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

Auth. (s. 43) 04-01

VANCOUVER ISLAND HEALTH AUTHORITY

Celia Francis, Adjudicator
September 10, 2004

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Summary: VIHA applied for relief under s. 43 on the grounds that respondent's requests were repetitious and systematic, and unreasonably interfered with VIHA's operations, and that the requests were also frivolous and vexatious. Most requests not made under s. 5 of the Act and s. 43 therefore not applicable. Access requests do not meet the test of s. 43.

Key Words: repetitious – systematic – unreasonably interfere with operations – frivolous – vexatious.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 43(a) & (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; Auth. (s. 43) 03-01, [2003] B.C.I.P.C.D. No. 42.

Cases Considered: *Mazhero* v. *British Columbia (Information and Privacy Commissioner)*, [1998] B.C.J. No. 1539.

1.0 INTRODUCTION

[1] In a letter of September 25, 2003, the Vancouver Island Health Authority ("VIHA") asked for authorization under ss. 43(a) and (b) to disregard outstanding and future requests made by a client of VIHA (the "respondent"). It described the requests and its arguments on the application of s. 43, and also set out the relief it was seeking. The Office did not refer the application to mediation but sent a Notice of Section 43 Application to the respondent in early October 2003, setting out the schedule for submissions by the participants.

[2] After the receipt of VIHA's initial submission, the respondent requested a one-year extension of the deadline for making a reply, on the grounds that the respondent's physical and mental disabilities prevented the respondent from providing one. According to the Office's decision letter on the extension request, the respondent indicated an expectation that VIHA would continue to process outstanding requests as well as any new ones the respondent made. VIHA opposed any extension. The Office declined the respondent's request, pointing out that the respondent's numerous communications with VIHA over the last few months were inconsistent with the respondent's supposed inability to make a submission to the Office in response to the s. 43 application.

[3] The respondent later asked for a six-month extension on the grounds that the respondent's health did not allow the respondent even to review VIHA's submission. VIHA once again opposed any extension, arguing that the respondent had the assistance of advocates and a support group. It also said the respondent had supplied insufficient detail on the medical conditions which supposedly hindered the respondent in making a reply. The Office declined the respondent's request for the six-month extension for reasons similar to the previous refusal.

[4] The respondent did not submit a reply to VIHA's initial submission. VIHA made no further written submission, although it sent a letter with attachments in February 2004, asking that these items be considered along with its other s. 43 materials.

2.0 ISSUE

[5] The issue here is whether, under s. 43(a) or s. 43(b), or both, I should authorize VIHA to disregard the respondent's outstanding requests and any future requests made by or on behalf of the respondent, including by two named "advocates", and, if so, whether I should grant it the following relief:

- to be authorized to disregard any such requests between the date of its submission and the date of this decision;
- to be authorized to disregard any such requests for a year following the date of this decision; and
- for the year following that, to be authorized to disregard any such requests in excess of one open request at a time, that it not be required to spend more than 7 hours responding to each request and that it not be required to respond where a request asks for records already provided;
- notwithstanding the second and third bullets above, that VIHA not be required to respond to more than two new access requests by or on behalf of the respondent between 12 and 18 months from the date of this decision; and
- with respect to the time limit under the second bullet, VIHA is at liberty to apply for further relief under s. 43 at that time.

3.0 DISCUSSION

[6] **3.1 Background** – VIHA said that the respondent is a client who is provided with funding and services through its programs. It said that the client received an increase in a certain type of funding in mid-2002 and that the respondent has since made many further requests for increased funding, which VIHA refused to grant. At the time of the s. 43 application, VIHA said that the respondent had not appealed the refusal to increase funding but had appealed VIHA's termination of the funding itself on July 31, 2003. VIHA said that this occurred because VIHA had concerns about certain financial aspects of the respondent's case and also had concerns that the particular program associated with the funding was no longer appropriate for the respondent. The respondent had appealed unsuccessfully at one level within VIHA at the time of this application and apparently was to have an appeal at a higher level in September 2003. VIHA's February 2004 letter to this Office states that the respondent's funding was terminated in December 2003.

[7] VIHA said that, since May 2003, the respondent had made a series of requests, all purportedly under the *Freedom of Information and Protection of Privacy Act* ("Act"), and that the respondent had also made numerous contacts with VIHA staff. In September 2003, it submitted an application under s. 43 of the Act for authorization to disregard the respondent's outstanding and future requests.

