



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

Decision F08-09

MINISTRY OF AGRICULTURE AND LANDS

Michael McEvoy, Adjudicator

November 6, 2008

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Summary: MAL requested authorization to disregard requests made by the respondent or others acting on her behalf. The respondent's requests were found to be vexatious and MAL is authorized to disregard them to the date of the application. With the exception of one open access request at a time, MAL is also authorized to disregard the respondent's requests for a two-year period from the date of this decision.

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

Authorities Considered: B.C.: 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; F06-03, [2006] B.C.I.P.C.D. No. 6; Decision F08-10, [2008] B.C.I.P.C.D. No. 33.

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 respondent lives in a small rural community near a land-based fish farm ("fish farm"). The fish farm discharges effluent into a drainage ditch crossing the respondent's property¹ and the respondent believes that, in doing

¹ The respondent's initial response is divided in two parts, both of which are submitted in an affidavit form. The first, dated October 14, 2007 is a more general statement outlining what might be described as background information. The second part of the response, also dated October 14, is a point by point response to MAL's initial submission. I will refer to these

so, the fish farm is not complying with regulatory authority.² The respondent made a number of requests for information about the fish farm, and related issues, to the Ministry of Agriculture and Lands (“MAL”). This case is about MAL’s application to, among other things, seek authorization under s. 43(b) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to disregard certain of the access requests made by the respondent. MAL submits that the respondent’s requests are vexatious. MAL also submits the requests are systematic or repetitive and that complying with them would unreasonably interfere with MAL’s operations.

[2] MAL seeks the following relief:

- (a) that MAL be authorized to disregard the respondent’s five requests outstanding as at the date of the s. 43(b) application to this Office. For ease of reference, I will use MAL’s file numbers to identify each of the requests. Also included here are the dates on which the requests were made to MAL. Those requests are MAL07.056 (May 20, 2007), MAL07.059 (May 18, 2007), MAL07.060 (May 24, 2007), MAL07.061 (May 27, 2007) and MAL07.064 (June 11, 2007);
- (b) that MAL be authorized to disregard four requests the respondent made after the s. 43(b) application was filed. MAL received these requests: MAL07/07/11-01 (July 11, 2007), MAL07/07/12-01 (July 12, 2007), MAL07/07/12-02 (July 12, 2007) and MAL07/07/16-01 (July 16, 2007);
- (c) that MAL be authorized for a period of three years from the date of this decision to disregard all future access requests the respondent makes, or that anyone else makes on her behalf, over and above one open access request at a time, relating to each of the records in the custody or control of MAL generally and records directly relating to the aquaculture facility at [the address of the fish farm];
- (d) that MAL not be required to spend more than 10 hours responding to any one request;
- (e) that MAL be authorized to disregard any access requests made by, or on behalf of, the respondent for records that have already been the subject of an access request by her or on her behalf;

documents as initial response #1 and initial response #2. The information referred to in this footnote is found in the respondent’s initial response #2, Tab 2, p. 12.

² Respondent’s initial response #2, Tab 1, pp. 10 and 11, *The Province* newspaper story.

- (f) that MAL be authorized to determine, in light of its s. 6(1) duties to the respondent, what a single access request is for the purposes of any authorization; and
- (g) for the purposes of the above, one “open access request” be defined as a request for records under s. 5 of FIPPA to which MAL has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of FIPPA.

[3] In addition to requests made of MAL, the respondent made concurrent and substantially similar access to information requests under FIPPA to the Ministry of Environment (MoE). MAL and MoE jointly process freedom of information requests through one central office, the Information, Privacy, Security and Records Office (IPSRO), which is part of MoE. Because the respondent’s access to information requests to MAL and MoE were either similar or identical, IPSRO filed separate but simultaneous s. 43 applications on behalf of MAL and MoE. I am issuing Decision F08-10³ on MoE’s application concurrently with my decision dealing with MAL’s s. 43(b) application.

2.0 ISSUE

[4] The issue before me is whether MAL is authorized to disregard certain access requests under ss. 43(a) and (b) of FIPPA and if so on what basis.

