



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

Decision F08-10

MINISTRY OF ENVIRONMENT

Michael McEvoy, Adjudicator

November 6, 2008

Quicklaw Cite: [2008] B.C.I.P.C.D. No. 33

Document URL: <http://www.oipc.bc.ca/orders/Section43/DecisionF08-10.pdf>

Summary: MoE 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 MoE is authorized to disregard them to the date of the application. With the exception of one open access request at a time, MoE 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 F08-09, [2008] B.C.I.P.C.D. No. 32.

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 MoE'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 Environment (“MoE”). This case is about MoE’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. MoE submits that the respondent’s requests are vexatious. MoE also submits the requests are systematic or repetitious and that complying with them would unreasonably interfere with MoE’s operations.

[2] MoE seeks the following relief:

- (a) that MoE be authorized to disregard the respondent’s six requests outstanding as at the date of the s. 43(b) application to this Office. For ease of reference, I will use MoE’s file numbers to identify each of the requests. Also included here are the dates on which the requests were made to MoE. Those requests are MoE07.079 (May 20, 2007), MoE07.080 (May 8, 2007), MoE07.083 (May 18, 2007), MoE07.084 (May 24, 2007) and MoE07.085 (May 27, 2007), MoE07.096 (June 11, 2007).
- (b) that MoE be authorized to disregard any other access requests that the respondent has submitted, or that have made on her behalf, between the date of the s. 43 application to the OIPC and the date of the s. 43 decision;
- (c) that MoE 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 MoE generally and records directly relating to the aquaculture facility at [the address of the fish farm].
- (d) that MoE not be required to spend more than 10 hours responding to any one request;
- (e) that MoE be authorized to disregard any access requests made by, or on behalf of, the respondent that have already been the subject of an access request made by her or on her behalf;
- (f) that MoE 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

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.

- (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 MoE 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 MoE, the respondent made concurrent and substantially similar access to information requests under FIPPA to the Ministry of Agriculture and Lands (“MAL”). 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 F08-09³ on MAL’s application concurrently with my decision dealing with MoE’s s. 43(b) application.

2.0 ISSUE

[4] The issue before me is whether MoE 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 MoE has the burden of proof under s. 43.

3.0 DISCUSSION

[6] **3.1 The Respondent’s Access Requests**—MoE asks that it be authorized to disregard a total of six access requests. MoE also asks that, in order to place these requests in context, I consider other access requests the respondent made which preceded MoE’s s. 43 application. Although MoE states there are seven other requests and the respondent acknowledges this,⁴ my review indicates there are actually six other separate requests.⁵ Those requests, which MoE has already responded to, resulted in the partial disclosure of several hundred pages of records, and they are now closed.⁶ I describe these six requests below as “background access requests”.

³ [2008] B.C.I.P.C.D. No. 32.

⁴ Respondent’s initial submission #2, para. 29.

⁵ The respondent filed MoE06.116 on December 6, 2006 but because of a miscommunication between the parties was not processed until March 9, 2007 and then given another file number, MoE07.037.

⁶ I will refer to the Edwards affidavit attached to MoE’s initial submission as Edwards affidavit #1, and the Edwards affidavit attached to MoE’s reply submission as Edwards affidavit #2. The material referenced here is found at Edwards affidavit # 1, paras. 1-3 and para. 6 as well as Edwards affidavit #2, para. 5.

Background access requests

1. MoE07.017 (February 2, 2007)—A request for all documents, reports, notes or data related to MoE's investigation of the fish farm between September, 2006 and February 2, 2007. The request resulted in the release of 193 records with some information severed and the file was closed.⁷
2. MoE07.036 (March 9, 2007)—A request for all records, documents, lab results and other records dating from the inception of the fish farm to the date of application on March 9, 2007. The request resulted in the partial release of 1697 records and the file was closed.
3. MoE07.037 (March 9, 2007)—The respondent originally filed this request December 6, 2006, but through a miscommunication between the parties, the request was processed March 9, 2007. The respondent asks for all documents related to the fish farm, including matters relating to any water quality testing for its effluent and a ditch into which the effluent was discharged prior to December 6, 2006. The request resulted in the full disclosure of 41 records.
4. MoE07.068 (May 1, 2007)—A request for documents relating to any visit the Minister of the Environment may have made to the fish farm; records relating to non-compliance with regulations by the fish farm and any new information regarding the fish farm between March 9, 2007 and May 1, 2007. The request resulted in the partial disclosure of two records.
5. MoE.07.076 (May 9, 2007)—A request for all records relating to the fish farm covering the period of January 31, 2007 to May 9, 2007. MoE reported to the respondent that there were no records responsive to this request.
6. EAO07.004 (May 24, 2007)—A request for a report of the Environmental Assessment Office Report on Aquaculture dated August 1997. The request was processed by MoE and the report withheld under s. 20 of FIPPA.⁸

