



OFFICE OF THE
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COMMISSIONER
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Order P14-01

VENTURE ACADEMY INC.

Elizabeth Barker
Adjudicator

February 20, 2014

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Summary: Venture Academy Inc. applied for authorization under ss. 37(a) and (b) of PIPA to disregard the respondent's outstanding and future requests for access to, and correction of, her personal information. The adjudicator finds that s. 37(a) does not apply as the respondent's outstanding request is not repetitious or systemic, and s. 37(b) does not apply because the outstanding request is not frivolous or vexatious. The application is denied.

Statutes Considered: *Personal Information Protection Act*, S.B.C. 2003, c. 63, ss. 23, 24, 37(a) and 37(b). *Personal Information Protection Act Regulations*, B.C. Reg. 473/2003, s. 2.

Authorities Considered: B.C.: Auth. (s. 43) 99-01; Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Order P05-01, [2005] B.C.I.P.C.D. No. 23; Order P10-01, [2010] B.C.I.P.C.D. No. 21; Order P13-03, 2013 BCIPC No. 35.

INTRODUCTION

[1] This case involves an application by Venture Academy Inc. ("Venture") for authority under s. 37 of the *Personal Information Protection Act* ("PIPA") to disregard the respondent's outstanding request and any future requests for access to, and correction of, personal information. Venture submits that because of their repetitious or systemic nature, the respondent's requests unreasonably interfere with its operations (s. 37(a)). It also submits that the respondent's requests are frivolous and vexatious (s. 37(b)).

ISSUE

[2] The issue in this inquiry is whether Venture is authorized, under s. 37 of PIPA, to disregard the respondent's outstanding request and any future requests under s. 23 and s. 24 of PIPA. Although PIPA does not assign a burden of proof in s. 37 matters, an organization seeking relief under this section should provide evidence that establishes a basis for the relief it seeks.¹

DISCUSSION

[3] **Background**—Venture operates a residential assessment and treatment program for troubled youth in Kelowna, BC. The respondent's daughter was a participant in Venture's program in 2010.

[4] The materials in this inquiry reveal that the respondent is dissatisfied with several aspects of the Venture program and its founder and president. The respondent and Venture have had disputes about the services Venture provided to the respondent's daughter and the invoices issued to the respondent. The respondent has taken her concerns to several oversight bodies such as the BC College of Teachers, the Ministry of Education and various other agencies. There is also a history of litigation between the parties, some of which is ongoing.

Respondent's outstanding request

[5] The respondent's outstanding PIPA request, which is the subject of this application, is a May 14, 2013 email from the respondent to Venture. Venture did not provide a copy; however, it was included as exhibit A to the respondent's affidavit. In it, the respondent wrote:

There is evidence (see below) that Venture Academy did not disclose all the records as was requested for and required in our original request for records first raised in 2011. By way of this email, and after consultation with the OIPC, I am now making a NEW access to personal information request (pursuant to Section 23(1) of the Personal Information Protection Act) requesting that you conduct an additional search for records and that I be provided with copies of ALL emails, letters, notes, records, involving my family [the respondent, her husband and her daughter] beginning June 2010 to May 14, 2013, AND that have to date not been disclosed.

[6] Her email also provides further specifics about the records she seeks. There is nothing in the inquiry materials to indicate that Venture responded to the respondent's May 14, 2013 request.

¹ Order P10-01, [2010] B.C.I.P.C.D. No. 21 and Order P05-01, [2005] B.C.I.P.C.D. No. 23.

[7] Although the May 14, 2013 request is for her daughter and husband's personal information as well as her own, there is nothing to establish that the respondent has the authority to request someone else's personal information. Section 2 of the Personal Information Protection Act Regulations sets out the conditions that must be met before someone is authorized to exercise another individual's rights under PIPA. I have no way of knowing if the respondent has met those preconditions and is authorized to make the May 14, 2013 request on behalf of her husband and daughter. Unless and until she does so, there is nothing in PIPA that obliges Venture to respond to the part of the outstanding request that relates to the daughter and the husband's personal information.