[5] Previous decisions have established that MAL has the burden of proof under s. 43.

3.0 DISCUSSION

[6] **3.1 Preliminary Matters**—I issued three interim decision letters disposing of some preliminary matters relating to this application,⁴ the latest of which left to this application the respondent’s contention that certain requests she made to MAL were not formal access requests under FIPPA. The respondent also argued that I should not consider these requests because they were not listed in MAL’s original s. 43 application. I will deal with these matters in the main body of this decision below.

[7] **3.2 The Respondent’s Access Requests**—MAL asks that it be authorized to disregard a total of nine access requests. MAL also asks that, in order to place these requests in context, I consider other access requests the respondent made earlier. Those requests, which MAL has already responded to, resulted in the partial disclosure of several hundred pages of records, and they

³ [2008] B.C.I.P.C.D. No. 33.

⁴ Those letters were dated; December 6, 2007, December 12, 2007 and January 28, 2008.

are now closed.⁵ I describe these earlier requests below as “background access requests”.

Background access requests

1. MAL06.071 (December 5, 2006)—The respondent asks for all licenses, compliance and inspection reports and other data related to the fish farm. She included a list of names under which the fish farm might appear. According to the evidence MAL provided, this request took 14 hours to process and the file was closed after the release of 356 documents.
2. MAL07.010 (February 1, 2007)—A request for all documents, reports, notes or data related to MAL’s investigation of the fish farm between September, 2006 and February 1, 2007. The request resulted in the release of 286 records with some information severed and the file was closed.
3. MAL07.039 (May 9, 2007)—A request for all records, documents, lab results and other records related to the fish farm between November 1, 2006 and May 9, 2007. The request resulted in the release of 72 records with some information severed and the file was closed.

Access requests for which MAL seeks s. 43 authorization

1. MAL07.056 (May 20, 2007)—The respondent’s email contains eight requests for records which pertain to all aquaculture facilities in BC. For example, the respondent asks for all records relating to how many aquaculture facilities have been fined or charged for non-compliance with regulations in the past 12 years. She also seeks a procedure manual for handling aquaculture facilities that are not in compliance with regulations.
2. MAL07.059 (May 18, 2007)—The respondent requests all records related to the fish farm. The respondent does not prescribe a time frame for the requested records.

⁵ I will refer to the Edwards affidavit attached to MAL’s initial submission as Edwards affidavit #1. MAL also filed an Edwards affidavit with a letter to this Office dated October 25, 2007 seeking to add further information to its submission. I will refer to this affidavit as Edwards affidavit #2. Finally, MAL filed an Edwards affidavit with its reply submission of April 4, 2008. I will refer to this affidavit as Edwards affidavit #3. The material referenced here concerning the background access requests is found in Edwards affidavit #1, Exhibit A, p.1 and Edwards affidavit #2, paras. 3 and 4.

3. MAL07.060 (May 24, 2007)—The respondent requests all records related to the fish farm. The respondent again does not prescribe a time frame for the requested records.
4. MAL07.061 (May 27, 2007)—The respondent's email is composed of 12 different requests for records related to communications between specific officials of various government ministries. Most of the requests seek records between 1995 and May 27, 2007.
5. MAL07.064 (June 10, 2007)—The request is for all records relating to the fish farm between May 24, 2007 and June 10, 2007.
6. MAL07/07/11-01 (July 11, 2007)—This request seeks information, data, application documents and inspection reports, among other records, related to the records which MAL disclosed under MAL07.010 noted above. There are, by my count, 25 separate requests for information contained in this email.
7. & 8. MAL07/07/12-01 and MAL07/07/12-02 (July 12, 2007)—The first request relates to records concerning a fish farm waste management plan and the second concerns any records which confirm that the fish farm is in compliance with regulatory authorities. Both requests are in one July 12, 2007 email.
9. MAL07/07/16-01 (July 17, 2007)—The respondent's request seeks eight different categories of records relating to the fish farm for the years 2002 through 2007.⁶