[8] **3.2 Applicable Principles** – The Commissioner, in decision Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 47, discusses the interpretation and application of s. 43(a), while Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, addresses s. 43(b). I have, in considering VIHA's request, applied the approach taken in those decisions and the cases to which they refer.

[9] 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.

[10] Relief under s. 43 is available for access requests made under s. 5 of the Act that meet certain criteria. Section 43 does not apply to questions or to everyday client relations. Nor does it apply to requests for information or routinely available records.

[11] **3.3 VIHA's Treatment of Requests** – According to the materials before me, the respondent and others acting on the respondent's behalf submitted 18 letters and request forms from May 7, 2003 to September 22, 2003. VIHA provided me with copies of the 18 requests, most of which contain numerous individual requests. The requests are

dated May 7 (two), May 9, May 20, June 13 (two), June 15, June 20, June 21, August 12, August 14, August 18 (two), August 19 (three) and September 22 (two).

[12] The requests cover records falling into two broad categories:

- the respondent's own personal information and client files in the hands of various VIHA employees and in various locations within VIHA ("personal information requests"); and
- records related to VIHA's services, benefits and policies on the care and services it offers, such as ways in which it is possible to receive more care hours than those allocated to the respondent, the types and amounts of care and support services available and methods of and criteria for performing risk management assessments and task analysis ("general information requests").

[13] Lori Bird, VIHA's information and privacy co-ordinator, deposed that, of the 14 items listed in the respondent's first request of May 7, 2003, she processed under the Act the first two items in the request, which were for specific records from the respondent's client file. She said that she provided responses to the two freedom of information parts of this request on May 23, 2003.

[14] Ms. Bird also deposed that Carol Karr, of VIHA's Client Relations Office ("CRO"), dealt with the remaining 12 items in the May 7, 2003 request. These included requests for records related to criteria for receiving services, records on general funding issues related to the respondent's program and policies, copies of forms and other records respecting task and risk factor analyses. The CRO responded to these other 12 requested items on May 15 and July 28, 2003. (See para. 3.(a), Bird affidavit and Exhibit "A", Bird affidavit. See also the relevant entry for May 7, 2003, Exhibit "A", Karr affidavit, a table summarizing the respondent's numerous contacts with the CRO from May to September, and the amount of time Carol Karr spent on each contact and on related meetings or phone calls with VIHA staff.) VIHA did not provide me with copies of these responses nor any of its other responses to the respondent's requests.

[15] The other May requests also asked for records related to VIHA's services and policies. VIHA's submission indicates that these requests were "mostly for CRO" as well. (See Exhibit "F", Bird affidavit; see also the relevant entries for May 8, 9 and 10, 2003, Exhibit "A", Karr affidavit.) VIHA said that it responded to the other May requests in a letter from Cathy Yaskow on May 23, 2003.

[16] VIHA said that one of the June requests was largely a re-statement of a particular May request and that it told the respondent this. It said that another June request was also largely repetitive of the same May request, although it did not state whether it informed the respondent of this (paras. 3.(d), (e) and (g), Bird affidavit).

[17] The respondent's remaining June requests and two of the August requests asked variously for the respondent's "VIHA file", "home and community care file", "VIHA headquarters file" and records created or held by named VIHA employees or located in specified VIHA offices. VIHA said that it combined the various requests that related to

the respondent's personal information and that they encompassed 3,000-4,000 pages of records. VIHA obtained a 60-day extension to respond to these requests from this Office due to the large number of records. As of October 7, 2003, VIHA said it was still processing these requests (paras. 3.(f), (h)-(k), Bird affidavit).

[18] Three August requests focussed on financial aspects of the respondent's case. VIHA said it responded to the requests for financial information on September 30, 2003 (see para. 4.l), Bird affidavit, for example).

[19] Two August requests and a September request asked for the respondent's file "since last time", that is, they asked for updated disclosure. One September request also asked for policies on certain VIHA programs, appeal guidelines and job descriptions and related information for a number of named VIHA employees. The other September request asked for records on how it is possible to obtain more care hours than those allotted to the respondent. Ms Bird said she was still processing these requests on October 7, 2003 (para. 4.(p), Bird affidavit).

