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Order F13-16

THE BOARD OF EDUCATION OF SCHOOL DISTRICT No. 43 (COQUITLAM)

Elizabeth Barker
Adjudicator

July 29, 2013

Quicklaw Cite: [2013] B.C.I.P.C.D. No. 20
CanLII Cite: 2013 BCIPC No. 20

Summary: The School District sought authorization under s. 43 to disregard both outstanding and future access requests made by, or on behalf of the respondents. The adjudicator found that only some of the outstanding access requests are frivolous and vexatious for the purposes of s. 43, and the School District is authorized to disregard them. In addition, the adjudicator authorized the School District to disregard the respondents' future access requests - in excess of one open request at a time - for two years from the date of this decision, and the School District is not required to spend more than three hours responding to any one access request. Finally, the School District does not require relief under s. 43 of FIPPA to be able to refuse to disclose copies of records that it has already provided to the applicant, either through a previous request or another avenue of access.

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

Authorities Considered: B.C.: Auth. (s. 43) 02-01, September 18, 2002, (unreported), http://www.oipc.bc.ca/decisions/171; Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26; Order F07-08, [2007] B.C.I.P.C.D. No. 28; Order F10-09 [2010] B.C.I.P.C.D. No. 47; Order F11-04, [2011] B.C.I.P.C.D. No. 40; Order F12-01, [2012] B.C.I.P.C.D. No. 8.

Cases Considered: *Crocker v. British Columbia (Information and Privacy Commissioner), et al.,* 1997 CanLII 4406 (BC SC)*; Mazhero v. British Columbia (Information and Privacy Commissioner),* 1998 CanLII 6010 (BC SC).

INTRODUCTION

[1] This case is about an application by the Board of Education of School District No. 43 (Coquitlam) ("School District") for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to disregard the respondents' outstanding access requests as well as any future requests for a period of two years. It also requests permission to restrict how much time it spends on any one request to no more than three hours. The School District submits that the respondents have initiated numerous records requests that are repetitious and systemic and that complying with them would unreasonably interfere with its operations (s. 43(a)). It also submits that the requests are frivolous and vexatious (s. 43(b)).

[2] The outstanding access requests are contained in emails dated January 29, March 15 and April 25, 2013.

[3] The School District seeks the following relief:

1. Authorization to disregard the respondents' access requests that are outstanding as of the date of this Order;

2. Authorization, for a period of two years from the date of this Order, to disregard all access requests made by the respondents or made on their behalf;

3. Authorization that, in the future, it is not required to spend more than three hours responding to any one request; and

4. Authorization to disregard any access request made by the respondents, or made on their 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 respondents and to which the School District has responded.

ISSUES

[4] The issue before me is whether the School District is authorized to disregard certain access requests by the respondents under ss. 43(a) and (b) of FIPPA and, if so, on what basis. Previous decisions have established that the School District has the burden of proof under s. 43.

DISCUSSION

[5] **Background**—The respondents are the parents of a child who is a former pupil of one of the School District's elementary schools. Their child attended the school for three years but has not been a student in the district since June 2011. The parties each provided extensive materials regarding their ongoing conflict, which dates back to January 2010. The respondents' and School District have disagreed over School District's staffing and practices, the behaviour of students, parents, neighbours and police officers. The conflict resulted in the respondents complaining to the Teachers Regulation Branch, the RCMP, the Ombudsman and ICBC. Suffice it to say that the parties' relationship deteriorated to the point that by late June 2011, the School District issued the first of a series of orders under s. 177 of the *School Act* prohibiting the respondents from entering School District property without prior consent.[1]

[6] Since September 2010, the respondents have sent approximately 46 emails to the School District containing approximately 36 requests for records. I can only approximate as the respondents' correspondence is at times difficult to decipher. As far as I can glean from the inquiry materials, the dispute is presently focussed on whether the current order under s. 177 of the *School Act* is justified and whether the respondents' child will be allowed to return to the elementary school where the disputes first arose.

[7] While there appears to be considerable discord between the parties, it is not my role to judge the parties' respective grievances or the validity of the respondents' complaints to various agencies. The only issue before me is whether the School District should be allowed to disregard the respondents' requests for records, either because they unreasonably interfere with the School District's operations due to their repetitious or systemic nature or because they are frivolous or vexatious.[2]

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[1] Section 177 prohibits a person from "disturbing or interrupting the proceedings of a school or an official school function. Section 11 and of the *School Act* provides for an appeal to the board if a decision significantly affects the education, health or safety of a student. Section 11.1 provides for a second appeal to the superintendent of achievement. Thus far, the respondents have been unsuccessful in their appeals.

