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

Decision F10-11

# MINISTRY OF LABOUR

Michael McEvoy, Adjudicator

October 14, 2010

Quicklaw Cite: [2010] B.C.I.P.C.D. No. 51
CanLII Cite: 2010 BCIPC No. 51
Document URL: http://www.oipc.bc.ca/orders/section43/DecisionF10-11.pdf

**Summary:** Three of the respondent's requests are systematic and would unreasonably interfere with the Ministries' operations. The fourth is vexatious. The Ministry is authorized to disregard the outstanding requests and is also entitled to other relief.

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

**Authorities Considered: B.C.:** Decision F06-12, [2006] B.C.I.P.C.D. No. 38; 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.

**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 Labour ("Ministry") applies under s. 43 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") for authorization to disregard four access requests the respondent made on January 22, 2010 and February 8, 2010. The Ministry says it is entitled to disregard three requests under the terms of Decision F06-12.[1] The Ministry says, if it is wrong about this, the three requests would still unreasonably interfere with its operations because they are repetitious and/or systematic as well as being frivolous and vexatious.

[1] [2006 ] B.C.I.P.C.D. No. 38.

The Ministry says the fourth request is frivolous and vexatious and it therefore seeks authorization to disregard it as well.

## 2.0 ISSUE

[2] The issues before me are whether:

1. The Ministry can disregard some of respondent's requests because they are subject to the terms of Decision F06-12 and;

2. The Ministry can disregard the respondent's requests because they are frivolous or vexatious, or because they are repetitious or systematic, and unreasonably interfere with the Ministry operations.

[3] Previous decisions have determined that the public body has the burden of proof in such cases.

## 3.0 DISCUSSION

[4] **3.1** 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.

[5] Commissioner Loukidelis discussed the interpretation and application of s. 43(a) in Auth. (s. 43) 02-01 and s. 43(b) in Auth. (s. 43) 02-02.[2] I have applied the approach taken in those and other decisions dealing with ss. 43(a) and (b), as well as the cases to which they refer.

[6] **3.2 Background**—The respondent's employment with the Ministry ended in 2002,[3] when his job of long standing was made redundant by a Ministry reorganization. Shortly thereafter, the applicant commenced a series of requests for records related to him and the reorganization. According to the Ministry, he made 41 requests over a 27-month period. The specific nature of those requests is set out in Decision F06-12,[4] a case dated December 13, 2006. That Decision

---

[2] [2002] B.C.I.P.C.D. No. 47; [2002] B.C.I.P.C.D. No. 57.
[3] At that time called the Ministry of Skills Development and Labour.
[4] [2006] B.C.I.P.C.D. No. 38.

authorized the Ministry of Education and the Ministry of Labour and Citizens' Services[5] to:

- disregard 12 of the respondent's requests.
- deal with only one of the applicant's requests at a time for a period of one year.
- disregard requests to which the Ministries had previously responded (no time limit attached to this authorization).

[7] **3.3 The applicant's current requests**—Most recently the respondent made four access requests under FIPPA. The following is a summary:

Request #1: Records pertaining to the "Core Review" of the Ministry in 2001. These would include Core Review strategies and directives received by the highest levels of Ministry officials.

Request #2: Records relating to a document listing the respondent's name with the word "unsuitable" beside it. This would include records that document attempts by the Ministry to determine who authored that particular record.

Request #3: Records relating to criteria used to determine redundant job positions, including the respondent's, prior to the Ministry eliminating those positions.

Request #4: Expense records for three Ministry employees for the period August 1, 2006 to September 30, 2006.

[8] **3.4 The Arguments**—I have carefully read and considered all of the submissions and evidence of the Ministry and respondent. What follows is a summary of the parties' salient points.

[9] The Ministry's first position is that Decision F06-12, allowing it to disregard requests to which it had previously responded, applies to requests #1 - #3. It notes the ruling of Commissioner Loukidelis was not time limited and that there is no reason to believe that it will locate responsive records it has not previously provided to the respondent.

[10] The Ministry submits that, if I find Decision F06-12 does not continue to apply, then I should still excuse it from responding to the requests because they are repetitive, systematic, vexatious and frivolous.