[8] On July 2, 2013, the respondent asked the Office of the Information and Privacy Commissioner ("OIPC") to review Venture's alleged failure to respond to her May 14, 2013 request. That matter is on hold pending the outcome of this application.²

Venture's s. 37 application

[9] On July 12, 2013, Venture applied, under s. 37 of PIPA, for authorization to disregard:

1. the respondent's May 14, 2013 request,
2. any future access requests, made by the respondent or made on her behalf, under s. 23 of PIPA, and
3. any future requests for correction of her personal information made by the respondent or made on her behalf, under s. 24 of PIPA.

[10] The respondent provided a submission and supporting affidavit in response to Venture's application and submission. Venture supplied no supporting affidavit evidence and chose not to reply to the respondent's submission.

[11] There were some portions of Venture's submissions that I have excluded from consideration because they reveal "without prejudice" communications. Specifically, Venture provided two emails it received from the respondent, both of which are marked "without prejudice", and detail of without prejudice communication that took place between the parties and an OIPC mediator regarding settlement of a complaint.³ The respondent objects to this material being used in the inquiry. In my view, it would be improper to consider information which was previously shared by the parties on a "without prejudice"

² Section 29(2) of PIPA suspends the time for responding to a request for records when an organization seeks relief under s. 37.

³The two emails are dated March 22, 2012 and May 14, 2013, and the communication with the mediator is revealed in Venture's submission at para. 14.

basis, in order to resolve or settle their disputes, and which they previously understood would not be used in any subsequent proceeding. Therefore, I have not considered this “without prejudice” information.

[12] **The Legislation**—Sections 23 and 24 of PIPA allow individuals to know what personal information of theirs an organization has and to ensure that it is accurate and complete. The portions of PIPA that are most relevant in this inquiry are the following:

- 23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:
 - (a) the individual's personal information under the control of the organization;
- 24(1) An individual may request an organization to correct an error or omission in the personal information that is
 - (a) about the individual, and
 - (b) under the control of the organization.

[13] Section 37 provides a means by which an organization can seek authorization to disregard requests made under ss. 23 and 24:

- 37 If asked by an organization, the commissioner may authorize the organization to disregard requests under section 23 or 24 that
 - (a) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the requests, or
 - (b) are frivolous or vexatious.

[14] **Is the outstanding request repetitious or systemic?**— In order to merit relief under s. 37(a), the respondent's request must be repetitious or systematic, and responding to it must unreasonably interfere with the operations of the organization. I will first determine whether the request is repetitious or systematic. Only if it is, will it be necessary to assess whether responding would unreasonably interfere with Venture's operations.

[15] There have been very few BC orders addressing s. 37(a) and the meaning of the terms “repetitious” and “systemic”. However, as was done in previous s. 37 decisions, I have turned to s. 43 of FIPPA for guidance in interpreting the meaning of these terms because the language of s. 43 of FIPPA is identical in all material respects to that in s. 37 of PIPA.⁴ For example, in Auth. (s. 43) 99-01

⁴ Order P05-01, [2005] B.C.I.P.C.D. No. 23, at para. 11 and Order P10-01, [2010] B.C.I.P.C.D. No. 21, at para. 18.

former Commissioner Loukidelis said the following about the meaning of the words “repetitious” and “systematic”:

The public body first must establish that an applicant has made requests of a “repetitious” or “systematic” nature. The plain meaning of the word “repetitious” in s. 43 is something that is characterized by repetition. Repetition is the act of repeating an act or things. To ‘repeat’ an act or thing, in turn, is to do the act or other thing over again one or more times. The plain meaning of the word “systematic” in s. 43 is something that is characterized by a ‘system’. In turn, a ‘system’ is a method or plan of acting that is organized and carried out according to a set of rules or principles.⁵

[16] I agree with this approach to the terms “repetitious” and “systemic” and will apply it here.