[2] On July 23, 2013, the respondents raised concerns about whether the School District's May 27, 2013 Pearce affidavit was properly sworn. I have not relied on the evidence contained in that affidavit, so I do not consider it necessary to address those concerns in this decision.

Applicable Principles

[8] Section 43 of FIPPA 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

[9] It is important to note that relief under s. 43 is available for access requests made under s. 5 of FIPPA that meet certain criteria. Section 43 does not apply to requests for information or answers to questions, everyday client relations matters or for routinely-available records.[3]

[10] For reasons that will become apparent below, I only find it necessary to deal with the issue of whether the three outstanding requests are frivolous or vexatious.

[11] Former Commissioner Loukidelis set out the principles governing the interpretation and application of s. 43(b) in Auth. (s. 43) 02-02.[4] First he considered the definitions of "frivolous" and "vexatious found in *The Concise Oxford Dictionary* (8th edition) and *Black's Law Dictionary* (6th ed.), which I will not repeat here. He also provided a non-exhaustive list of factors to assist with determining if a request is frivolous or vexatious. The following are the factors that I consider to be most relevant in this inquiry:

> - Regardless of how it is so, a frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
>
> ...
>
> - A "frivolous" request is one that is made primarily for a purpose other than gaining access to information. It will usually not be enough that a request appears on the surface to be for an ulterior purpose – other facts will usually have to exist before one can conclude that the request is made for some purpose other than gaining access to information.
> - The class of "frivolous" requests includes requests that are trivial or not serious...

[3] See Order F12-01, [2012] B.C.I.P.C.D. No. 8, at para. 6; Order F07-08, [2007] B.C.I.P.C.D. No. 28, at para. 10; Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26, at para. 10.
[4] [2002] B.C.I.P.C.D. No. 57.

- 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...

[12] My understanding of the terms "frivolous" and "vexatious" is also informed by the following principle articulated by Coultas J. in *Crocker v. British Columbia (Information and Privacy Commissioner) et al.*[5] *(Crocker)*:

> … 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 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.

Parties' Submissions

[13] **School District**—The School District submits that the respondents' requests for records are frivolous, vexatious, repetitive, systemic, made in bad faith, and an abuse of the processes of FIPPA.[6] It claims that the requests are just one part of a multi-pronged campaign of harassment of the School District, staff and community members by the respondents. That campaign has involved launching a website and Twitter account targeting the school, complaints to the Teacher Regulation Branch, the police and the BC Ombudsperson, threatening to make a documentary about how the school treated their child, filming students and staff, and threatening a human rights complaint about the decision to refuse the request to register the respondents' child. It submits that these facts collectively demonstrate that the respondents' requests are "vexatious" and are intended for the improper purpose of attacking and disrupting the operations of the School District.[7]

[14] The School District also submits that responding to the respondents' requests has been time consuming and constitutes an unreasonable interference with its operations. Regarding the outstanding January 29, 2013 request, the School District argues that it duplicates earlier requests and is an "omnibus"

[5] (1997) CanLII 4406 (BC SC), at para. 42.
[6] School District's submissions, para. 28.
[7] School District's submissions, para. 19.

request for all records that relate to the conflict between the parties. It submits that it has already comprehensively responded to earlier requests for this same information.

[15] **Respondents**—The Respondents deny their requests are frivolous or vexatious. They submit that the records requested are needed to support their complaints to the RCMP, the Teacher Regulation Branch and other regulatory bodies.[8] Regarding the issue of repetition, they submit that any repetition that occurred was due to follow-up requests that were necessary because the School District's responses were incomplete.[9] They provide the following information about their current, outstanding requests:

> The Applicant refers to a multi-pronged campaign against the School District including a web site and twitter account. This is absolutely true and this campaign for accountability through all legal means available continues to this day (including the production of a documentary film), to hold those responsible for the assault of our [child] at [school] and the failure of the Applicant to discipline those responsible as legally required.[10]

Analyzing the requests

[16] I will now assess each of the respondents' requests at issue in this inquiry.