[5] A reorganization of the latter ministry resulted in the assignment of the respondent's request to the Ministry of Labour.

[11] With respect to the repetitive and systematic nature of the requests, it compares requests #1 - #3 to the numerous requests Decision F06-12 dealt with. It submits that the respondent's requests continue a pattern that began in 2002 whereby answers to each request led to a series of further requests. In some cases, the respondent took to "requesting copies of his previous FOI requests."[6] In the time between the issuance of Decision F06-12 and his most recent request in January of 2010, the Ministry says the respondent corresponded with the Ministry in a manner that "continued his systematic campaign to voice concerns around the decision to eliminate his position during government restructuring."[7] In addition, it submits that, when government appoints a new Deputy Minister to the Ministry, the respondent renews his concerns with that person and "his desire that the persons who are 'at fault' be disciplined."

[12] The Ministry says that the applicant received his entire personnel file from the BC Public Service Agency in 2009 and from the Ministry in previous years. It contends that this included records of decisions regarding his employment.

[13] The Ministry also argues that processing requests #1 - #3 would unreasonably interfere with its operations. It says it would have to conduct searches for records that are about ten years old and now located in archived files for the bulk of the requests.[8] The Ministry estimates that it would take seven to ten hours for staff at its Employment Standards Branch to locate and retrieve records responsive to those requests. The Ministry submits that with respect to request #1 alone there are approximately 20 boxes of records offsite relating to the Core Review. It says those 20 boxes would have to be recalled and reviewed and that, given the history of the respondent's requests and the overlap between those requests, an FOI analyst within the Information Access Office would have to review the requested records to confirm that they have been previously provided to the respondent. The Ministry estimates that it would take between 12 and 13 hours to complete that work. As such, the Ministry estimates that it will take a Ministry employee between 19 and 23 hours to complete the processing of the requests.[9] It adds that despite this fact it does not anticipate that this search will locate any records it has not already provided to the respondent.

[14] With respect to request #4, the Ministry says it has already taken 21 hours to locate and retrieve records responsive to it. In any event, the Ministry submits that request #4 concerning the expense records of three employees is vexatious and frivolous, with emphasis on the former. The Ministry says the first employee noted was, at the time of the Ministry reorganization, a director who supervised the respondent while the other two worked with that director. The Ministry says

[6] Ministry initial submission, para 4.43
[7] Affidavit of Alex Bjelica, Exhibit "G".
[8] Ministry initial submission, para. 23
[9] Ministry initial submission, para. 22.

that by 2006, the period covered by the respondent's request, that director had moved to a job in another ministry. The Ministry argues these requests for expense records are an attempt to harass employees who the respondent "believes are responsible for his no longer being employed by the Province."[10]

[15] The Ministry adds that all of the requests are vexatious and frivolous in that they are:

- abuses of the rights conferred under FIPPA,
- "frivolous" in the sense that they have been made for ulterior purposes, and/or are not serious,
- "vexatious" in the sense that they have been made in bad faith and/or for the purpose of annoying or harassing or burdening the Ministry, and
- repetitive or overlapping in nature thereby supporting a finding they are frivolous and/or vexatious.

[16] The Ministry further submits that the following aspects of the requests show bad faith on the respondent's part and abuses of his access rights:

- the extent to which he requests broad categories of records;
- his targeting of specific employees, by making requests for their expense records, presumably for the purposes of harassing those employees;
- the extent to which his requests repeat or overlap previous ones; and
- the extent to which he refuses to provide necessary clarification about the scope of his requests.

[17] The respondent denies that his new requests overlap previous ones. He argues that the Ministry never originally answered several of the requests it says are overlapping because Decision F06-12 permitted the Ministry to disregard them. Therefore, he submits his new requests will not produce overlapping information.[11] In other instances, the respondent says previous requests do not bear any relation to his current ones.[12] He also denies the Ministry's assertion that it has provided him his entire personnel file.[13] He also takes issue with Ministry assertions about the length of time it would take the Ministry to process his requests.