[20] **3.4 Is Relief Warranted Under Section 43(a)?** – VIHA took the position that the respondent's requests are both systematic and repetitious, and that they interfere unreasonably with its operations. It acknowledged that, in these cases, access requests must be either repetitive or systematic and must also unreasonably interfere with the public body's operations.

Repetitious

[21] VIHA set out its arguments on this aspect of the matter at paras. 38-42 of its initial submission. It argued that the repetitive nature of the respondent's requests is evident from their face, both within and between requests. As an example, VIHA cited the first request of May 7 where, it said, the respondent asks in three different ways for records on the criteria that must be met to qualify for different levels and types of care and services. VIHA suggested that there is no appreciable difference between these requests.

[22] I agree that, on their face, the items VIHA pointed to in the first May 7, 2003 request all appear to be asking for the same types of records. I also note, however, that VIHA is referring here to some of the 12 items which it said were handled by VIHA's Client Relations Office, not to those dealt with under the Act by its information and privacy co-ordinator.

[23] As another example, VIHA said that the respondent's request of May 20 and the first June 13 request essentially repeated requests for records related to the same specified care and services which it said were found in the first May 7 request.

[24] I agree that these requests ask for items that are largely similar or identical to the general information items asked for in the first May 7 request, as do the second May 7 request, the May 9 request and the June 15 request. VIHA did not, however, process the requests for general information items in the first May 7 request under the Act but, rather,

diverted them to its CRO for a routine response. The material before me indicates that VIHA dealt with the other May requests and the June request for general information as requests for routinely available records as well, not as requests under the Act.

[25] The relationship between VIHA and the respondent has evidently been challenging and frustrating for both sides for some time. I also recognize that VIHA perceives that it was deluged with requests from the respondent from May 2003 to September 2003. VIHA did not deal with the earlier repetitive general information requests under s. 5 of the Act but, reasonably and appropriately in my view, combined them and responded to them routinely. It also concluded, reasonably, that the later requests repeated the earlier ones and so informed the respondent in at least one case.

[26] The purpose of the Act is to provide the public with a right of access, under s. 5, to records which are not otherwise available. Section 2(2) of the Act states that it does not replace other methods of providing access to information that is available to the public. This means that if records are routinely available, without a request under the Act, public bodies are expected to provide them. VIHA itself acknowledged that some of the respondent's requests were freedom of information requests and some were not (para. 28, initial submission).

[27] The purpose of s. 43 is to provide relief for requests made under s. 5 of the Act that meet certain criteria. Section 43 is not available to relieve a public body faced with voluminous and duplicative requests for general information that is routinely available.

[28] Moreover, I note that VIHA had responded to the early general information requests well before it made it s. 43 application and that it received no further requests from the respondent for general information from mid-June to late September 2003. While one of the September requests asks for the same types of records on care hours which the respondent had previously requested, the respondent acknowledged that VIHA had already provided these records. In my view, VIHA was free in that case to provide a second copy or not, as it saw fit. The remainder of the September requests for general information ask for new things, such as job descriptions, which I would expect a public body to process routinely, not under the Act.

[29] The respondent's general information requests are not, in my view, requests under s. 5 of the Act, as expressly contemplated by s. 43. I therefore find that they are not repetitious for the purposes of s. 43 of the Act.

[30] VIHA also argued that requests for the respondent's client files and other personal information were repetitious. VIHA said that the respondent requested a copy of the respondent's file "from 1995 to date" in the second June 13 request. VIHA then cited the respondent's June 20 request which also asked for a copy of the respondent's VIHA file, as well as a specified type of client file, records concerning the respondent's needs being met by a particular program and all other information about the respondent. VIHA said that the June 20 request repeated the June 13 request and was also internally repetitious, as the respondent's "VIHA file" would include the other types of information requested.

[31] VIHA suggested that the respondent's request of June 21, which asks for the respondent's files in the hands of named VIHA employees and a number of specified locations within VIHA, was also repetitive of the June 13 request for the "VIHA file". VIHA said it combined the June 13, 20 and 21 requests as they were similar.

[32] Other requests asked for correspondence and other records created by a named physician about the respondent (see Exhibits "M" and "O", Bird affidavit), apparently also part of the "VIHA file". Four August requests asked for records related to alleged financial errors by the respondent. All four appear to be for the same type of information. In these cases, the respondent appeared to be aware that the financial records are a subset of the "VIHA file" but asked that VIHA provide them separately and ahead of the other requests, on an urgent basis, "for my appeal to get services reinstated" (see the August 18 request, Exhibit "L", Bird affidavit, for example).

