DISCUSSION

[4] **3.1 Background**—The respondent is a former MSDL employee. Some years ago there was an organizational restructuring within MSDL and the respondent’s position was made redundant. The Ministries say that the respondent has since “apparently been very unhappy” about the loss of his employment. He requested access to information related to this matter, both under FIPPA and directly from MSDL program areas.² According to the Ministries, in a period of just over 27 months, the respondent made 41 access requests.³ He also made some human rights complaints related to the loss of his employment.⁴

[5] The Ministries applied jointly for a s. 43 authorization because, they say, they are both affected by the respondent’s requests.⁵ The respondent made

¹ MSDL is now the Ministry of Labour and Citizens’ Services, but I will refer to that ministry as MSDL. Further, because the s. 43 request encompassed an access request to the MOE, the s. 43 request was amended to include the MOE. I will refer to the two ministries collectively as “the Ministries”.

² Paras. 4.17 and 4.18, initial submission; paras. 8 and 9, Shave affidavit.

³ Para. 4.20, initial submission; para. 10, Shave affidavit; the Ministries say that several of the requests contain more than one request within them and that the applicant actually made 57 requests; it is however using the figure of 41 for the purposes of this application.

⁴ Para. 4.18, initial submission; para. 9, Shave affidavit; para. 62, respondent’s reply submission.

⁵ Paras. 1.02, 4.12 – 4.16; paras. 3, 5-7, Shave affidavit.

access requests to both MSDL and MOE, although the majority of his requests were directed at MSDL. MSDL did not at the relevant time have its own branch for complying with FIPPA. Instead, the Information and Privacy branch of the MOE provided these services to MOE, MSDL and others. According to the Ministries, because MSDL relied on MOE for request-processing services, the “burden imposed” by the respondent’s requests and follow-up issues and questions was felt by both MSDL and MOE. In addition, they say, the respondent began requesting files associated with his access requests and information related to MOE access and privacy functions.⁶

[6] **3.2 Applicable Principles**—In Auth. (s. 43) 02-01,⁷ I discussed the interpretation and application of s. 43(a), while Auth. (s. 43) 02-02,⁸ addressed s. 43(b). I have, in considering the Ministries’ requests here, applied the approach taken in those decisions and the cases to which they refer.

[7] Section 43 reads as follows:

Power to authorize a public body to disregard requests

- 43 If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that
- (a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or
 - (b) are frivolous or vexatious.

[8] Relief under s. 43 is available for access requests made under s. 5 of FIPPA that meet certain criteria. Section 43 does not apply to questions seeking answers or to everyday client relations. It also does not apply to requests for information or routinely-available records.⁹

[9] **3.3 Description of Requests**—The Ministries provided me with copies of the respondent’s requests and related correspondence. They say they excluded correspondence generated during mediation of various files with this Office.¹⁰ They say that many of the respondent’s requests ask for copies of all related documents or information including copies of emails, memos, letters, reports and statistical information.¹¹

⁶ Paras. 4.12 – 4.16, initial submission; Shave affidavit.

⁷ [2002] B.C.I.P.C.D. No. 47.

⁸ [2002] B.C.I.P.C.D. No. 57.

⁹ See Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26, at para. 10.

¹⁰ Para. 4.23, initial submission; Exhibit A to Shave affidavit. The Ministries said they excluded any file material that was not copied to the respondent during the mediation process. I note there are several examples of mediation-related correspondence between this Office and the respondent in the material before me, but I have ignored this material in reaching my decision here.

¹¹ Initial submission, Exhibit A to Shave affidavit.

[10] The Ministries say that, of the respondent's 41 access requests between June 2002 and September 2004,¹² one was for records available routinely under s. 70 of FIPPA. The Ministries transferred two further requests under s. 11 of FIPPA to the Public Service Agency, as it now holds government employees' personnel files. Of the remaining requests, the Ministries have processed and responded to 28—respecting 12 of which the respondent has requested reviews by this Office, since closed—and have placed the other 13 on hold pending the outcome of this application. Of these, the respondent has requested reviews in four cases where the Ministries exceeded their legislated time lines for responding.¹³

[11] The respondent's 41 access requests seek records in one or more of the following categories:

- Records specifically about the respondent (e.g., personnel files, leave files, PSERC¹⁴ grievance files, emails with the respondent as the subject);
- Records relating to particular incidents said to have occurred or comments said to have been made during the respondent's employment;
- Records relating to the Core Review and to the organizational restructuring of MSDL;
- Records relating to other staff (e.g., who occupied what positions and when, information as to certain employees' last day of work, expense information filed by certain employees);
- Records relating to the provision of security on the last day of work;
- Files opened for the processing of the respondent's access to information requests and related records (e.g., records relating to a proposed meeting with the Director of Employment Standards during mediation of the respondent's first access request file and the mediation of the other reviews that were happening simultaneously);
- Records management policies; and
- Records relating to the operations of MOE's access and privacy branch.¹⁵

[12] The Ministries contend that I need information about the respondent's access requests that they have already processed in order to assess this s. 43 application.¹⁶ The previous requests include, as examples, the following topics: the respondent's personnel files; records relating to the new organizational

¹² Para. 4.20, initial submission; para. 10, Shave affidavit.

¹³ Paras. 4.24-4.27, initial submission, paras. 14-17, Shave affidavit.

¹⁴ Public Service Employee Relations Commission, now the Public Services Agency.

¹⁵ Para. 4.22, initial submission; para. 12, Shave affidavit.

¹⁶ Para. 4.11, initial submission.

structure (including positions, locations and individuals assigned to positions); information relating to a specific incident; copies of all documents relating to meetings dealing with organizational restructuring (including any and all agendas or equivalent documents, lists of meeting participants and any and all notes kept by meeting participants); all records relating to the respondent's leave during a specified period; all records about maintenance of records by the Ministry; and copies of all emails sent and received by the respondent for a specified period.

[13] The Ministries have 13 outstanding access requests from the respondent.¹⁷ As noted earlier, at the time of the Ministries' s. 43 application, five of the outstanding access requests to MSDL were past their statutory 30-day deadlines for a response.¹⁸ (I will refer to these five requests as the "overdue requests".) Four of these were the subject of "deemed refusal" files in this Office.

[14] The overdue requests include the following topics: all documents relating in any way to the hiring of three Industrial Relations Officers ("IROs"); all documents related to three complaints the respondent filed with the Deputy Minister of MSDL; copies of all documents relating to the Employment Standards Branch ("ESB") Core Review strategies and directives received by the highest levels of Ministry public servants from the Cabinet or the Minister of Skills Development and Labour or their representatives; copies of documents produced by the highest levels of Ministry public servants related to the Core Review for dissemination to the next levels of public servants involved in the core review process; copies of all records relating to comments made by a named individual; and all records pertaining to persons (including corporations) supplying services to MSDL for work customarily done by IROs and Employment Standards Officers.¹⁹

[15] The remaining outstanding requests include the following topics: all information related to the provision of security and investigative staff and services to the ESB (including termination protocols, contracts with agencies providing security or investigative staff and related invoices, reports and correspondence); records showing all employees and their respective positions at ESB, all records contained in specified information and privacy files dealing with the respondent's access requests; and all records relating to a specified incident at a specified office.²⁰

[16] **3.4 Section 43 and Overdue Requests**—The first issue is whether I can, under s. 43, authorize a public body to disregard requests made under s. 5 of FIPPA where, at the time of the s. 43 application, the public body has failed to meet the time requirements of s. 7 of FIPPA with respect to those requests.

¹⁷ Para. 4.19, initial submission.

¹⁸ With dates of receipt ranging from March 22, 2004 to June 25, 2004, and response due dates ranging from May 5, 2004 to August 10, 2004; October 8, 2004 letter from Ministries; para. 6, respondent's reply submission.

¹⁹ Initial submission, Exhibit A to Shave affidavit.

²⁰ Initial submission, Exhibit A to Shave affidavit.

[17] The Ministries take the position that I have the jurisdiction to grant relief under s. 43 regardless of whether or not statutory response times have been met.²¹ The Ministries cite *Auth* (s. 43) 99-01²² and *Crocker v. British Columbia (Information and Privacy Commissioner) et al.*²³ for the proposition that s. 43 is an important and powerful tool to remedy the abuse of access rights and alleviate administrative hardship. They cite *Crocker* and *Mazhero v. British Columbia (Information and Privacy Commissioner)*²⁴ for the proposition that s. 43 gives the Commissioner the authority to make prospective orders, that is, orders reaching into the future, not just orders affecting outstanding requests.²⁵

[18] The Ministries argue that, given the strong remedial nature of s. 43 and the fact that it exists to remedy situations in which public bodies are “overburdened” by repetitious or systematic requests, or where public bodies are faced with requests that are frivolous or vexatious, or both, it is “difficult to imagine that section 43 would not be available in the very scenario that is likely to arise as a result of such overburdening – *i.e.*, in a scenario in which because of such overburdening a public body has not met its response time(s) in respect of some or all of the requests from the FOI applicant who is overburdening the public body”.²⁶

