

## Purpose of this document

This guidance outlines the process and criteria the Office of the Information and Privacy Commissioner for BC (OIPC) will use for applications to disregard access requests (commonly known as FOI requests)<sup>1</sup> by public bodies under section 43(a.1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

## Background

Section 43 allows public bodies to ask the Commissioner for permission to disregard an access request in limited circumstances. Because this is a restriction on the right of access, the OIPC considers relief granted under s. 43 to be an extraordinary remedy.

Section 43 (a.1) creates new grounds to disregard an access request on the basis that the applicant's behaviour is abusive or malicious. This differs from the other subsections of s. 43 because the focus is on the applicant's conduct and not on the request. For that reason, all interactions between an applicant and a public body are relevant in the application of this remedy.

Public bodies discharge an important role in the overall administration of FIPPA, and where abusive or malicious behaviour impacts their ability to serve the public or where the well-being or safety of staff is negatively impacted, the OIPC, in accordance with the Commissioner's duty to ensure the proper functioning of FIPPA, may impose restrictions on applicants through s. 43(a.1).

## Guidelines for applying s. 43(a.1)

The OIPC recommends public bodies establish or revise their own policies that outline the expectations of behaviour for applicants. Any such policy should state the general expectation of conduct of applicants, define and describe abusive or malicious behaviours, and outline the process and outcomes for a breach of the policy.

Below are sample definitions and conduct that may assist public bodies in creating their own policies.

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<sup>1</sup> For further clarity, access requests that public bodies can apply to disregard under section 43 are submitted under ss. 5 or 29 of FIPPA.

**Abusive:** a pattern of behavior that is offensive, mistreats others, or involving threats, insults, put downs, criticism, intimidation, or humiliation. For example, this can include:

- the use of hurtful, insulting, derogatory, discriminatory or threatening language, whether or not the staff is the focus of the language;
- name calling and personal insults;
- unreasonably copying parties unrelated to the matter on correspondence, such as police or other regulatory bodies; or
- an unreasonable fixation on an individual or staff member, including for example seeking out personal social media accounts or other personal information about a party or staff member and including that irrelevant information in a submission.

**Malicious:** intentional conduct undertaken without just cause or excuse, particularly where the action is motivated by an improper purpose, ill will, or mischievous intentions or motives. This generally means actions intended to cause pain or cost a public body resources or time, and may include the following types of behaviours:

- making retaliatory statements like: “I am going to keep making requests until I get what I want.”
- making excessive demands on the time and resources of staff including:
  - lengthy and/or frequent phone calls;
  - voluminous and/or frequent correspondence;
  - repeated contacts or inquiries on matters that have previously been responded to conclusively; and/or
  - demanding immediate attention.

### Process for applying for relief under s. 43(a.1)

The OIPC recommends that public bodies internally follow the process outlined below before seeking relief under s. 43(a.1):

1. In cases where conduct is in breach of the public body’s respectful conduct policy, the head should provide a written warning to the applicant or complainant, specifically identifying the conduct and warning that a further breach of the policy will result in the public body seeking relief under s. 43(a.) from the OIPC. The public body should document these communications with the applicant or complainant.
2. Where conduct continues, an application under s. 43(a.1) can be made to [info@oipc.bc.ca](mailto:info@oipc.bc.ca), copying the applicant, and by providing the following information:
  - a. Original correspondence where the breach of the public body’s policy is located (if a phone call or message, notes of that call by the head of the public body are sufficient);
  - b. The warning letter from the head of the public body;

- c. Details (along with supporting documents) of the offending conduct that occurred after the warning was issued; and
  - d. Any other relevant information.
3. If an application under s. 43(a.1) is made, the OIPC will follow its usual process, which first involves investigating and attempting to mediate a resolution of the matter. If the matter is not resolved through mediation and the public body wishes it to proceed to inquiry, the OIPC will issue a notice of inquiry, seek submissions from both parties, and issue a decision.<sup>2</sup>

Public bodies that do not have a conduct policy in place may still apply to the OIPC for relief. Except in serious cases, such as a direct threat to staff, the OIPC strongly recommends applicants first be given a warning and the opportunity to correct their behaviour before the public body makes a s. 43(a.1) application.

### Possible remedies available for successful applications to disregard

If a public body is successful in their application to disregard an access request under s. 43, the OIPC may restrict an individual's access rights by:

- permitting the public body to disregard a specific request;
- permitting the public body to disregard multiple requests;
- imposing limits on the number or frequency of future requests;
- authorizing the public body to disregard future requests; or
- other appropriate remedies in the circumstances.

### FAQs

1. What happens to the timelines under FIPPA when a warning is issued? Or when an application is made to the OIPC?
  - a. The timelines for responding to a Part 2 request continue until a request is made under s. 43 to the OIPC (see s. 7(3) of FIPPA). Issuing a warning letter does not suspend any timelines.
2. How long will the OIPC take to make a decision?
  - a. The OIPC prioritizes s. 43 applications.
3. I have been warned about my behavior and don't agree with the public body, what can I do?
  - a. If a public body makes an application under s. 43, then you will have an opportunity to respond. Otherwise, a public body is still required to process your request and has a duty to assist you.

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<sup>2</sup> Instructions for Written Inquiries: <https://www.oipc.bc.ca/documents/guidance-documents/1658>.

4. Won't this just mean a public body can essentially ignore my request if they find me annoying or persistent?
  - a. A public body still has a duty to respond and assist you and cannot disregard your request without the permission of the OIPC.

*These guidelines are for information purposes only and do not constitute a decision or finding by the Office of the Information and Privacy Commissioner for British Columbia. These guidelines do not affect the powers, duties, or functions of the Information and Privacy Commissioner regarding any complaint, investigation, or other matter under FIPPA or PIPA.*