[33] VIHA concluded its arguments on this issue by pointing out that the respondent at one point asked for "a copy of all FOIs submitted to [VIHA] this year", suggesting that the respondent had lost track of the requests made and was not aware of the requests made to date. VIHA then suggested that certain other statements by the respondent indicate that the respondent is not aware of VIHA's responses either. It suggested that this means that the respondent will "continue to flood VIHA with repetitive FOI requests" and will not, or will not be able to, acknowledge VIHA's fulfilment of those requests. It argued that this meets the test in *Mazhero* v. *British Columbia (Information and Privacy Commissioner)*, [1998] B.C.J. No. 1539, that future requests will continue to reasonably interfere with VIHA's operations.

[34] In my view, VIHA's fears on this point were speculative at the time of its application. Nor, it seems, have they been borne out since then. If the respondent has submitted further requests for personal information since September 2003, VIHA has not provided them to me. Although VIHA wrote again in February 2004, the attached copies of the respondent's correspondence do not include requests for the respondent's personal information but are concerned with other issues.

[35] There is no doubt that the respondent made a number of requests for various types of client files and personal information. VIHA sensibly combined them into one request. While VIHA staff may have perceived them as repetitive, this may spring from their knowledge that an applicant's request for his or her "VIHA file" would include the applicant's personal information held by all relevant staff and in all relevant locations, not just in a central file. It is not clear to me, however, that an applicant would necessarily know this.

[36] A prudent applicant, interested in obtaining access to all of her or his personal information in the hands of a public body, would be well advised to specify all staff and locations that the applicant anticipates would hold such information. Limiting the request to the "VIHA file" might result in the applicant receiving only records from a central file, missing other personal information held by program staff and in other locations in the public body.

[37] The material before me reveals that the respondent has had extensive and varied interactions with numerous VIHA staff over some years. In these circumstances, it was, in my view, reasonable for the respondent to supplement the request for the "VIHA file" with requests for specific types of records, records created by specific staff and records held in specific locations within VIHA.

[38] I do not have the benefit of the respondent's direct comments on this issue, although there is some indication in the requests that the respondent was aware of submitting duplicate requests. The respondent suggested, however, that, in such cases, VIHA simply inform the respondent that it had already provided the requested records.

[39] For these reasons, I am not persuaded that the various requests for the respondent's "VIHA file", related personal information and client files are repetitious for the purposes of s. 43(a).

[40] I also do not consider that the requests for the respondent's financial information to be repetitious. The respondent was in the middle of an appeal to VIHA officials over financial issues and understandably wanted the financial information as soon as possible to assist with the appeal. The respondent acknowledged that the financial information was part of the requests for the "VIHA file" but, reasonably in my view, asked that VIHA provide the financial information first, as the appeal was coming up. The fact that the respondent and the two advocates all asked for the same thing over a few days may simply indicate a lapse in communication among them. I note that VIHA in any case provided this financial information in late September 2003.

[41] I also do not consider the three requests for "my file since last time" to be repetitious for the purposes of s. 43(a). Two were dated August 19 while the third was dated September 22, 2003. They arrived well after the June requests and were not repeats of the requests for the VIHA file and other types of personal information, but requests for new information. It is reasonable and understandable, in my view, for an applicant who is in the middle of an appeal process to request updated disclosure of personal information.

[42] VIHA drew a number of parallels between the respondent in this case and the respondent in Auth. (s. 43) 02-01, where the Information and Privacy Commissioner authorized the public body to disregard the respondent's outstanding requests. Both made many combined and distinct requests, it said, made offers to withdraw requests, made broadly worded requests, made numerous calls to staff, raised complex and time-consuming issues and had trouble tracking their requests.

[43] However, crucial differences between the two cases weaken VIHA's reliance on Auth. (s. 43) 02-01. Between 1994 and late 2001, the respondent in Auth. (s. 43) 02-01 had made over 200 access requests. The Commissioner found there that the respondent's requests were repetitious for the purposes of s. 43, noting that the respondent had repeatedly requested and received the same types of personal and general information records over that time, for example, her entire Ministry file, specific aspects of her file,

records related to travel expenses, complaint records and Ministry policies and procedures on various matters.