[19] The Ministries say that s. 43 authorizations have been granted in the past with respect to outstanding requests for which response times had elapsed by the date of the s. 43 application. The Ministries cite *Auth*. (s. 43) 02-01²⁷ as an example and say, in that case, the elapse of response times was not identified as giving rise to any issue or concern and the public body was granted relief.²⁸

[20] The respondent argues that FIPPA does not specifically preclude granting authorization respecting requests where a response from the public body is overdue, but says that to do so “would be illogical and would offend the spirit and the intent of the Act.”²⁹ He says that, at the date of the s. 43 application, the overdue requests were already “deemed refusals” under s. 53(3) of the Act. The Ministries had not taken 30-day extensions under s. 10 of FIPPA, nor had they approached this Office with a view to extending the time to respond to the overdue requests.³⁰ He says that, between the time of the first due date and the s. 43 application, the Ministries gave no reasons for the “ongoing breaches”, despite the fact that he filed requests for review with this Office concerning four of those requests.³¹

²¹ Para. 3.01, initial submission.

²² <http://www.oipc.bc.ca/orders/section43/dec-22-1999.html>; para. 4.03, initial submission.

²³ (1997), 155 D.L.R. (4th), 220; [1997] B.C.J. No. 2691 (S.C.).

²⁴ (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.)

²⁵ Para. 4.06, initial submission.

²⁶ Para. 4.08, initial submission.

²⁷ Para. 4.09, initial submission.

²⁸ Para. 4.09, initial submission.

²⁹ Paras. 8 and 9, initial submission.

³⁰ Paras. 8-13, initial submission.

³¹ Para. 9, reply submission.

[21] The respondent discusses at considerable length the alleged significance of the date on which the Ministries decided to make the s. 43 application. He argues that this date is relevant to my decision whether or not to consider the overdue requests in this application. The respondent argues that there are “two rather dark alternatives”³² to explain the Ministries’ lack of response with respect to the five overdue requests—that the Ministries adopted a policy to disregard their statutory obligations regarding his access requests;³³ and that the Ministries may have planned, either before the earliest due date for a response, or shortly after, to file a s. 43 application with respect to his requests, but waited to do so. He argues that the Ministries should not be rewarded for that “artifice”.³⁴ In either case, the respondent says, the Ministries had the opportunity and obligation to make their positions known as soon as possible and the “fact” that they did not do so “amounts to a flouting of the spirit and intent of the Act.” He says that these circumstances led directly to his filing of two additional requests for records. The respondent accuses the Ministries of having “adopted a highhanded stance of complete inaction”³⁵ with respect to the overdue requests and describes their approach as “apparent stonewalling”.³⁶ He concludes that the Ministries should not be permitted to include the five overdue requests in this application.³⁷

[22] The Ministries deny that this is the case. They say that they did their best to keep up with the respondent’s many access requests, and associated issues and questions, but his demands became overwhelming. At a certain point, they decided to seek relief from those demands and the decision to do so was taken when the workloads of everyone involved allowed it. They say this occurred in the context of what they characterize, with some exaggeration, as an “exponentially” expanding workload attributable to the respondent. The respondent had also requested reviews by this Office of their failure to respond³⁸ and the necessary allocation of resources to the review process was, for the Ministries, an additional consideration in assessing the degree of interference with operations resulting from the respondent’s requests.³⁹

[23] The Ministries say that they continued to work on the overdue requests until, and to some extent after, the s. 43 application was initiated.⁴⁰ At this point, the Ministries submit, s. 7 of FIPPA did not require them any longer to deal with the access requests that were subject to the application, which is why they did not reply to some of the respondent’s letters.

³² Para. 7, reply submission.

³³ Para. 7, reply submission.

³⁴ Paras. 11-13, initial submission; para. 8 reply submission.

³⁵ Para. 12, reply submission.

³⁶ Para. 16, reply submission.

³⁷ Paras. 8-11, reply submission.

³⁸ July 20, 2004.

³⁹ Paras. 3.07 and 3.08, surreply submission; Carlson affidavit.

⁴⁰ Para. 3.09, surreply submission; Carlson affidavit.