[18] With respect to request #2, the respondent submits that he does not seek records dating prior to 2004. He contends that there was "considerable activity"

[10] Ministry initial submission, para. 35.
[11] Respondent's reply, para. 14.
[12] See for example references in paras. 14 and 20 of the respondent's reply submission.
[13] Respondent's reply, para. 56.

concerning the record referred to in request #2 after 2003 and "most productively" in 2006."[14] He says the Ministry could have contacted him about this but did not do that.

[19] The respondent argues that much of the Ministry's argument relates to material it filed in respect of Decision F06-12. The respondent describes that Decision as "bizzarely [*sic*] one-sided in favour of the Ministry"[15] and submits that relying on it here "is nothing more than a cynical attempt at bootstrapping."[16]

[20] The respondent describes as "ludicrous" and speculative the Ministry's charge that his request for employee expense records is a form of harassment."[17] He submits that expense records "should be pretty much an open book as far as public bodies are concerned."[18] The respondent goes on to say that in 2003 he filed a human rights complaint against his former supervising director, who is one of the employees subject to his expense record request. The respondent notes the complaint was resolved but says that the complaint against his former supervisor involving a reference for the respondent "demonstrates a number of things that are relevant to the matter at hand."[19] Among those things is the respondent's assertion that his supervisor's

> conduct in altering an important document on what amounts to a whim (animated by underlying prejudice?) is shocking in the extreme. What could she have possibly been thinking about? This was the action of an individual employed as an upper level manager in the Ministry…[20]

[21] **3.5 Findings—**I first consider requests #1 - #3.

***Does Decision F06-12's previous authorization cover requests #1 - #3?***

[22] In Decision F06-12 Commissioner Loukidelis excused the Ministry from responding to any future requests covering records the applicant had already asked for and to which the Ministry had responded. The Ministry asserts that Decision F06-12 authorizes it to disregard requests #1 - #3 on the basis that "there is no reason to believe that responsive records will be located that were not previously provided to [the respondent]". Certainly, the Ministry persuades me that the respondent's recent requests overlap, to some extent, records he asked for previously. However, the Ministry does not adequately explain its response to those previous requests and what, if any, records it disclosed in

[14] Respondent's reply, para. 18. The underlining is the respondent's.
[15] Respondent's reply, para. 26.
[16] Respondent's reply, para. 32.
[17] Respondent's reply, para. 40.
[18] Respondent's reply, para. 41.
[19] Respondent's reply, para. 47.
[20] Respondent's reply, para. 49.

reply to them.[21] The Ministry's "belief" that it would not locate any new records is not evidence that it has already responded to the overlapping requests as required by the authorization in Decision F06-12. Therefore, the Ministry does not persuade me it can disregard the respondent's recent requests based on the authorizations in Decision F06-12. .

***Are requests #1 - #3 systematic?***

[23] I do agree, however, with the Ministry that requests #1 – #3 are systematic as defined by FIPPA. It is evident the respondent continues to engage in the same determined effort to request information that gave rise to Decision F06-12. The respondent believes Decision F06-12 to be wrong and contends its conclusions have "had their day." He urges me not to consider them here.

[24] I disagree with the respondent. The factual findings of Decision F06-12 are directly relevant to this proceeding. Those findings involve the same respondent and requests related to the same issue as in this proceeding (the respondent's termination eight years ago). I am only able to judge whether the respondent's actions are systematic by looking at his past actions. Therefore, it is entirely proper and appropriate that I take account of Decision F06-12 here.

[25] For this reason, it is necessary to restate certain conclusions of Decision F06-12;[22]

> 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;[23] related matters such as security services;[24] interactions, communications or incidents with other employees;[25] his access to information files;[26] MSDL's organizational re-restructuring,[27] staffing and hiring processes;[28] emails involving him;[29] information supporting statements made in letters or emails to him;[30] 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

[21] In at least one case, LBR-2010-07, it would appear the Ministry provided no response because Decision F06-12 authorized the Ministry to disregard it

[22] Para's 34 and 35. The footnotes in the quotation that follows are from the original. The request records relating to those files in this quotation were also submitted as evidence in this inquiry.

[23] For example, SDL-2003-020; SDL-2002-049; SDL-2002-054.