[8] **3.3 The Parties' Positions**—MAL argues that the respondent's requests are vexatious as that term is defined in Auth. (s. 43) 02-02.⁷ MAL submits that the respondent is not using FIPPA for the purposes for which it was intended and that she has made her requests in bad faith or for the purpose of harassing or burdening MAL, or both. MAL argues that this is so in respect of the access requests individually and when considered together, including the background access requests (*i.e.*, each is a part of a pattern of vexation).⁸

[9] MAL argues that the following factors show the respondent has acted in bad faith and abused her access rights:

- the large number of requests she has made in less than six months

⁶ The matters referred to in paras. 1-9 can found in Edwards affidavit #1, Exhibit A, pp. 1-8 and the attachment to MAL's letter of January 7, 2008 sent to this Office and copied to the respondent.

⁷ [2002] B.C.I.P.C.D. No. 57.

⁸ MAL's initial submission, para. 39.

- the extent to which she requests broad categories of records
- the extent to which she proceeds systematically – request by request, and within each request
- the fact that it takes staff five to six times as long to deal with a request from her as anyone else
- the extent to which she floods both the IPRSO and MAL staff with correspondence
- her threat to file weekly requests as a way of forcing MAL to provide her with systematic reporting
- her complaints about delays by MAL, without acknowledging that she has continued to overburden MAL (both by making new access requests and by raising issues and questions in respect of most of MAL's responses), thereby taking up a great deal of staff time and exacerbating delay issues.

[10] In light of the history of the respondent's requests to MAL and bearing in mind the legislative purposes of FIPPA, MAL argues that:

- the outstanding access requests are abuses of the rights conferred under FIPPA;
- they are vexatious in the sense that they have been made in bad faith or for the purpose of annoying or harassing or burdening MAL or both; and
- the repetitive or overlapping natures of the FOI requests supports a finding that they are vexatious.

[11] The respondent denies that her requests are vexatious. She submits that:

- her requests were made in good faith after an MoE employee allegedly told her in December of 2006 that the fish farm was dumping hundreds of thousands of litres of "non-regulated, non-compliant" waste onto her property and that of her neighbour.⁹
- she is motivated solely by her well-founded and growing concern over the impact of her and her neighbour's exposure to unregulated fish farm effluent. She submits that she is morally bound to take all

⁹ Respondent's initial response #2, para. 2.

necessary steps to determine the extent of the problem and to seek redress.¹⁰

- MAL's submission repeatedly fails to mention that the fish farm, which is the focus of the majority of the requests, has been operating in violation of a number of MAL regulations.¹¹
- in her review of previous s. 43 decisions she can find no instance where a concern regarding public safety, health or the environment has been labelled vexatious.¹²

[12] With respect to the assertion that her requests are repetitive, a factor considered in whether a request is vexatious¹³, the respondent submits that:

- the number of requests she has made are "at most" five¹⁴ and that the emails in files MAL07/07/11-01, MAL07/07/12-01, MAL07/07/12-02 and MAL07/07/16-01 (which I will refer to as the "emails") were never intended to be formal access requests under FIPPA. She argues that MAL is attempting to add these emails in question to its s. 43 submissions to make it appear as if she has made more access requests than she really has. The respondent submits that the four emails were written after discussions with the Ombudsman's office and relate to files in the Ombudsman's office.¹⁵
- I should not consider the four emails referred to in the preceding bullet because they were not listed in MAL's original s. 43 application.
- In addition, she argues that she thought it would be "easier for the MAL FOI Act staff if they knew we would submit consecutive requests for the information".¹⁶ The respondent said she based this idea on Order 01-35 which she described, without elaboration, as a "solution" to consecutive requests.

[13] In reply MAL argues that it is not a complete defence for the respondent to claim that the requested records relate to a serious issue. Even individuals

¹⁰ Respondent's initial response #2, para. 181.

¹¹ Respondent's initial response #2, para. 202.

¹² Respondent's initial response #2, para. 209.

¹³ See para. 27, Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57.