Previous PIPA requests

[17] Venture’s submissions do not contain copies of the respondent’s purported previous PIPA requests. In support of its application, Venture provides a chronology of its communication with the respondent between December 2010 and December 2012. Much of it refers to matters that fall outside the scope of PIPA because they do not involve requests for personal information or requests to correct personal information.⁶ However, the communications between the two parties which do appear to relate to requests under ss. 23 and 24 of PIPA are as follows:

1. December 22, 2010 – A request for “copies of all documents related to the Venture Academy Inc.’s registration of [the respondent’s daughter] with KLEOS [an open learning program]”. Venture does not explain if, or how, it responded.
2. January 3, 2011 – The respondent “requests information relating to her daughter.” Venture does not provide any particulars or indicate how, or if, it responded.
3. March 11, 2011 – The respondent sent a request for “all information in relation to her daughter” and a request that Venture “correct the information that is on file.” Venture does not indicate if, or how, it responded. Nor does it describe what information was the subject of the correction request. It may very well be that the correction request related, not to personal information, but to perceived errors in invoicing. I consider

⁵ Auth. (s.43) 99-01, [http://www.oipc.bc.ca/decisions/ 170](http://www.oipc.bc.ca/decisions/170), at p. 3. See also, Decision P05-01, [2005] B.C.I.P.C.D. No. 23, at para. 11.

⁶ For example, requests to close the respondent’s account and provide a refund, request for invoices, statements of services for tax purposes, and a reference letter for her daughter.

- that to be the most likely scenario because Venture provides nothing to establish that it had provided the respondent with any personal information that might need correction, but it does provide ample information about the respondent's disagreement with invoicing.
4. December 1, 2011 – The respondent emails Venture “looking for outstanding records”. Venture provides no detail about what information was requested. However, based on information contained in Venture's application and submission about its interactions with the OIPC during this same time period, I conclude that this email must have been a follow-up to an earlier request for personal information.
 5. December 16, 2012 – The respondent requests “information regarding her daughter's education registration and other issues.” Venture submits that it prepared a response on or about December 20. However, it does not provide any further detail about the request or its reply.

[18] Venture also provides information that, over the years, the respondent made seven complaints to the OIPC about Venture. It provided very little detail, and no supporting documentation, to assist me in fully understanding the nature of these complaints. It is even unclear whether all of the complaints identified by Venture were filed by the respondent. It appears that at least one may have been filed by someone other than the respondent because it was a complaint about an individual's personal information having been inadvertently sent to the respondent.

[19] The respondent acknowledges that the records she asks for in the May 14, 2013 email were first requested by her daughter in 2011 and that they were the subject of two OIPC complaints.⁷ She provides no additional detail about those earlier requests. She adds that Venture told her that the records were under the control of other organizations, but it was only after following-up with those organizations that she learned that this was not correct. In addition, she explains that Venture did not reveal the existence of records that she now knows exist because she has seen them through her participation in various regulatory proceedings. However, she is prohibited by confidentiality provisions from using those records in proceedings other than those through which they were obtained.⁸ She submits that she made the May 14, 2013 request so she could obtain the missing records and then follow-up with a formal request to correct misinformation they contain about the respondent and her daughter.

⁷ Respondent's submission, paras. 19 and 54.

⁸ These other regulatory proceedings involve her concerns about the care her daughter received from various professionals while enrolled in the Venture program.

[20] Venture does not reply to the respondent's submissions that Venture has records that it did not previously acknowledge were under its control.

[21] Regarding Venture's claim that her requests are systemic, the respondent points out that Venture provides no argument or evidence that she employed any system of using records obtained in one request to justify and support further PIPA requests.

Analysis and conclusion, s. 37(a)

[22] The information Venture provides about the previous requests is lacking in particulars, and there is no supporting documentation, such as copies of the respondent's request letters, Venture's responses or the OIPC investigators' letters. Therefore, it was difficult to determine how many PIPA requests the respondent has made, when they were made, how Venture responded and whether some of the respondent's communication was following-up on outstanding requests. Although some of the past requests appear to be similar, they vary in scope. As I cannot determine with any certainty what was requested, I am unable to conclude that what the respondent asked for at any one time was the same as what was previously requested.