[44] There is no indication in the material before me that the respondent in this case has made repeated requests for personal information over a period of time. Nor does VIHA say that it has already provided the respondent with multiple copies of the respondent's personal information. Rather, the material before me indicates that, over a relatively short space of time, this respondent submitted a number of closely-related requests for personal information. Moreover, aside from the personal financial information, there is no indication in the material before me that the respondent in this case had received even one complete copy of the respondent's personal information at the time of the s. 43 application, much less multiple copies.

[45] To summarize, for the reasons given above, I find that the respondent's requests for general and personal information are not repetitious for the purposes of s. 43(a).

Systematic

[46] VIHA described at paras. 43-45 how in its view the respondent's request are also systematic. It suggested that they reflect a system or method, targeting the same types of information in various forms. VIHA also argued that this respondent's requests are similar to the respondent's requests in Auth. (s. 43) 02-01 in that they all broadly worded, combine and repeat themselves, and raise complex requests and questions which are time-consuming to deal with. These arguments appear to be directed to the respondent's general information requests, rather than the personal information requests.

[47] I found above that the respondent's requests for general information were not requests under s. 5 of the Act and therefore not repetitious for the purposes of s. 43(a). For the same reasons, I find that they are also not systematic under s. 43(a).

[48] I also do not regard making specific requests over a fairly short space of time for the "VIHA file" and all personal information held by likely VIHA staff and in likely locations within VIHA, to be making "systematic" requests for the purposes of s. 43(a). It was, rather, a prudent and reasonable attempt by the respondent to obtain all personal information and client files that VIHA held on the respondent, for use in ongoing disputes and the upcoming appeal.

Unreasonably interfere with operations

[49] Although I have found that the respondent's requests are not repetitious or systematic for the purposes of s. 43(a), I will also consider whether they have interfered unreasonably with VIHA's operations.

[50] VIHA suggested that, in considering the impact of the respondent's requests on VIHA's operations, it is instructive to consider their sheer quantity. VIHA said that, while it is possible to break the respondent's requests down in different ways, the respondent had, by its calculation, submitted 206 requests between May 2003 and

September 2003 (paras. 25-27, initial submission). While the figure of 206 separate requests is debatable, I acknowledge that the respondent submitted a large number of requests, upwards of 180 at least, in that time frame. The vast majority of these were, however, the requests for general information that I concluded above were not made under s. 5 of the Act.

[51] Lori Bird deposed that, as of October 7, 2003, and to the extent to which she had documented her time, she had spent over 80 hours in dealing with the respondent's requests. This was, she said, exclusive of the many (but unspecified) hours spent by her colleague, Cathy Yaskow, assisting her in dealing with the requests. Ms. Bird said that dealing with the respondent's requests had compromised her ability to respond promptly to other applicants under the Act but did not elaborate on this point. Ms. Bird also stated that the respondent's requests were cumbersome and time-consuming to deal with, as it required much time, up to a day on each occasion, for her to cross-reference each new request to determine if it had been answered, was underway or was a new request (paras. 4 & 5, Bird affidavit).

[52] In support of its position on the burdensome nature of the respondent's requests, VIHA also provided affidavit evidence from Carol Karr, VIHA's co-ordinator of Client Relations. Ms. Karr described the respondent's numerous contacts with VIHA staff between May 1 and October 7, 2003 and deposed that she had spent approximately 273 hours of her time, or about 3½ hours a day, in that period in dealing with the respondent's various inquiries. Ms. Karr said her other work had been adversely affected as a result of having to spend so much time on the respondent's inquiries. Ms. Karr's affidavit, with Exhibits "A" and "C" (tables recording her interactions with the respondent and the time she spent on them), show that this time was devoted almost exclusively to dealing with the respondent's calls, questions and requests for information on services, benefits and related issues. Of these 273 hours, Ms. Karr spent approximately 7.5 hours on the respondent's formal access requests.

[53] Again, VIHA suggested that this case is similar to that in Auth. (s. 43) 02-01, arguing that the respondent in this case has placed a heavy burden on VIHA, not only in the large number of complex requests but in the voluminous and abusive contacts the respondent has made with VIHA staff (paras. 32-33, initial submission).