[24] The Ministries argue that the real issue is whether they have provided enough evidence to support their request for relief with respect to these requests. They acknowledge that, if a public body had, theoretically, employed a strategy to delay a s. 43 application, that fact could be a consideration in a s. 43(a) analysis of whether a respondent's requests unreasonably interfere with the operations of a public body.⁴¹

[25] I have no doubt that there is room under s. 43 to authorize a public body to disregard requests where, at the time of the application, a public body has failed to meet the requirements of s. 7 respecting those requests. A decision on whether or not to include overdue requests in a s. 43 authorization will, of course, turn on the specific circumstances of each case. Public bodies have an obligation to respond to access applicants within legislated response times and, if they are likely to be unable to do so, must take or seek extensions as permitted under FIPPA.

[26] The Ministries have not provided the specific date on which they decided to bring the s. 43 application. I do not, however, attach significance to this in the present circumstances and do not accept the respondent's argument that the Ministries employed a strategy in the timing of the application. As was the case in Decision F06-03, there is no evidence that the Ministries deliberately neglected the overdue requests. I accept that the Ministries had become overburdened by the respondent's requests and by follow-up issues and questions, such that they had to fit in the work on their s. 43 application with that on the respondent's requests, and those of other applicants, as time allowed. In the circumstances of this case, I consider it appropriate to include the overdue requests in my consideration of the Ministries' application for relief under s. 43.

[27] **3.5 Is Relief Warranted Under Section 43(a)?**—The first issue to be decided under s. 43(a) is whether the respondent's requests have been repetitious or systematic.

The respondent's requests are systematic

[28] The Ministries take the position that all of the respondent's requests are systematic and that many of them are also repetitious.⁴² They also say that the respondent's requests interfere unreasonably with their operations. In view of my decision that the requests are systematic, I do not need to deal with whether they are also repetitious.

[29] The Ministries say that the respondent's requests are methodical and "marked by thoroughness and regularity":

4.54. ... He regularly makes FOI requests, and he approaches his target subject areas in an organized, methodical, and thorough way.

⁴¹ Para. 3.10, surreply submission.

⁴² Para. 4.58, initial submission; Shave affidavit.

He also (systematically) uses the responses to each FOI request as a springboard from which to raise further questions and issues and/or to make further FOI requests. And he then (also systematically) uses the responses to those questions or FOI requests as further springboards. He has (systematically) moved through his target subject areas – from records relating to his employment, to records relating to the structural reorganization, to records relating to records management and to the processing of his FOI requests, and now to records relating to MOE IPB. He sometimes revisits some of his earlier FOI requests, broadening them by date range or otherwise. The Public Bodies submit that the systematic nature of [the respondent's] requests is very apparent on the face of the FOI requests.

4.55 [The respondent] also, very systematically raises issues with the Public Bodies about their responses to his FOI requests, and then often (again systematically) takes his issues to review by OIPC.

[30] They argue that, in the requests, issue and questions, further requests and reviews, the respondent “regularly proceeds in a very methodical and thorough way”. Everything about these requests is systematic, they say.⁴³

[31] The respondent takes issue with the Ministries’ arguments, saying they make

...sweeping and inaccurate generalizations but failing to back those generalizations up to any significant degree (or at all) with examples (detailed or otherwise), documents or statistics.⁴⁴

[32] The respondent continues in this vein, criticizing the Ministries for failing to provide particulars and for not defining particular problems. Indeed, he says, he is following this Office’s policy of attempting to deal with his concerns over their responses first with the Ministries, suggesting this has not met with the Ministries’ approval. He views his questions as pertinent and important, well within MOE’s abilities and duties to deal with.⁴⁵

[33] He also says that he follows up with Ministry staff where he finds “their argument and positions difficult to understand”, particularly where matters do “not ring true to MOE”. He finds the most effective way of doing this is to make access to information requests, since asking for information has not been effective when he tries it. The respondent gives an example of a case where he requested records in support of a statement in a letter that he had received from the MSDL’s deputy minister, as he believed the statement was incorrect. There was no system, he said, but simply “a desire to find out the truth”.⁴⁶

⁴³ Para. 4.56, initial submission; paras. 17-23, Shave affidavit.

⁴⁴ Para. 79, initial submission.

⁴⁵ Paras. 79-85, reply submission.

⁴⁶ Paras. 116-120 and Tab 24, reply submission.