[23] Further, the respondent's explanation that any overlap between her outstanding request and her previous requests is due to the incompleteness of Venture's earlier responses is plausible and has not been refuted by Venture. The wording of the May 14, 2013 request also lends credence to the respondent's explanation that what she is requesting is a copy of records that have to date not been disclosed. Her explanation is also reasonable given that Venture's materials reveal that the OIPC investigated the respondent's complaints about Venture's alleged inaccurate and incomplete replies on more than one occasion.

[24] While it may be that Venture has previously disclosed the records the respondent requests in her May 14, 2013 email, I cannot reach that conclusion without engaging in guess work, and I decline to do so or fill in the gaps in Venture's evidence. Such speculation does not provide a sound or reasonable basis to make a determination that may restrict an individual's right to access their personal information. As a result, I am not satisfied that the respondent's May 14, 2013 request is repetitious.

[25] Although Venture also submitted that the respondent's requests have been systemic in nature, it did not elaborate. I can see no organization or pattern, so I am not convinced that there is a systemic nature to her outstanding PIPA request.

[26] Since Venture has failed to establish that the respondent's May 14, 2013 request is of a repetitious or systemic nature I do not need to consider whether responding to it would unreasonably interfere with Venture's operations.

[27] **Is the outstanding request frivolous or vexatious?**—The applicant also submits that the respondent's outstanding request is frivolous and vexatious, so merits relief under s. 37(b).

[28] There have been two previous BC Orders addressing s. 37(b).⁹ In both, the analysis of whether the requests in question were frivolous or vexatious was based, in part, on a consideration of a non-exhaustive list of factors from Auth. (s. 43) 02-02.¹⁰ Because the language of s. 43(b) FIPPA and s. 37(b) of PIPA are identical in all material respects, I also consider the factors from Auth. (s. 43) 02-02, to be helpful in evaluating s. 37(b), and I paraphrase them as follows:

- A frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
- The determination of whether a request is frivolous or vexatious must, in each case, keep in mind the legislative purposes of the Act, and those purposes should not be frustrated by an institution's subjective view of the annoyance quotient of particular requests.
- A "frivolous" request is one that is made primarily for a purpose other than gaining access to information.
- The class of "frivolous" requests includes those that are trivial or not serious.
- The class of "vexatious" requests includes those made in "bad faith", and 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.

Analysis and conclusion, s. 37(b)

[29] Venture provides several arguments in support of its submission that the outstanding request is frivolous or vexatious, and I will address each individually.

[30] Venture submits that because of the volume and frequency of the respondent's past requests, her requests for information are frivolous and vexatious. As previously stated, due to the incomplete information that Venture provides, it is not possible for me to determine with any certainty the number of

⁹ Decision P05-01, [2005] B.C.I.P.C.D. No. 23 and Order P13-03, 2013 BCIPC No. 35.

¹⁰ Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57.

discrete PIPA requests the respondent has made. My best calculation is that since December 2010, the respondent has made approximately five discrete requests, including the outstanding May 14, 2013 request. I do not find that to be an excessive volume or frequency.

[31] Venture also submits that the respondent's requests breach an April 2012 settlement agreement by which she agreed not to make further requests or complaints to the OIPC. Although Venture does elaborate, I understand this to be an argument that the May 14, 2013 request is vexatious because it was made in breach of the settlement agreement. I am not persuaded by this submission primarily because Venture provides no evidence to support this assertion. In addition, the respondent disputes Venture's interpretation of the settlement agreement, and explains that it did not address requests for personal information. Venture does not reply to the respondent's denial, nor does it provide a copy of the settlement agreement to illustrate its point.¹¹

[32] Venture also submits that the respondent's requests are being made to obtain information in order to harass it by means of unwarranted complaints to various agencies about Venture, its employees, contractors and related supports. Venture adds that there have been instances where the information provided to the respondent was misrepresented and formed the basis for complaints to various agencies. I am not persuaded by this line of argument. What the respondent chooses to do with her personal information once she receives it, and whether her complaints to various agencies are unwarranted, is not relevant to the issues to be decided in this inquiry.