- ***January 29, 2013 request***

[17] In this request, the respondents asked for the following records:

> This is an official FIPPA requesting that you provide the following:
>
> - Please provide all records relating to the District's determination that security at [school] was emergent,
> - Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that the [respondents] present a threat to staff,
> - Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that the [respondents] have made defamatory Facebook comments,
> - Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that the [respondents] were disturbing the functioning of the school through actions in the school building,
> - Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that the [respondents] were sending

[8] Respondents' submission, paras. 3, 5 and 20.
[9] Respondents' submission, paras. 4 and 8.
[10] Respondents' submission, para. 7.

an unreasonable number of emails and making an unreasonable number of visits to the school,

- Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that the [respondents] were making threatening comments in emails concerning their [child] including the demand for [child's] placement in a particular teacher's class,
- Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that the [respondents] were interfering with the work of school monitors, resulting in student's feeling unsafe,
- Please provide all records supporting the claims by Assistant Superintendent Julie Pearce that a school ought not to have to hire a security company to ensure that staff feels safe at recess and lunch, but as a result of the [respondents'] conduct, that is exactly what has occurred.

[18] This request is broad in its scope, and based on my review of the evidence, I find that it consolidates and substantially repeats several of the respondents' previous access requests. For example, on numerous occasions in the past the respondents have requested records that support the School District's claims about their behaviour, alleged safety concerns and the decision to impose the s. 177 order banning them from School District property. In particular, emails dated May 28, May 29, June 8, October 3 and December 18, 2012, were requests for such information.[11] The inquiry materials establish that the respondents have chosen to challenge the School District's s. 177 order by repeatedly requesting records that support various aspects of the School District's s. 177 case. In effect, the January 29, 2013 email is a rhetorical challenge, disguised in the language of a request for records. It is clear that what the respondents are saying is: "We disagree with your decision and your reasons. Prove it."

[19] I am satisfied that they have not made the January 29 request for the purpose of gaining access to information that they do not already have (*i.e.,* the reasons for the s. 177 order). I accept the evidence of the School District's Freedom of Information and Protection of Privacy Coordinator that she has diligently responded to all requests, has spent a large number of hours doing so and believes there are no further responsive records. I have also considered the independent report of the BC Ombudsperson, included in the School District's submission, which found that the School District had provided the respondents with adequate and appropriate reasons for the s. 177 order (including examples of the offending behaviour as well as student and staff complaints).[12] I also

[11] May 9, 2013 Quinton Affidavit, exhibits L, M, N, O, S, V. The May 28 and 29 requests resulted in OIPC investigation F12-50394 in which the investigator concluded that the disclosed records were appropriately severed in compliance with s. 22 (third-party personal privacy).
[12] May 9, 2013 Pearce affidavit, exhibit R.

accept the School District's evidence that the respondents have been informed that the appropriate forum for challenging the School District's decisions is an appeal to its board or judicial review.

[20] For the respondents to ask once again for records that support the School District's decision leads me to conclude that this request is made for a purpose other than gaining access to information, but for some ulterior or oblique motive. I conclude that they are using the January 29 requests in order to antagonize and pressure the School District into backing down from its decisions, and that the requests are, therefore, vexatious. This conclusion is amply supported by the respondents' approach and tone throughout their correspondence, the following being only two of many examples:

> Please consider this a freedom of information request should you require a significant understanding of the importance of my inquiry. I have a large list of freedom of information requests being queued at this time, and would encourage you to prepare appropriate resources to attend to these over the coming weeks... I have previously described the only outcome which will satisfy me...I do remind everyone that we have two paths that this can take moving forward, and I look forward to your timely attention to my request. [September 28, 2010 (12:39) email][13]

> I will stop at no time, and with no regard for the wants and needs of anyone who stands in the way of this basic request...It is pretty simple: qualify the curriculum being delivered to [child], and give [child] first position in placement for next year at [school]. The grade 6 spelling in grade 2, and the assault on students stops right now...I promise that until the priority for [child] is realized, I will rigorously paralyze the efforts of all those who fail to fully support this advocacy." [May 24, 2011 email][14]

[21] Furthermore, I consider that at least two of the requests included in the January 29 email are also "frivolous". The class of frivolous requests includes those that are "trivial or not serious" or have been made primarily for a purpose other than gaining access to information.[15] For example, the respondents have requested all records that support the claims that they sent "an unreasonable number of emails" and that they made "defamatory Facebook comments". Responding to this request would require the School District to provide the respondents with copies of their own correspondence and Facebook entries. The respondents give no indication they no longer have copies of these records. It is simply not plausible to conclude that they actually want to see these records and have made this request in a good faith attempt to gain access to information that they do not already have. In my view, the true motive for this request is to challenge the School District's judgment or opinion about those materials

[13] May 9, 2013 Pearce affidavit, exhibit C.
[14] May 9, 2013 Pearce affidavit, exhibit M.
[15] Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, at para. 27.