[54] I have some sympathy for VIHA's position here. It has evidently been faced with a challenging and difficult client who has placed constant and time-consuming demands on its staff. I also acknowledge that the respondent's requests for information and inquiries have placed heavy demands on Carol Karr's time, at least, and may have interfered with her ability to carry out her other duties. The difficulty with VIHA's arguments on this aspect of the s. 43 application, as above, is that it is the respondent's demands for service and requests for routinely available records that have taken up staff time. Relief under s. 43 is not available to public bodies in such situations. If VIHA'S CRO needs relief from the applicant's demands outside the Act, the source of any relief also lies outside the Act.

[55] Regarding the unreasonable interference issue, it is useful to look at the evidence provided in other s. 43 authorizations as a comparison. In Auth. (s. 43) 02-01, for example, the Ministry's evidence showed that it had already disclosed approximately 6,000 pages of records under the Act to the respondent. The Ministry also showed that it would take an estimated 570 hours of its information and privacy staff alone to process the outstanding requests. It said that this did not include program staff's time to retrieve records for forwarding to the information and privacy office. In that case, the Ministry said, the respondent's requests comprised approximately 8% of the Ministry's requests and each request took almost twice as long to process as other requests.

[56] As another example, in Auth. (s. 43) 03-01, the Ministry said that its information and privacy manager had spent about 516 hours to date in processing requests from the respondent and would likely require another 291 hours to complete work on the outstanding requests. The Ministry said that the respondent's requests constituted about 6% of its requests. It said that it had already disclosed over 17,200 pages of records, excluding the current request, which would encompass another 9,700 pages. It said that its information and privacy manager spent approximately 17 % of his time on the respondent's requests and on many (if unspecified) occasions would spend 80-90% of his time on them. The Ministry said that the respondent's requests impaired its ability to respond to other requests but provided no specifics as to how long other applicants had to wait for responses to their access requests. In that case, the Information and Privacy Commissioner declined to grant the s. 43 authorization, as he found that the requests were not systematic and did not unreasonably interfere with the Ministry's operations.

[57] The only evidence before me in this case as to time taken processing the respondent's access requests was that, from early May to early October 2003, Ms. Karr spent about 7.5 hours (a negligible amount, in my view) and that Ms. Bird spent approximately 80 hours – less than an hour a day. I do not consider that the expenditure of 87.5 hours by two people over five months constitutes unreasonable interference with VIHA's operations.

[58] VIHA provided no evidence in this case of how much time its other staff had spent in processing the respondent's access requests up to the date of the s. 43 submission. It also did not provide an estimate of how much more time would be required by VIHA staff to finish work on the respondent's outstanding access requests for personal information. There is also no indication of how far behind VIHA was in processing its other access requests. Nor did VIHA say how many requests it processes each year nor what proportion are this respondent's requests. VIHA has not shown how completing work on the respondent's personal information requests would unreasonably interfere with its operations.

[59] I also note that VIHA obtained a two-month extension to complete its work on the respondent's personal information requests, due to the volume of records. The purpose of obtaining such an extension is to allow a public body to process large volumes of records, where doing so within the original time limits would unreasonably interfere with its operations. In this way, a public body can work on a request involving a large volume

of records in tandem with its other requests, and its other applicants do not suffer from undue delay.

[60] VIHA also argued that the respondent would likely continue to flood VIHA with burdensome requests. I said above that this was a speculative argument and that VIHA had provided no evidence to support this notion, either with its submission or since. The same applies here.

[61] It is clear that VIHA would like me to take into account here the hundreds of hours that VIHA staff have spent in handling the respondent's numerous telephone calls and demands for services and benefits, as well as the emotional toll on them of dealing with the respondent's behaviour. However, finding ways of dealing with these aspects of the respondent's demands, which fall outside the Act, is a management issue, not a freedom of information issue.

[62] I find that the respondent's access requests do not unreasonably interfere with VIHA's operations for the purposes of s. 43(a).

[63] **3.5 Is Relief Warranted Under Section 43(b)?** – VIHA presented its arguments on how it believes the respondent's requests are frivolous and vexatious at paras. 46-57 of its initial submission. VIHA again drew a number of parallels between this respondent and the one in Auth. (s. 43) 02-01. It suggested that this respondent's motive is known only to the respondent. It then went on to speculate that the respondent's requests derive from frustration at VIHA's attempts to channel communications through the respondent's advocates and that VIHA had not complied with the respondent's various requests for accommodation of alleged physical disabilities.