¹⁴ Respondent's supplementary response, March 18, 2008, para. 9 and 18; those access requests being MAL07.056, MAL07.059, MAL07.060, MAL07.061 and MAL07.064.

¹⁵ Respondent's supplementary response, March 18, 2008, paras. 12 and 13. The respondent also stated that *in camera* submissions could be provided to this Office if required. I would note that it is up to the respondent what evidence she elects to provide this inquiry. In any event, the emails in question speak for themselves. They are addressed to MAL employees.

¹⁶ Respondent's initial response #2, para. 145.

pursuing very serious and timely issues, MAL argues, have an obligation not to abuse the right of access conferred under FIPPA.¹⁷

[14] MAL also submits that the respondent seeks records that she knows do not exist. MAL submits that the respondent is either attempting to force MAL to create those records or she has a misunderstanding of the extent of her rights under FIPPA. For example, MAL notes that the respondent acknowledges that MAL has not tested the fish farm water and yet she continues to request, among other things, results of these tests. MAL argues that the process under FIPPA is not intended to force a public body into a reporting regime and that an applicant seeking access to information only has a right to records or information in the custody and control of the public body.¹⁸ MAL argues that Order 01-35 was a situation where the public body produced records on an ongoing basis that could be provided to the applicant in that case. MAL argues that, if the respondent believes that MAL is withholding records, which it denies, she can seek a review through this Office.¹⁹

[15] As to whether the emails in question were access to information requests under FIPPA, MAL submits that, in each, the respondent wrote to a MAL staff member asking for records, documents or data that MAL does not routinely release. MAL contends that the requests provide sufficient detail for the staff to identify the records and were sent to an official with the public body and therefore constitute requests as defined by s. 5 of FIPPA.

[16] **3.4 Applicable Principles**—Section 43(b) of FIPPA reads as follows:

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

...

(b) are frivolous or vexatious.

[17] Coultas J. in *Crocker v. British Columbia (Information and Privacy Commissioner) et al.*²⁰ stated as follows:

... 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

¹⁷ MAL's reply submission, para. 23.

¹⁸ MAL's reply submission, para. 26.

¹⁹ MAL's reply submission, para. 27.

²⁰ (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.), at para. 42.

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.

[18] The Commissioner carefully canvassed the meaning of the term vexatious under s. 43(b) in Auth. (s. 43) 02-02²¹. He noted that vexatious is meant to signify something more than that which is annoying or distressing. He referred to the definition provided in *Black’s Law Dictionary* (as being) without reasonable or probable cause or excuse²² and also cited former Ontario Commissioner Wright, who defined the term to include “intent to annoy, harass, embarrass or cause discomfort”.²³

[19] Commissioner Loukidelis stated that the word vexatious must be defined in a manner consistent with FIPPA’s purpose of making public bodies accountable while at the same time recognizing that abuse of the right of access can have serious consequences for the rights of others and the public interest. He set out a non-exhaustive list of other factors used to determine whether a request is vexatious, which I find useful to repeat here in part:

- Regardless of how it is so, a frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
- ...
- The class of “vexatious” requests includes requests made in “bad faith”, *i.e.*, for a malicious or oblique motive. Such requests may be made for the purpose of harassing or obstructing the public body.
- The fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious... To be clear, the fact that access requests are repetitious or systematic in nature cannot, in the face of the explicit test under s. 43(a), be sufficient to warrant relief under s. 43(b). Alongside other factors, however, the fact that repetitious requests have been made may support a finding that a particular request is frivolous or vexatious.²⁴

[20] **3.5 Discussion**—I accept that the respondent has a deep concern for her own health, the health of her family and that of her neighbours. I also have no doubt that the respondent believes the discharge of effluent from the fish farm into the nearby ditch has had serious and negative health consequences for herself, her family and her neighbours. She states that she has tested the ditch water at her own expense and, based on her interpretation of the results, believes the fish farm has contaminated the water and surrounding soil.²⁵

²¹ [2002] B.C.I.P.C.D. No. 57 at pp. 5 and 6.

²² Para. 19.

²³ Para. 20.

²⁴ Para. 27.