⁷ All of the information concerning requests 1 through 6 is found in Edwards affidavit #1, Exhibit A, pp. 1-3 and p. 6 as well as Edwards affidavit #2, para. 5.

⁸ This section allows the head of a public body to refuse to disclose information to an applicant that is available for purchase by the public.

Access requests for which MoE seeks s. 43 authorizations

1. MoE07.079 (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.⁹
2. MoE07.080 (May 8, 2007)—The respondent requests all records relating to a consulting company report on the fish farm that had been disclosed to the respondent.
3. MoE07.083 (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.
4. MoE07.083 (May 24, 2007)—The respondent again requests all records related to the fish farm. The respondent again does not prescribe a time frame for the requested records.
5. MoE07.085 (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.
6. MoE07.096 (June 10, 2007)—The request is for all records relating to the fish farm between May 24, 2007 and June 10, 2007.

[7] **3.2 The Parties' Positions**—MoE argues that the respondent's requests are vexatious as that term is defined in Auth. (s. 43) 02-02.¹⁰ MoE 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 MoE, or both. MoE 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).¹¹

[8] MoE 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

⁹ All information concerning requests 1 through 6 which follows is found in Edwards affidavit # 1, Exhibit A, pp. 3 through 6.

¹⁰ [2002] B.C.I.P.C.D. No. 57.

¹¹ MoE's initial submission, para. 39.

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

[9] In light of the history of the respondent's requests to MoE and bearing in mind the legislative purposes of FIPPA, MoE 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 MoE or both; and
- the repetitive or overlapping natures of the FOI requests supports a finding that they are vexatious.¹²

[10] 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

¹² MoE's initial submission, para. 40 and 41.

of thousands of litres of “non-regulated, non-compliant” waste onto her property and that of her neighbour.¹³

- 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 necessary steps to determine the extent of the problem and to seek redress.¹⁴
- MoE’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 MoE regulations.¹⁵
- 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.¹⁶

[11] With respect to the assertion that her requests are repetitive and systematic, a factor considered in whether a request is vexatious,¹⁷ the respondent submits that:

- although her requests are similar, in that they relate to obtaining records concerning the “unregulated discharge of waste”, none of the requests are identical. She submits that the requests are different in that they relate to different time periods or sources of documents.
- she thought it would be “easier for the MoE FOI Act staff if they knew we would submit consecutive requests for the information”.¹⁸ The respondent said she based this idea on Order 01-35 which she described, without elaboration, as a “solution” to consecutive requests.
- she did not use any system in filing her requests but rather based her requests on an evolving understanding and growing concern over the health of individuals. She argues that it is MoE that has systematically attempted to obstruct her requests for information.¹⁹

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

¹³ Respondent’s initial response #2, para. 2.

¹⁴ Respondent’s initial response #2, para. 130.

¹⁵ Respondent’s initial response #2, para. 136.

¹⁶ Respondent’s initial response #2, para. 138.

¹⁷ See para. 27, Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57.

¹⁸ Respondent’s initial response #2, para. 87.

¹⁹ Respondent’s initial response #2, para. 197. The respondent also contends at para. 279 that MoE is protecting “politically sensitive” information an allegation which MoE denies.

pursuing very serious and timely issues, MoE argues, have an obligation not to abuse the right of access conferred under FIPPA.²⁰

[13] MoE also submits that the respondent seeks records that she knows do not exist,²¹ MoE submits that the respondent is either attempting to force MoE to create those records or she has a misunderstanding of the extent of her rights under FIPPA. For example, MoE notes that the respondent acknowledges that MoE has not tested the fish farm water and yet she continues to request, among other things, results of these “tests”.²² MoE 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.²³ MoE 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. MoE submits that, if the respondent believes that MoE is withholding records, which it denies, she can seek a review through this Office.²⁴

[14] **3.3 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.