[24] SDL-2004-036; SDL-2004-009

[25] For example, SDL-2004-018

[26] For example, SDL-2002-059; SDL-2003-064

[27] For example, SDL-2002-043; SDL-2002-053; SDL-2002-055.

[28] For example, SDL-2002-055; SDL-2003-018; SDL-2004-028.

[29] For example, SDL-2003-042 SDL-2003-065.

[30] For example, SDL-2003-021; SDL-2004-030.

> in response to earlier access requests, in one or two cases regarding events from the 1990s.[31]
>
> 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 records[32] 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,[33] 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.

[26] The respondent says "there haven't been any requests for information from me since 2004…".[34] The sworn evidence, however, contradicts this. The respondent sent a letter to then Deputy Minister of Labour and Citizens' Services, Lori Wanamaker, on August 28, 2006 concerning a record containing the term "unsuitable" opposite the respondent's name.[35] This same matter is the subject of request #2. The respondent raised the "unsuitable" issue again with a succeeding Deputy Minister Labour, Rob Lapper, in February 8, 2010 correspondence. The letter seeks further information related to the criteria used to classify as redundant the respondent's job and others in 2002– the issue in request #3. This correspondence also corroborates the Ministry's contention that the respondent systematically renews advocacy of his case upon the appointment of a new Deputy Minister with oversight of his file.

[27] As already noted, the respondent's recent requests overlap previous ones. Request #1, for example, is almost identical to one the respondent filed in April 2004 and which Decision F06-12 described at paragraph 11.[36] Commissioner Loukidelis permitted the Ministry to disregard that request because he found it to be part of a systematic pattern of requests warranting relief under s. 43. If that request was systematic then it is no less so now.

[28] A repetition of requests is an important factor in determining whether it is systematic under s. 43(a) of FIPPA. Taken together with the evidence of this

---

[31] For example, SDL-2002-046

[32] 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.

[33] SDL-2003-042

[34] Respondent's reply para. 60.

[35] Affidavit of Alex Bjelica, Exhibit "G".

[36] The 2004 request is identified as SDL-2004-016 attached as Exhibit "A" to the affidavit of Carole Shave.

case noted above and the findings in Decision F06-12 it is clear that for the purposes of s. 43(a) requests #1 - #3 are systematic in nature.

***Would requests # 1 - # 3 unreasonably interfere with Ministry operations?***

[29] Before I may consider granting the Ministry relief, I must next consider whether the respondent's requests would unreasonably interfere with the Ministry's operations. In making this assessment, it is important that I not view these requests in isolation but rather in the continuum of the previous requests and respondent's associated activities. The authorization in Decision F06-12 concluded with the following:

> If based on experience, [the Ministries] consider it warranted, they may apply for further relief.

[30] The respondent's present requests are inseparable from and interwoven with those of the past eight years that have caused unreasonable interference with the Ministry's operations. The most recent requests would add, and have already added, to the over 300 hours the Ministry has spent to date replying to the respondent. Deputy Ministers and other Ministry staff have answered numerous queries from the respondent since Decision F06-12. The Ministry has already spent 21 hours dealing with request #4. Requests #1 through #3, if undertaken, would necessitate Ministry staff retrieving and processing almost decade old archived files, potentially consuming another 20 hours or more in the process.

[31] The Ministry's sworn evidence is that its staff has intermittently been required to contact the respondent to clarify his requests. Given the history, I agree with the Ministry that further clarifications will be required that result in the respondent raising yet more issues and questions. For this reason, the Ministry's estimate of processing time for the outstanding requests is likely conservative. The respondent downplays the Ministry's operational burden by suggesting, for example, that request #2 is more limited in scope than appears on its face. I note the respondent waited until this inquiry to clarify the scope of his request. This is not helpful as a means of assisting the Ministry in expeditiously dealing with matters. In fact the respondent's actions support the Ministry's assertions that the respondent does not cooperate with it in attempting to clarify his requests. This has the obvious consequence of interfering with Ministry operations by sending staff on unnecessary searches.[37]

[32] Having considered all of the evidence, submissions and circumstances described above I have no difficulty in concluding the requests #1 - #3 at issue in this case would be an unreasonable interference with the Ministry's operations

[37] Affidavit of Alex Bjelica, paras. 21 and 22.

under s. 43(a) of FIPPA. Since I find these requests systematic and an unreasonable interference with Ministry operations, it is not necessary to consider whether they are also frivolous and vexatious.