²⁵ Respondent’s initial response #2, para. 71.

The respondent has provided me hundreds of pages of research material to sustain her view. She repeatedly makes the point that the fish farm has not complied with the law and asks why MAL does not enforce its own regulations.²⁶ It is fair to say the respondent is waging a concerted campaign to have the discharge both tested and stopped.²⁷

[21] I make no comment on the legitimacy of the respondent's grievances because that is not a matter over which I have any authority. However, it is evident to me for reasons below that the respondent has undertaken a strategy of using frequent and substantially similar access requests under FIPPA as a means of waging her campaign.

Were certain emails formal access requests under FIPPA?

[22] My analysis begins by addressing the respondent's arguments that four emails in files MAL07/07/11-01, MAL07/07/12-01, MAL07/07/12-02 and MAL07/07/16-01 should not be considered access requests under FIPPA.

[23] I have reviewed those emails carefully and conclude, without any difficulty, that all of them constitute requests for records under FIPPA and that MAL was correct to treat them as such. I will cite one email as an example to illustrate why I have reached this conclusion. The respondent wrote the following to Pat Bell, the Minister of Agriculture and Lands on July 17, 2007²⁸:

We formally request that the Minister of Agriculture, on behalf of the Ministry of Agriculture provide us with the following information from the Fish Farm...for the years 2002 through 2007. We request that this request for information is respected, and NOT subjected to MAL obstructive actions

....

- 1) Inventory Records
- 2) Inspection and Maintenance Records
- 3) Training Records
- 4) Records of Drugs
- 5) Drug Free Period Records
- 6) Prohibition against Processing Records
- 7) Transportation Records
- 8) Inspectors Records

[24] The letter clearly asks a public body (in this case the Minister himself) for records in sufficient detail to constitute an access request under s. 5 of FIPPA.

²⁶ See for example the Respondent's initial response submission #1, para. 16.

²⁷ Respondent's initial response #2, Tab 10, p. 2 as an example. This email, as with many of the respondent's emails, was distributed to among others, members of the media and BC's Official Opposition party.

²⁸ MAL07/07/16-01.

[25] The respondent also argues that the four emails just referred to were not listed in MAL's original s. 43 application and therefore should not be considered here.²⁹ While the respondent is correct that the original application to this Office listed only the access requests that the respondent had made to that point, there is nothing which prohibits a public body from asking that others be added prior to the Notice of Hearing being issued to the parties. Both parties to this proceeding therefore were fully aware which requests MAL was asking to be authorized to disregard and therefore had the opportunity to make submissions about them.³⁰

Analyzing the requests

[26] The respondent's access requests are, to a significant degree, similar to one another and to the background requests³¹. In addition to these similarities the time periods referenced in the requests also overlap to some extent.

[27] The real purpose of these access requests, in my view, is revealed in an email exchange involving the respondent, dated May 18, 2007.

[28] The exchange begins with the respondent sending an email to Sarah Harrison, an MoE employee.³² It reads in part:

Re: Non Compliance and Complaint

We have tried contacting Lynn Bailey [MoE], Chris Trumpy [MoE] and Gordon Campbell [Premier] regarding the status of a NON-COMPLIANT Aquaculture Facility...

...

On April 23, 2007 Lynn Bailey for the MoE advised that the Aquaculture facility was still working towards compliance, but indicated it had Not achieved compliance.

...

Five and a half months have passed since the MoE stated the Aquaculture facility was NOT in compliance with Waste water management regulations, and yet they continue to dump unregulated effluent into a water way designed for natural run-off only.

...

²⁹ MAL07.056, MAL07.059, MAL07.060, MAL07.061 and MAL07.064 were the file numbers referenced in MAL's s. 43 application of June 12, 2007 to this Office.

³⁰ Including all received requests to the time of the Notice of Hearing being issued was also the approach followed in the Commissioner's ruling in Auth (s.43) 02-01, [2002] B.C.I.P.C.D. No. 47 and by Senior Adjudicator Francis in F06-03, [2006] B.C.I.P.C.D. No. 6.