[34] The Ministries have, in my view, accurately characterized the respondent's 41 access requests as systematic. Step by step, the respondent has requested, often in minute detail, records on various aspects of his employment and that of others;⁴⁷ related matters such as security services;⁴⁸ interactions, communications or incidents with other employees;⁴⁹ his access to information files;⁵⁰ MSDL's organizational re-restructuring,⁵¹ staffing and hiring processes;⁵² emails involving him;⁵³ information supporting statements made in letters or emails to him;⁵⁴ and other matters of concern to him. He has also made a number of requests for records related to matters referred to in records he had already received in response to earlier access requests, in one or two cases regarding events from the 1990s.⁵⁵

[35] He has also often followed up on responses to FOI requests with questions about the records (or lack thereof), requests for information on relevant orders and why, in cases where the Ministries had subsequently released records, the Ministries had not disclosed the records earlier. He has also followed up with questions on the contents of the records⁵⁶ and with questions about the responses to his access requests. As an example of the latter, in a request for emails on a particular topic,⁵⁷ upon being told that there were no emails, he made a series of requests for information on email backup tapes, whether they existed, where they were stored, the use made of them and so on. The respondent also requested reviews of or made complaints about a number of the responses he had received, for example, where he was told no records existed or he had already received records responsive to his request in response to earlier requests.

[36] I have referred above to only a small number of the respondent's access requests, some of which repeat earlier requests. I have analyzed them and the related correspondence carefully, however, and readily consider them, in light of previous decisions on systematic requests, to be systematic.⁵⁸ I find that the respondent's requests in this case, both processed and outstanding, are "systematic" requests within the meaning of s. 43(a).

⁴⁷ For example, SDL-2003-020; SDL-2002-049; SDL-2002-054.

⁴⁸ SDL-2004-036; SDL-2004-009

⁴⁹ For example, SDL-2—4-018

⁵⁰ For example, SDL-2002-059; SDL-2003-064

⁵¹ For example, SDL-2002-043; SDL-2002-053; SDL-2002-055.

⁵² For example, SDL-2002-055; SDL-2003-018; SDL-2004-028.

⁵³ For example, SDL-2003-042 SDL-2003-065.

⁵⁴ For example, SDL-2003-021; SDL-2004-030.

⁵⁵ For example, SDL-2002-046

⁵⁶ For example, SDL-2002-035, the respondent's request for personnel records, which generated numerous follow-up letters on a number of issues, and SDL-2003-037, where the respondent asked a number of questions about the contents of the records.

⁵⁷ SDL-2003-042

⁵⁸ See Decision F05-01 and Decision F06-03.

Unreasonably interfere with operations

[37] The Ministries say that MOE's access and privacy branch has a small staff. There were only two analysts and one manager when the respondent first began making access requests. In July of 2004, MOE added another permanent analyst and, due to a backlog greatly exacerbated in large part, the Ministries say, by the respondent's requests, MOE hired two additional employees on a temporary basis.⁵⁹

[38] The Ministries say that 41 requests in just over two years is a very high number of requests from one individual. They say that 41 requests make up 28% of the overall access requests to MSDL in the same time period but that the number could actually be tripled because the respondent's requests take approximately three times longer to deal with as compared to other access requests.⁶⁰

[39] The Ministries say that the respondent's requests sometimes need clarification, which he does not always provide. His requests are often broad because they ask for "all information" on a particular topic. Due to the repetitive and overlapping nature of his requests, staff have to continually check to see what records have previously been provided, a time-consuming and difficult exercise because of the volume of the requests. His follow-up correspondence—which occurs in most cases, they say—raises issues and asks further questions, which take more time and generate further correspondence. The Ministries say they have spent approximately 302.5 hours dealing with the respondent's requests, questions and issues to date, 184.5 hours by MOE staff and 118 hours by MOE program staff (excluding time taken to deal with the respondent's reviews and complaints, to this Office). The respondent's requests have had an impact on the Ministries' ability to do their jobs under FIPPA, including responding to other applicants' requests, an impact they foresee continuing if they have to respond to the outstanding requests. They also predict that the respondent will continue to make requests.⁶¹

[40] The respondent's submissions run to many pages. I do not propose to reproduce them in any detail, although I have considered them all carefully. It suffices to say that the respondent voices, in minute detail, the same objections about this aspect of the Ministries' submissions and evidence as he did with those on the "systematic" aspect. He alleges that the Ministries have failed to produce specifics and questions in a similarly detailed fashion the validity of their submissions, including their estimates of time taken to deal with his requests and their arguments that his requests and follow-up issues have overburdened their

⁵⁹ Paras. 4.13 and 4.66, initial submission; Shave affidavit.