[64] VIHA also argued that the respondent was being insincere in August 2003 in offering to put other requests on hold or to cancel them while VIHA processed the requests for financial information. Cancelling a request is not the same as putting it on hold, VIHA said. Moreover, it continued, the respondent's offers to cancel earlier requests, or put them on hold so that later requests could be processed first, suggests that the respondent was being insincere in making the earlier requests.

[65] VIHA also said that, in one September 2003 request, the respondent revived an earlier request for information on how it is possible to obtain more care hours than the number allotted to the respondent. This was a request which, VIHA said, the respondent had earlier offered to "cancel" or "put on hold".

[66] Finally, VIHA drew my attention to the respondent's frequent threats that VIHA's failure to respond in a timely manner would risk the respondent's health or even lead to the respondent's suicide. VIHA said mental health staff had assessed the respondent in mid-July 2003 and found the respondent not to be at risk of suicide. VIHA suggested that if the threats are not genuine, they should be viewed as "calculated to impose considerable distress on VIHA's staff" and, as a method of asking for records, should be considered vexatious.

[67] I disagree with VIHA's views on nature of, and motive for, the respondent's requests. First and foremost, as discussed above, the majority were not formal access requests under s. 5 of the Act but requests for routinely available general information to which VIHA has already responded. Such requests cannot therefore be frivolous or vexatious for the purposes of s. 43(b).

[68] Moreover, I see no signs of bad faith or insincerity in the respondent's requests. On the contrary, while the respondent may be demanding and difficult, the respondent's motives are in my view genuine and by no means suspect. The formal access requests for the respondent's personal information were clearly directed at obtaining records that the respondent perceived would be useful in the ongoing dispute over the amount of benefits and, later, in the appeal of the termination of those benefits. The respondent may well have been frustrated at VIHA's attempts to limit the respondent's contacts with VIHA staff but this did not, in my view, instigate the requests.

[69] There is also no indication in VIHA's submission that the respondent in this case has received multiple copies of the respondent's client files, as had occurred in both Auth. (s. 43) 02-01 and Auth. (s. 43) 02-02. In addition, unlike the respondent in Auth. (s. 43) 02-02, this respondent had a live issue with the public body. The absence of a live issue with the public body was a factor in the Commissioner's finding in Auth. (s. 43) 02-02 that the respondent's requests were frivolous and vexatious within the meaning of s. 43(b).

[70] With regard to the September 2003 request that VIHA referred to, I do not agree with VIHA's suggestion that the applicant was being inconsistent in making a new request for records where the respondent had purportedly offered to cancel or put on hold the earlier request for the same records. Not only were the previous requests for records on care hours not formal access requests but VIHA responded to these requests in May and July 2003. The material before me indicates that the requests that the respondent had offered to cancel or put on hold in August 2003 were the personal information requests which were still underway at that time.

[71] In addition, the respondent noted in the September 2003 request that VIHA had already provided the requested records on care hours but said that, due to the respondent's medical condition, the records no longer existed. In such a case, it was up to VIHA to assess the respondent's explanation for making the same request over again and to decide whether or not to provide a duplicate set of records.

[72] With regard to the August requests for financial information, the respondent acknowledged that they were part of the other personal information requests but asked that VIHA process them ahead of the rest of the file. This was a reasonable request, given the respondent's upcoming appeal on benefits. I agree that the respondent's various offers to cancel or put on hold other requests which VIHA processed these requests for financial information sent confusing messages to VIHA staff. However, I do not see them as support for an argument that the respondent had been making frivolous or vexatious requests earlier. Rather, I see them as indications of the respondent's eagerness

to have immediate access to the personal financial information needed for the upcoming appeal, which was after all largely concerned with certain financial aspects of the respondent's case.

[73] As for the respondent's threats of risk to health or suicide, I accept that VIHA staff found them distressing to deal with. Whatever the respondent's reasons may have been for making such threats, however, I do not consider that they support the conclusion that the respondent was insincere in asking for the records. To the contrary, to my mind, they underscore the respondent's sincerity and anxiety to obtain the records.

[74] For the reasons discussed above, I find that the respondent's requests are not frivolous or vexatious for the purposes of s. 43(b) of the Act.

4.0 CONCLUSION

[75] For the reasons given above, I decline to grant authorization under either s. 43(a) or s. 43(b).

[76] As I have declined to authorize VIHA under s. 43 to disregard the respondent's requests, there is no need to consider VIHA's submissions on the remedy it asked for.

September 10, 2004

Celia Francis
Adjudicator