³¹ The requests resulted in MAL disclosing over 700 pages of documents, Edwards affidavit #3, para. 5.

³² Respondent's initial response #2, Tab 10, pages 1 and 2.

We require one of the following;

- 1) A current written status report on the Aquaculture Facility from MOE
- 2) or a copy of an order from the MoE to the Aquaculture to Stop dumping Non-Compliant waste immediately [original emphasis].

[29] Jim Gilliland, an MoE employee responded as follows,

I have forwarded your request to Gerry Edwards in the Ministry's Information, Privacy and Records Services Branch for response under the FOI Act. I understand that you have a number of FOI requests in progress. These may provide answers to your questions. If you have additional concerns/questions after you receive responses to your FOI requests, please contact Gerry Edwards.

[30] The respondent then replied,

It is our understanding our request to MoE is NOT an FOI request. It appears that the MoE is obstructing our access to information that may impact the health of residents, electors, and taxpayers in B.C.

We wait the MoE's direct response. Perhaps obtain a "Letter of Opinion" from a lawyer...on MoE's legal obligations and potential liability regarding documented unregulated waste being dumped on to private property with the MoE's [and Premiers] knowledge, and apparently support and consent.

[31] What the respondent is saying in this exchange, is that MoE should either create an update record for her about the fish farm or order an end to the "dumping" of effluent. She believes neither of these "requests" are properly characterized as access to information requests. I agree with the respondent. It is my conclusion that these particular requests are properly viewed as calls to action as opposed to seeking existing records.³³

[32] The respondent, having failed in her attempts to have MoE meet her demands, and clearly frustrated, directed her attention to Gerry Edwards, an employee of the IPSRO office. Her email to Gerry Edwards began as follows:

Unfortunately Mr. Gilliland & MoE want you and your office to do more work! Sorry!

[33] The respondent then stated she would "do at least a weekly FOI" because that seemed to be the "only way" she was going to receive the desired response from MoE. She stated the access requests would be addressed to both MoE and MAL.

³³ Based on the material provided me by the parties neither MAL nor MoE ultimately treated these matters as formal requests for records under FIPPA.

[34] The conclusion I draw from the above exchange is that the respondent views continual access to information requests as a means to pressure MoE into complying with her demands that it either issue an order to stop dumping or to create an update record on the fish farm.

[35] The respondent followed through the same day on her promise to file frequent access requests. The request of May 18, 2007 (MAL07.059), which MAL seeks authorization to disregard, is a request for “all information” relating to the fish farm and its owners. It contains no time frame and in most respects overlaps background requests MAL07.039 and MAL07.010. The concluding paragraph of the MAL07.059 email reiterates the respondent’s intention to file ongoing access requests:

Please be advised that we will file a new FOI request at least once a week so as to avoid delays in receiving the information regarding the water being dumped onto our property from the Aquaculture Facility upstream. Knowledge of the status of the water is relevant as it relates to potential health hazards...[original underlining].

[36] Part of the respondent’s demand for an update record on the fish farm is based on her belief that MAL and MoE should test the discharged water from the fish farm. I take from the following quotes in the respondent’s submission that she believes MAL is not doing this testing in order to avoid having to disclose the resulting information. She states:

310. I currently understand that the MAL has failed to enforce their regulations on the Fish Farm...
311. As a result, I believe that the MAL is afraid to test the water because they know contents [sic] and the risk to human health, animal health, and the environment.
- ...
314. We also understand from Gerry Edwards Affidavit, and other communication that [MAL] has failed to obtain records normally required under their own regulations.
315. As a result I expect, as do the other interested parties that the MAL has continued to fail to regulate the Fish Farm as a means to avoid producing records.

[37] In other words, even though the respondent is aware that MAL has not tested the water, she nonetheless continues to file access requests for such information.

[38] Indeed, the respondent states in her supplementary response of December 27, 2007:

I would not have been required to request any information from the Ministry if the Ministry had enforced its own Regulations, Acts and licensing and reporting requirements on the Fish Farm.