⁶⁰ Paras. 4.59 and 4.65, initial submission; Shave affidavit.

⁶¹ Paras. 4.40-4.42, 4.60-4.62 and 4.63-4.68, initial submission; paras. 10-23 and 31-35, Shave affidavit; Carlson affidavit.

staff.⁶² He also says he has given no sign that he will continue to make access requests.⁶³

[41] I accept the Ministries' contention that the detailed, overlapping nature of the respondent's requests makes them difficult to deal with, in that it is necessary in each case to determine what the applicant wants, if the Ministries have already provided the requested records or, in the case of new requests, if the Ministries have the requested records. The Ministries' evidence about the time taken to deal both with the respondents' requests and his many and detailed follow-up issues and questions establishes, in my view, that the respondent's past requests have unreasonably interfered with the Ministries' operations within the meaning of s. 43(a). I am also satisfied that responding to the outstanding requests would continue to have this effect.

[42] For the reasons given above, I find that, for the purpose of s. 43(a), the respondent's requests are systematic and unreasonably interfere with the operations of the Ministries.⁶⁴

[43] **3.6 What is the Appropriate Relief?**—The Ministries say that the relief they seek is based on considerations in *Crocker* and *Mazhero*. They say the relief they seek would balance the respondent's legitimate interest in seeking access to records, including those containing his own personal information, and the Ministries' interest in avoiding the "undue burden that arises from processing" requests that are systematic and unreasonably interfere with their operations. They say that the remedies they seek will "appropriately redress the administrative hardship arising from [the respondent's] FOI requests".⁶⁵ They do not, however, explain why they think this.

[44] The respondent does not address this issue except by asking that I not grant the Ministries the authorization they seek.⁶⁶ He also says that he has some live issues, his human rights complaints, for which he needs the records he has requested.⁶⁷

[45] The Ministries ask that I authorize them to disregard:

- (a) the respondent's 12 access requests that were outstanding at August 26, 2004;
- (b) the one access request the respondent submitted after August 26, 2004;

⁶² Paras. 22-29, 40-43, 82-85, 101-105, reply submission; paras. 50-102, surreply. The Ministries reject these contentions in their surreply at paras. 3.14-3.25 and 3.30-3.32.

⁶³ Para. 124, surreply.

⁶⁴ The Ministries, at paras. 2.03-2.05 of their surreply, abandoned their contention that the respondent's requests are frivolous, but maintained their position that the requests are vexatious. Because I have found that s. 43(a) applies, I need not consider whether s. 43(b) also applies.

⁶⁵ Paras. 6.01-6.04, initial submission.

⁶⁶ Para. 129, initial submission.

⁶⁷ Paras. 120-122, surreply.

- (c) all future access requests that may be received from or on behalf of the respondent before the date of the s. 43 authorization;
- (d) for a one-year period beginning on the date of the s. 43 authorization, all access requests from or on behalf of the respondent over and above one open access request (*i.e.*, one access request, not one letter containing numerous requests) at a time; and
- (e) for an indefinite period, all future access requests to the extent that they repeat earlier access requests to which they have already responded.

4.0 CONCLUSION

[46] In the circumstances, including the fact that the respondent has on occasion been requesting his own personal information, I make the following authorization under s. 43 of FIPPA:

1. The Ministries are each authorized to disregard the respondent's 12 access requests which were outstanding at the date of the s. 43 application to this Office;
2. The Ministries are each authorized to disregard any other access requests that the respondent has submitted, or that have been made on his behalf, between the date of the s. 43 application to this Office and the date of this authorization;
3. The Ministries are each authorized, for a period of one year from the date of this authorization, to disregard all access requests made by the respondent, or made on his behalf, over and above one open access request at a time;
4. The Ministries are each authorized to disregard any access request made by the respondent, or made on his behalf, to the extent that the request covers records or information that have already been the subject of an access request made by or on behalf of the respondent and to which the relevant ministry has responded; and
5. The following apply respecting this authorization:
 - (a) the Ministries may each determine, in light of their s. 6(1) duties to the respondent, what is a single access request for the purposes of this authorization; and
 - (b) for the purposes of the above, an "open access request" is a request for records under s. 5 of the Act to which the relevant ministry has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of FIPPA.

[47] The Ministries did not ask for any time limits in relation to access requests that the respondent is permitted to make under this authorization. If, based on experience, they consider it warranted, they may apply for further relief.

[48] For clarity, reference in the above authorization to “the Ministries” is a reference to each of them severally and not jointly.

December 13, 2006

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

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