(*i.e.,* that the emails are "unreasonable" and the Facebook comments "defamatory") and to pressure it to alter its assessment of the respondents and back down from its decisions regarding them.

[22] Therefore, the evidence satisfies me that the requests contained in the January 29 email are frivolous and vexatious in the manner described in Auth. (s. 43) 02-02.

- ***March 15, 2013 request***

[23] There are two parts to this request which is contained in an email addressed to nine members of the School District's board of education:

> ...We note that the response of the Board to our request to register [child]... was addressed by Ms. Pearce in a letter dated February 28, 2013. In the Board's response to our request... several declarations are made about alleged complaints made by us to the Board and to the Ombudsman that have been dismissed. We are not aware of the complaints to which Ms. Pearce has based her allegations and make this official request under the Freedom of Information and Protection of Privacy Act for all records relating to these complaints and the dismissals."

[24] The respondents' denial that they made a complaint to the BC Ombudsperson, which was eventually dismissed, is refuted by the inquiry materials, which include a copy of the Ombudspersons' report.[16] In fact, the respondents' submissions include an October 20, 2102 letter they sent to the BC Ombudsperson in which they acknowledge receiving that agency's report into their concerns and expressing their disagreement with it.[17] It is disingenuous on the respondents' part, in their March 15, 2013 email, to disavow knowledge of, and request records relating to, the existence of a complaint they initiated and a report that they already have. As with the January 29 request, I find that this request has clearly not been made to obtain access to information but, instead, to challenge and pressure the School District to back down from its decision. Therefore, I find this aspect of the March 15, 2013 request is vexatious.

[25] The second part of the March 15 request is for records proving the existence of the complaints to "the Board",[18] which the respondents deny having made. While the inquiry materials include no reference to complaints having

[16] May 9, 2013 Pearce affidavit, exhibit R.

[17] In their submissions, the respondents write, "The Respondents and their advocates have never advanced any complaints specific to [the respondents] to the Ombudsman and this is a patent lie. The advocate for the Respondents did make an application to the Ombudsman as a general concern about the lack of process for appeal to Section 177 Orders under the School Act and with no specific reference to the [School District] or any other entity. The Ombudsman's office responded with an unsolicited response relating to the actions of the [School District] in the particular application against the [respondents]."

[18] I understand this to be a reference to the School District's board of education.

been made specifically to "the Board", they do contain many examples of complaints that the respondents sent to the school principal and the School District's assistant superintendent.[19] I am aware that the March 15, 2013 request contains the respondents' own terminology and paraphrasing of the contents of the February 28, 2013 decision letter, and the School District may not have used the term "the Board". What is clear, however, from reading the entire contents of the respondents' March 15, 2013 email, is that they were told their complaints were a factor in the School District's decision. In my view, the respondents are not making this request because they genuinely want to gain access to the records but because they disagree with the School District's reasons for refusing to let them register their child. There is an ulterior purpose to the March 15, 2013 request, which is to confront or provoke the School District and pressure it into backing down.

[26] Therefore, I am satisfied that the requests contained in the March 15, 2013 email are vexatious in the manner described in Auth. (s. 43) 02-02.

- ***April 25, 2013 request***

[27] In this request, the respondents write,

> Further, under FIPPA please provide all records relating to the School and the District stating or indicating that [the respondents' child] is not to play on the new playground equipment at [school] and that this structure was constructed to keep persons including [the respondents' child] away from the school.

[28] The April 25, 2013 email is, as far as I can see, a first instance of a request for records regarding the playground equipment and whether it was constructed to keep the respondents' child away from the school. The School District, who has provided no argument specific to this request, has not satisfied me that this request is frivolous, vexatious, repetitious or systemic. Therefore, it is not authorized to disregard it.

Appropriate Remedy

[29] Section 43 gives the Commissioner the discretion to authorize a public body to disregard requests under ss. 5 or 29 that are frivolous or vexatious. In light of my finding that the requests contained in the January 29, 2013 email are frivolous and vexatious and the requests in the March 15, 2013 email are vexatious, I authorize the School District to disregard them. It is not authorized, however, to disregard the April 25, 2013 request.