[39] Again, the only conclusion I can reasonably draw from this is that the respondent believes that if she launches enough access to information requests, MAL will eventually relent and test the water or issue an order to stop the waste discharge as she believes it should.

[40] On May 24, 2007, the respondent filed an access to information request³⁴ identical to the one she made six days earlier³⁵ which included the warning that she would make a new access request at least once a week.

[41] Three days later the respondent filed MAL07.061, which I detailed above. On June 10, 2007 the respondent filed a request³⁶ for information that was identical to the one she filed May 24, this time for the period of May 24, 2007 to June 10, 2007. Four requests followed the request of June 10, 2007 and these are outlined in the description of the access requests found above.

[42] In summary, the respondent made a total of nine access requests in the approximately eight week period between May 18, 2007 and July 16, 2007, many of which are substantially similar to one another and to the background requests.

[43] Further evidence the respondent is using her access requests as leverage to force MAL into actions having nothing to do with requests for records is found in an email from the respondent to IPSRO dated May 30, 2007.³⁷ In this email the respondent insists that MoE and the Premier's Office instructed her to make FIPPA requests.³⁸ After denying that the requests are similar to or duplicates of her previous access requests, the respondent states the following:

Of course if your offices want to cover all of our costs while we wait for the information, or if they would cover the costs of housing us, and our animals...elsewhere while the Non-compliant waste from the Fish Farm is dealt with, we would then consider delaying our requests.

[44] The respondent is frustrated with what she views as MAL's failure to enforce various regulations, including the testing of the water being discharged from the fish farm. The respondent also has a committed belief the discharged water is contaminating her property and that of her neighbours and that a stop should be put to it. However, this does not justify the respondent's frequent and in many instances substantially repetitive requests under FIPPA in order to exert pressure to fulfill these collateral objectives.

³⁴ MAL07.060.

³⁵ MAL07.059.

³⁶ MAL07.064.

³⁷ Edwards affidavit #1, Exhibit G, p. 38 and 39.

³⁸ There is no other evidence provided which supports this claim.

[45] The respondent's requests are clearly vexatious under s. 43(b) of FIPPA in the way that term is delineated by Commissioner Loukidelis in Auth. 02-02. I conclude that the respondent is abusing her rights under FIPPA because she is using those rights to harass MAL into undertaking actions which have nothing to do with a good faith desire to obtain records under FIPPA.

[46] Given the conclusion reached above, it is not necessary for me to consider MAL's argument with respect to s. 43(a) of FIPPA.

[47] **3.6 Appropriate Remedy**—MAL seeks authority to disregard all access requests by the respondent to the date of this inquiry. I have noted the vexatious nature of the requests and in particular the repetitive nature of many of them. MAL07.059, MAL07.060, MAL07.064 and MAL07/07/16-01 all contain the same information requests with overlapping time frames. I am authorizing MAL to disregard each of them.

[48] I am not prepared to authorize MAL to disregard MAL07.056 in its entirety. The first of the eight requests contained in MAL07.056 relates to a procedure manual for dealing with aquaculture facilities found to be in non-compliance with regulations. MAL states that it "may have some material under [s. 70] where [the respondent] requests the Procedure Manual for handling Aquaculture facilities or businesses that are found in non-compliance of regulations, registrations, and other guidelines".³⁹ If such a record does exist, it may well have to be disclosed to the respondent under s. 70 of FIPPA, subject to appropriate exceptions, which I need not decide here. As for the other requests contained in MAL07.056, given their breadth⁴⁰ and the context in which they were made, *i.e.*, following the threat to make systematic weekly requests, I will authorize MAL to disregard them.

[49] For similar reasons, I reach the same conclusion with regard to MAL07.061 and MAL07/07/11-01. These are very detailed and comprehensive requests following on the heels of the respondent's threat to launch additional requests against MAL if her demands for action from MoE were not met. These requests may be entirely disregarded by MAL.

[50] Finally, I will authorize MAL to disregard MAL07/07/12-01 and MAL07/07/12-02 because I conclude that, within the context in which each was made, it was aimed, not at garnering information, but harassing MAL into bringing the fish farm into what the respondent describes as compliance with certain regulations.