[33] In support of this application, Venture provides eight emails from the respondent and her daughter, which it submits illustrate that the respondent is acting with malice and in bad faith.¹² In them the respondent and her daughter express their frustration with events, and I note that the tone is angry and not at all conciliatory. Venture also provides a copy of its notice of civil claim against the respondent and her daughter as evidence of what it calls the "excessive and unrelenting harassment"¹³ of Venture, its staff and associates. I note that there is no reference in the emails or the notice of civil claim to information received and/or denied in response to PIPA requests. Venture also submits that it was told by the RCMP that the respondent is under investigation; however Venture provides no particulars that demonstrate a connection between the respondent's PIPA requests and a police investigation.

¹¹ The respondent provides what she states is an excerpt from the settlement agreement. It reveals nothing about personal information, PIPA requests and/or complaints.

¹² The first two contain the heading "without prejudice", so I have not considered them.

¹³ Venture's submission, para. 11.

[34] Venture has failed to satisfy me that there is a link between the respondent's PIPA requests and the emails or events mentioned directly above. Even if, as Venture argues, the respondent's email communications and various complaints to oversight bodies were made with the intent to harass, that is insufficient to establish that the respondent's PIPA requests are vexatious or frivolous. There needs to be a clear connection between the PIPA requests and the communications or circumstances that Venture claims are harassing. In this case, it is simply not evident that any such connection exists.

[35] Finally, Venture also submits that the May 14, 2013 request has an ulterior motive: interfering with the legal processes of Venture's civil claim.¹⁴ I fail to understand how the respondent's exercising of her rights under PIPA would interfere with court proceedings, and Venture provides no particulars or explanation. Further, the respondent's May 14, 2013 request was made approximately two months before Venture filed its notice of civil claim, so the outstanding request's timing does not suggest that it was made for an oblique or bad faith reason related to the legal proceedings.

[36] A determination of whether a request is frivolous or vexatious must include consideration of the legislative purposes of PIPA, which are to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes the right of the individual to know what personal information of theirs an organization has and to ensure that it is accurate and complete.¹⁵ Section 37 is a remedial tool that is used to prevent abuse of the individual's right. However, an organization's subjective view of the aggravation associated with a request is insufficient, on its own, to merit relief under s. 37(b). To allow otherwise would undermine the purposes of PIPA.

[37] The context for the May 14, 2013 PIPA request is a significant factor in this inquiry. There is an ongoing dispute between the parties, and the respondent continues to challenge Venture's business practices and involve various oversight bodies. Venture views the respondent's actions as harassment and an unfounded attack on its name, and it has initiated a lawsuit against her. Section 37, however, does not relieve an organization of its duty to comply with ss. 23 or 24 PIPA requests because the parties have a dispute unrelated to the PIPA requests. While the respondent's non-PIPA related complaints and communications may be perceived by Venture as excessive or harassing, this does not suffice to establish that the PIPA requests are frivolous or vexatious, as those terms have been interpreted in previous BC orders. Venture must establish that a link exists between the respondent's PIPA requests and the behaviour that it submits is malicious and designed to harass and obstruct its operations. In my view, it has not done so.

¹⁴ Venture's submission, para. 13.

¹⁵ PIPA, s. 2.

[38] Furthermore, because Venture provides only cursory and incomplete information about the earlier PIPA requests, its own responses and the OIPC investigations, I cannot ascertain what exactly the respondent requested and whether Venture's responses to those earlier requests were accurate and complete. The respondent says that they were not, and she provides a plausible explanation for what motivates the outstanding request and why her requests may be similar or overlap. Venture does not rebut what she says.

[39] In conclusion, I am not convinced that the respondent's outstanding request is motivated by anything other than a desire to accurately pinpoint what personal information Venture has about her and her daughter and ensure that it is accurate. Venture has failed to establish that the respondent's outstanding request was made in bad faith or for an ulterior or malicious purpose and, therefore, is frivolous or vexatious.

ORDER

[40] For the reasons given above, I find that Venture has not established that the outstanding May 14, 2013 request is repetitious, systemic, frivolous or vexatious. Therefore, Venture is not authorized under either s. 37(a) or 37(b) to disregard the respondent's May 14, 2013 request or any future requests.

February 20, 2014

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: P13-53830