[15] Coultas J. in *Crocker v. British Columbia (Information and Privacy Commissioner) et al.*²⁵ 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 to restrict the meaning of s. 43. The section must be given the “remedial

²⁰ MoE's reply submission, para. 23.

²¹ MoE's reply submission, para. 12. The respondent attempted to reply to this point in her submissions to the application giving rise to Decision F08-09. The respondent's argument was that if the record did not exist then MoE should simply respond that such was the case. The public body in that decision, the Ministry of Agriculture and Lands, objected to me considering this argument because it amounted to an inappropriate and confusing sur-reply. I have considered the respondent's argument in relation to this (MoE's) application but have concluded it does not answer MoE's claim that the respondent has acted in a vexatious manner.

²² MoE's reply submission, para. 13.

²³ MoE's reply submission, para. 14.

²⁴ MoE's reply submission, para. 15.

²⁵ (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.), at para. 42.

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.

[16] The Commissioner carefully canvassed the meaning of the term vexatious under s. 43(b) in Auth. (s.43) 02-02²⁶. 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 excuse²⁷ and also cited former Ontario Commissioner Wright who defined the term to include “intent to annoy, harass, embarrass or cause discomfort”.²⁸

[17] 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.

[18] **3.4 Discussion**—As I said in Decision F08-09, 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.²⁹ The respondent has provided me hundreds of pages of research material to sustain her view. She repeatedly makes the point

²⁶ [2002] B.C.I.P.C.D. No. 57 at pp. 5 and 6.

²⁷ Para. 19.

²⁸ Para. 20.

²⁹ Respondent’s initial response #2, para. 71.

that the fish farm has not complied with the law and asks why MoE does not enforce its own regulations.³⁰ It is fair to say the respondent is waging a concerted campaign to have the discharge both tested and stopped.³¹

[19] 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.

Analyzing the requests

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

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

[22] 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.

...

We require one of the following;

- 1) A current written status report on the Aquaculture Facility from MoE

³⁰ See for example the Respondent's initial response submission #1, para. 16.

³¹ 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.

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

- 2) or a copy of an order from the MoE to the Aquaculture to Stop dumping Non-Compliant waste immediately [original emphasis].

[23] 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.

[24] 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.

[25] As I stated in Decision F08-09, 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

[26] 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!

[27] 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.

[28] The conclusion I draw from the above exchange is that the respondent views continual access information requests as a means to pressure MoE into

³³ Based on the material the parties provided me, MoE did not ultimately treat these matters as formal requests for records under FIPPA.

complying with her demands that it either issue an order to stop dumping or to create an update record on the fish farm.

[29] The respondent followed through the same day on her promise to file frequent access requests. The request of May 18, 2007 (MoE07.083), which MoE 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 MoE07.017, MoE07.036, MoE07.37 and MoE07.076. The concluding paragraph of the MoE07.083 email reiterates the respondent’s intention to file ongoing access requests on a weekly basis in order to avoid delays in obtaining information.

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

249. I currently understand that the MoE has failed to enforce their regulations on the Fish Farm...

250. As a result, I believe that the MoE is afraid to test the water because they know contents [*sic*] and the risk to human health, animal health, and the environment.

...

253. We also understand from Gerry Edwards Affidavit...and other communication that [MoE] has failed to obtain records normally required under their own regulations.

254. As a result I expect, as do the other interested parties that the MoE has continued to fail to regulate the Fish Farm as a means to avoid producing records.

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

[32] Indeed, the respondent states in her response submission that:

once [MOE] either provides the requested information, or instructs the Fish Farm to cease dumping waste on our properties there will no longer be a need for additional information.³⁴

[33] Again, the only conclusion I can reasonably draw from this is that the respondent believes that if she launches enough access to information requests,

³⁴ Respondent’s initial response #2, para. 257.

MoE will eventually relent and test the water or issue an order to stop the waste discharge as she believes it should.