³⁹ MAL initial submission, para. 19.

⁴⁰ For example the respondent asks for "[r]ecords of inspections of Land Based Aquaculture facilities for the past 12 years".

Authorization to disregard future requests

[51] MAL has asked for authorization, for a period of three years from the date of this decision, to disregard requests from the respondent or anyone on her behalf over and above one open request at a time relating to each of, the fish farm and, the records in the custody and control of MAL generally. I agree that this is a reasonable remedy, with one modification. Given that the respondent's ability to make access requests has been suspended since MAL made its s. 43 application, I am of the view that this authorization should extend for a two year, rather than three year, time period from the date of this decision. I have carefully reviewed the rulings of the courts in *Crocker v. British Columbia (Information and Privacy Commissioner) et al.*⁴¹ and *Mazhero v. British Columbia (Information and Privacy Commissioner)*⁴² and conclude the remedy granted here is consistent with those judgments.

[52] The remedy I have granted does not deny the respondent access to information under FIPPA.⁴³ Rather it ensures that MAL is not bombarded by a plethora of requests aimed at an ulterior purpose. My decision allows for the processing of the respondent's requests in a manner which ensures rights of access under FIPPA are not abused.

Time limit on responses

[53] Given the circumstances of this case and consistent with other decisions under s. 43⁴⁴ it is appropriate that MAL not be required to spend more than 10 hours responding to any one request.

Authorization to disregard requests for information covered by previous requests

[54] This is a reasonable remedy as it negates the repetitive nature of the respondent's requests and I will grant it.

Other aspects of the authorization

[55] I will also grant MAL's request that it be authorized to determine what a single access request is for the purposes of this authorization, noting that this

⁴¹ (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.).

⁴² (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

⁴³ And as I noted at para. 7, the respondent has already received over 700 records in response to her processed access requests.

⁴⁴ See for example Decision F05-01, [2005] B.C.I.P.C.D. No. 4 in which the Commissioner ruled that the public body was not required to spend more than seven hours responding to any one request.

remedy is also consistent with previous decisions involving s. 43. Although I have granted MAL the discretion to make this determination, I caution both parties on this point. I could envision that one legitimate request by the respondent might encompass a search for records under more than one topic. By the same token, the respondent should not expect that one request (by email or otherwise) covering, for example, a breadth of topics over a 12-year period, as was the case with MAL07.061, would be treated as a single request. It is important that both parties act reasonably to ensure the meaning and spirit of FIPPA is met.

4.0 CONCLUSION

[56] I therefore make the following authorizations under s. 43:

1. MAL is authorized to disregard all of the respondent's access requests classified under MAL's record system as MAL07.056 (except as provided in para. 48 above), MAL07.059, MAL07.060, MAL07.061 MAL07.064, MAL07/07/11-01, MAL07/07/12-01, MAL07/07/12-02 and MAL07/07/16-01, all of which were outstanding as of the date of this application.
2. MAL is authorized, for a period of two years from the date of this decision, to disregard all access requests that the respondent submits, or that are been made on her behalf, over and above one open access request at a time relating to each of:
 - (a) records in the custody or control of MAL generally; and
 - (b) records directly relating to the aquaculture facility at [the address of the fish farm].

For clarity, this means that the respondent is permitted to have a total of two open requests with MAL at a time, one for each of the above noted categories, (a) and (b).

3. MAL is authorized to disregard any access request made by the respondent, or made on her 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 MAL has responded; and
4. The following apply respecting this authorization:
 - (a) MAL may determine, in light of its s. 6(1) duties to the respondent, what is a single access request for the purposes of the authorization; and

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- (b) for the purposes of the above, an “open access request” is a request for records under s. 5 of FIPPA to which MAL has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of FIPPA.

[57] For clarity, MAL is entitled to apply for further relief under s. 43 after the time period set out in paragraph 2 above if it considers that such relief is warranted in light of MAL’s experience with the respondent.

November 6, 2008

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

OIPC File No. F07-31935