***Is request # 4 frivolous and vexatious?***

[33] The Ministry contends the respondent's request for the 2006 expense records of three employees who formerly worked with the respondent is vexatious and frivolous. I agree.

[34] The respondent directs the request at his former supervisor and her two colleagues. The respondent's evidence reveals that he holds his former supervisor to some extent responsible for matters relating to his 2001 termination. He feels strongly she improperly altered a reference letter for him. He describes her actions as "shocking," asking "[h]ow completely immune to censure had she been made to feel she was?" [38] It is fair to say he was at very least unhappy with his former supervisor's actions. In saying this, I do not judge the respondent's assertions or discount the human consequences that follow a termination of employment. It is incumbent on me however to ensure that FIPPA is not used for a purpose other than gaining access to information.[39]

[35] The expense records the respondent requests relate to a two-month period in 2006. By that point, the respondent was long gone from his former position. In fact, as noted, his former supervisor no longer worked for the Ministry then either. The request on its face bears no relation to other information he seeks with respect to his dismissal. He argues that expense records "should be pretty much an open book as far as public bodies are concerned." In general, this is true. However, it is surely no coincidence that the employees he should single out for such a query are a former supervisor, whose actions are a concern to him, and her workmates at the time of the respondent's dismissal. In my view, this request is frivolous because it is not a serious attempt to gain information. There appears to be no live issue between the parties but if there were such an issue, the respondent does not attempt to connect his access request with it. Rather the request is a means of demonstrating the respondent's displeasure with his former supervisor and her colleagues. I therefore find it is vexatious under the terms of s. 43 of FIPPA.

[36] **3.6 Relief the Ministry seeks**—The Ministry seeks relief based on considerations in *Crocker v. British Columbia (Information and Privacy*

[38] Exhibit H to the affidavit of Alex Bjelica.
[39] See the discussion in Auth. (s. 43) 02-02, paras. 14–27.

*Commissioner), et al.*[40] and *Mazhero v. British Columbia (Information and Privacy Commissioner)*[41].

[37] The Ministry seeks among other things a series of remedies that include the authorization:

- To disregard the open requests
- To disregard all access requests made by the applicant for a period of two years from the date of the decision over and above one open access request at a time
- That it not be required to spend more than seven hours responding to any one request

[38] The Ministry argues this relief seeks to balance the respondent's legitimate interest to seek access to records, including those containing his own personal information, and the Ministry's interests in avoiding the undue burden that arises from processing frivolous and/or vexatious requests, and/or requests that are repetitious and/or systematic and that unreasonably interfere with the Ministry's operations. The respondent opposes the Ministry's request.

## 4.0 CONCLUSION

[39] Taking into account the considerations in *Crocker* and *Mazhero* in addition to all of the submissions, evidence and circumstances of this case, I conclude that the Ministry's request for relief under s. 43 is reasonable.

[40] I therefore make the following authorization under s. 43 of FIPPA:

1. The Ministry is authorized to disregard the open requests #1 through #4;
2. The Ministry is 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 the Commissioner and the date of this s. 43 decision;
3. The Ministry is authorized, for a period of two years from the date of this decision, to disregard all access requests made by the respondent, or made on his behalf, over and above one open access request at a time relating to records in the custody or control of the Ministry.

---

[40] *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.);
[41] *Mazhero v. British Columbia (Information and Privacy Commissioner)*[41] (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

4. The Ministry is not required to spend more than seven hours responding to any one request;

5. The Ministry is authorized to disregard any access request made by the respondent, or made on his behalf, to the extent that the request covers records that have already been the subject of an access request made by or on behalf of the respondent and to which the Ministry has responded;

6. The following terms apply respecting the above authorizations:

   a. the Ministry 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 the FIPPA to which the Ministry has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of the Act

October 14, 2010

**ORIGINAL SIGNED BY**

Michael McEvoy
Adjudicator

OIPC File No. F10-41279