[19] To name only a few: exhibits A, P and S in the May 9, 2013 Pearce affidavit.

[30] The School District also requests relief for any future record requests made by, or on behalf of, the respondents. In considering this aspect of their request, I have kept foremost in mind two principles: when making a prospective authorization, the Commissioner must bear in mind the objective of s. 43, which is to avoid requests that constitute an unreasonable interference with the operations of the public body,[20] and the prospective remedy must not be wholly disproportionate to the harm inflicted.[21] The following excerpt from *Mazhero v. British Columbia (Information and Privacy Commissioner*)[22] summarizes well the balancing that must take place when determining remedies that have an impact on future access requests:

> As a general rule, even though the Commissioner has determined that the repetitive or systematic nature of past and pending requests represents an unreasonable interference with the operations of the public body, he should not generally authorize a public body to disregard all future requests for records (or a type of records) without regard to whether any such requests will unreasonably interfere with the operations of the public body. As stated by Coultas J. in Crocker, the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body.

[31] As explained above, I find that two out of three of the respondents' most recent requests are frivolous and vexatious. I am also aware of the challenges the School District likely experienced dealing with the respondents' past requests, given that they were frequent, difficult to decipher, and often contained inflammatory rhetoric. Therefore, I deem it appropriate to consider some relief and direction regarding any future requests for records.

[32] Since there is evidence that the respondents have made multiple requests, simultaneously or within days of each other[23] and much time has already been spent on responding to the respondents' requests, I authorize the School District to deal with only one open request for records at a time. In addition, it is not required to spend more than three hours responding to any one request. I do not believe that responding to future requests in this fashion would unreasonably interfere with the School District's operations. However, I believe that it is too drastic to authorize the School District to disregard all future requests for the next two years when it is not known whether any such requests

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[20] *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC), at para. 25.
[21] *Crocker, supra,* at paras. 54-59.
[22] 1998 CanLII 6010 (BC SC), at para. 29.
[23] For example, ten emails were sent over a three day period in September 2010 and six in May 2012.

would cause unreasonable interference with its operations. Also, the parties may have an ongoing relationship and need to communicate in the future if the respondents succeed in challenging the School District's decision to deny their request to register their child.

[33] The School District also requests authorization to disregard any access request made by the respondents to the extent that the request covers records that have already been the subject of a request to which the School District has responded. Previous orders have found that FIPPA does not require public bodies to disclose copies of records that they have already provided to the applicant, either through a previous request or another avenue of access.[24] Therefore, the School District does not require authorization under s. 43 to deal with such requests, and I decline to order such relief. I expect the School District will be able to respond to any repeat requests by making it clear when such records were previously provided. If no responsive records exist, the School District need only inform the respondents of that fact. I am not satisfied that responding in that manner would unreasonably interfere with the School District's operations.

[34] Furthermore, as noted at the outset, there is no requirement in FIPPA for public bodies to provide answers to questions, respond to requests for information or demands for action. There is nothing in FIPPA that prevents the School District from dealing, as it chooses, with communications that are not a request for records made in accordance with s. 5 or a request for correction of personal information under s. 29 of FIPPA.

CONCLUSION

[35] In light of the foregoing, I make the following authorizations under s. 43 of FIPPA:

1. The School District is authorized to disregard the respondents' January 29, 2013 and March 15, 2013 access requests.

2. For a period of two years from the date of this Order, the School District is authorized to disregard any access request in excess of a single open access request at a time, made by, or on behalf of, the respondents. An "open access request" is a request for records under s. 5 of FIPPA to which the School District has not yet responded as required by ss. 6(1) and 8 of FIPPA.

[24] See Order F10-09 [2010] B.C.I.P.C.D. No. 47 and Order F11-04, [2011] B.C.I.P.C.D. No. 40.

3. The School District is entitled to determine, when complying with its s. 6(1) duties to the respondents, what constitutes a single access request for the purpose of the above authorization.

4. For a period of two years from the date of this Order, the School District is not required to spend more than three hours responding to any single access request made by, or on behalf of, the respondents.

[36] I dismiss the School District's application under s. 43 of FIPPA to disregard the respondents' April 25, 2013 request. The School District must process that request in accordance with the timelines in s. 7 of FIPPA.

July 29, 2013

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: F13-52449