[34] On May 24, 2007, the respondent filed an access to information request³⁵ identical to the one she made six days earlier³⁶ which included the warning that she would make a new access request at least once a week. She also filed a request with MoE's Environmental Assessment Office.³⁷

[35] Three days later the respondent filed MoE07.085 which I detailed above. On June 1, 2007 the respondent filed a request for information that was identical to the one she filed May 24, this time for the period of May 24, 2007 to June 10, 2007.³⁸

[36] In summary, the respondent made a total of 6 access requests in the approximately three week period between May 18, 2007 and June 10, 2007, many of which are substantially similar to one another and to the background requests.

[37] Further evidence the respondent is using her access requests as leverage to force MoE into actions having nothing to do with requests for records is found in an email from the respondent to IPSRO dated May 30, 2007.³⁹ In this email the respondent insists that MoE and the Premier's Office instructed her to make FIPPA requests.⁴⁰ 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.

[38] The respondent is frustrated with what she views as MoE's failure to enforce various regulations including the testing of the water being discharged from the fish farm. The respondent's 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.

[39] In my view the respondent's requests are clearly vexatious under s. 43(b) of FIPPA in the way that term is delineated by Commissioner Loukidelis in

³⁵ MoE07.084.

³⁶ MoE07.083.

³⁷ EAO07.004.

³⁸ MoE07.096.

³⁹ Edwards affidavit #1, Exhibit H, p. 30.

⁴⁰ There is no other evidence provided which supports this claim.

Auth. (s. 43) 02-02. I conclude that the respondent is abusing her rights given under FIPPA because she is using those rights to harass MoE into undertaking actions which have nothing to do with a good faith desire to obtain records under FIPPA.

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

[41] **3.5 Appropriate Remedy**—MoE 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. MoE07.076, MoE07.083, MoE07.084 and MoE.096 all contain the same information requests with overlapping time frames. I am authorizing MoE to disregard each of them.

[42] As regards MoE07.080, I find that its breadth and proximity in time to the respondent's threat to make weekly requests is sufficient for me to conclude that MoE is authorized to disregard it.

[43] I am not prepared to authorize MoE to disregard MoE07.079 in its entirety. The first of the eight requests contained in MoE07.079 relates to a procedure manual for dealing with aquaculture facilities found to be in non-compliance with regulations. 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 MoE07.079, given their breadth⁴¹ and the context in which they were made, *i.e.*, its proximity to the respondent's pledge to make systematic weekly requests, I will authorize MoE to disregard them.

Authorization to disregard future requests

[44] MoE 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 records in the custody and control of MoE 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 MoE 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.*⁴² and *Mazhero v. British Columbia (Information and*

⁴¹ For example the respondent asks for records of inspections for all land based aquaculture facilities during the past 12 years.

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

Privacy Commissioner)⁴³ and conclude the remedy granted here is consistent with those judgments.

[45] The remedy I have granted does not deny the respondent access to information under FIPPA.⁴⁴ Rather it ensures that MoE 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

[46] Given the circumstances of this case and consistent with other decisions under s. 43,⁴⁵ it is appropriate that MoE not be required to spend more than 10 hours responding to any one request.

Authorization to disregard requests for information covered by previous requests

[47] 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

[48] I will also grant MoE's request that it be authorized to determine what a single access request is for the purposes of this authorization, noting that this remedy is also consistent with decisions involving s. 43. Although I have granted MoE the discretion to make this determination, I caution both parties on this point. As I stated in Decision F08-09, 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 MoE.079, 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

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

1. MoE is authorized to disregard all of the respondent's access requests classified under MoE's record system as MoE07.079 (except as provided

⁴³ (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

⁴⁴ And as I noted at paras. 6, the respondent has already received almost 2,000 records in response to her processed access requests.

⁴⁵ 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 7 hours responding to any one request.

- in para. 43 above), MoE07.080, MoE07.083, MoE07.084, MoE07.085, and MoE096, all of which were outstanding as of the date of this application.
2. MoE 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 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 MoE 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 MoE at a time, one for each of the above noted categories, (a) and (b).

3. MoE 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 MoE has responded; and
4. The following apply respecting this authorization:
 - (a) MoE 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
 - (b) for the purposes of the above, an “open access request” is a request for records under s. 5 of FIPPA to which MoE has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of FIPPA.

[50] For clarity, MoE 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 MoE’s experience with the respondent.

November 6, 2008

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator