



## THE BOARD OF EDUCATION OF SCHOOL DISTRICT 52 (PRINCE RUPERT)

Order F21-14

Celia Francis  
Adjudicator

April 14, 2021

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**Summary:** The Board of Education of School District 52 (Prince Rupert) (SD52) requested authorization under s. 43(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard a respondent's outstanding requests, as well as future requests, over and above one open request at a time. The adjudicator found that some outstanding requests were not requests for records under FIPPA and, thus, did not need relief under s. 43(a). The adjudicator also found that one request was not repetitious or systematic for the purposes of s. 43(a) and concluded that SD52 was not authorized to disregard that request. Finally, the adjudicator found that the remaining outstanding requests, which were requests for records under FIPPA, were repetitious and systematic and would unreasonably interfere with SD52's operations. The adjudicator authorized SD52 to disregard these remaining outstanding requests and to disregard future requests, over and above one open request at a time, for period of two years.

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

### INTRODUCTION

[1] This order arises out of a request under s. 43(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) from The Board of Education of School District 52 (Prince Rupert) (SD52) for authorization to disregard certain requests from a parent in the school district (respondent). SD52 takes the position that the requests would unreasonably interfere with its operations because of their repetitious and systematic nature. SD52 seeks authorization to disregard the respondent's outstanding requests and to respond to only one of the respondent's future requests at a time.

[2] SD52 initially requested authorization to disregard 22 requests. After the Office of the Information and Privacy Commissioner issued the notice of hearing for this matter, SD52 received three more requests from the respondent in early January 2021. I have included these three requests in my consideration of SD52's application.<sup>1</sup> For reasons given below, I have decided to grant SD52's application in part.

## ISSUE

[3] The issues before me are these:

1. Are the respondent's outstanding requests repetitious or systematic and, if so, would they unreasonably interfere with SD52's operations, for the purposes of s. 43(a)?
2. If the answer is yes, what relief, if any, is appropriate?

[4] Past orders and decisions on s. 43 have placed the burden of proof on the public body.<sup>2</sup>

## DISCUSSION

### *Background*

[5] SD52 said that it is a small school district with nine schools and approximately 1,900 students. SD52 said that it normally receives no more than two FIPPA requests a year.<sup>3</sup>

[6] SD52 said that the respondent moved to the community and began making requests in April 2018. Since then, SD52 said, the respondent has submitted approximately 90 requests, the vast majority between August 2020 and January 2021.<sup>4</sup> SD52 said that the respondent's requests relate to SD52's "personal information management programs, including in connection with its surveillance systems, its student registration forms, its personal information directory, its privacy training programs and other record management systems".<sup>5</sup>

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<sup>1</sup> Decision F08-09, 2008 CanLII 57361 (BC IPC) and Order F17-08, 2017 BCIPC 9 (CanLII) both included for consideration requests that postdated the original s. 43 application.

<sup>2</sup> For example, Order F17-18, 2017 BCIPC 19 (CanLII).

<sup>3</sup> SD52's initial submission, p. 1.

<sup>4</sup> SD52's initial submission, p. 1; Affidavit of SD52's Secretary-Treasurer, para. 7.

<sup>5</sup> Affidavit of SD52's Secretary Treasurer, para. 4. The Secretary-Treasurer is SD52's delegated head of the public body and is responsible for processing FIPPA requests; Secretary-Treasurer's affidavit, para. 3.

[7] SD52 supported its submission with detailed affidavit evidence from its Secretary-Treasurer, which included copies of the respondent's various communications and SD52's responses.<sup>6</sup>

### **Application of s. 43**

[8] Section 43(a) 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, ...

[9] Former Commissioner Loukidelis has discussed the function and importance of s. 43 and had the following to say about its role in the scheme of access rights created under FIPPA:

... Access to information legislation confers on individuals such as the respondent a significant statutory right, i.e., the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access....<sup>7</sup>

[10] Section 43 is, therefore, "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."<sup>8</sup>

[11] In order to merit relief under s. 43(a), the requests must be repetitious or systematic and they must unreasonably interfere with the public body's operations. A repetitious request is one that is made over again.<sup>9</sup> A systematic request is characterized by a system, which is a method or plan of acting that is

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<sup>6</sup> Exhibits A to PP, Affidavit of SD52's Secretary-Treasurer. Each exhibit comprises a number of individual pieces of correspondence.

<sup>7</sup> Auth. (s. 43) 99-01 (December 22, 1999) at p. 7.

<sup>8</sup> *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at para. 33.

<sup>9</sup> Auth. (s. 43) 99-01 (December 22, 1999) at p. 3.

organized and carried out according to a set of rules or principles.<sup>10</sup> The key characteristics of a systematic request include:

- a pattern of requesting more records, based on what the respondent sees in records already received;
- combing over records deliberately in order to identify further issues;
- revisiting earlier freedom of information requests;
- systematically raising issues with the public body about their responses to freedom of information requests and then often taking those issues to review by the OIPC;
- behaviour suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events; and
- an increase in frequency of requests over time.<sup>11</sup>

[12] Previous orders and decisions have found 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 questions or to everyday client relations. Nor does it apply to requests for information or routinely available records.<sup>12</sup> There is also no need for relief from requests for records the respondent has already received or to which a public body has previously responded.<sup>13</sup>

[13] I apply below these principles in analyzing the parties' submissions.

### ***Respondent's earlier requests***

[14] The respondent's first request, in April 2018, was for a copy of SD52's personal information directory (PID).<sup>14</sup> SD52 replied in June 2018 that it did not have a PID. SD52 later developed a PID and provided it to the respondent in January 2019.

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<sup>10</sup> Auth. (s. 43) 02-01 (September 18, 2002) at para. 17, citing Auth. (s. 43) 99-01 (December 22, 1999) at p. 3.

<sup>11</sup> Order F18-37, 2018 BCIPC 40 (CanLII) at paras. 26-27; Order F13-18, 2013 BCIPC 25 (CanLII) at para. 25; Decision F06-03, 2006 CanLII 13535 (BC IPC) at paras. 51 and 53.

<sup>12</sup> Auth. (s. 43) 04-01, September 10, 2004, Decision F07-08, 2007 CanLII 42406 (BC IPC).

<sup>13</sup> Decision F11-04, 2011 BCIPC 40 (CanLII).

<sup>14</sup> Under s. 69(6) of FIPPA, public bodies that are not ministries are required to make available for inspection and copying by the public a directory that lists the public body's personal information banks. The list must include specified information, including a description of the kind of personal information in each bank and authority for its collection.

*September 2019 to January 2020*

[15] From September 2019 to January 2020, the respondent made 15 further requests, all centred around SD52's video surveillance systems at its schools, as follows:<sup>15</sup>

- requests for video images of himself taken at a specified dates and times at two named schools (School A and School B);<sup>16</sup>
- records of Parent Advisory Council (PAC) approvals for the installation of the video systems at School A and School B;
- SD52's annual reviews of the video systems for School A and School B;
- records showing how the video systems or the notices on video surveillance at School A and School B's comply with s. 27(2)<sup>17</sup> and s. 30<sup>18</sup> of FIPPA and/or records showing that SD52 considered that s. 27(2) and s. 30 do not apply;
- a security audit for the video system of School B;
- records of incidents and safety concerns supporting the installation of the video systems at School A; and
- records of access to and use of the respondent's personal information provided with SD52's letter of December 18, 2019.<sup>19</sup>

[16] SD52 responded to all of these requests.<sup>20</sup>

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<sup>15</sup> SD52 said that a 2010 amendment to the *School Act*, s. 74.01, authorizes school boards to install a video surveillance system in a school; Affidavit of SD52's Secretary-Treasurer, para 9. Section 74.01 of the *School Act* authorizes the installation of a video surveillance system at a school, with the approval of the Parent Advisory Council (PAC) for the school, for the purposes of protecting (a) the safety of individuals in a school facility or on school land, (b) an individual's belongings in a school facility or on school land, or (c) school property. Section 74.01 also requires annual reviews of video systems installed before the 2010 amendments.

<sup>16</sup> SD52 said that it deduced that the respondent visited the schools with the intention of ensuring that their video surveillance systems captured his images and that he wanted access to these images. SD52 requested a photograph of the respondent in order to identify him in the images; Affidavit of SD52's Secretary-Treasurer, para. 11.

<sup>17</sup> Section 27(2) of FIPPA requires a public body to inform an individual from whom it collects personal information of the purpose and legal authority for collecting and the contact information of an officer or employee of the public body who can answer questions about the collection.

<sup>18</sup> Section 30 requires a public body to protect personal information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

<sup>19</sup> I understand this request to refer to access to and use of the respondent's video images that SD52 disclosed in response to his request for his video images taken at School B.

<sup>20</sup> SD52 provided video images where it could locate them. It also provided the requested annual reviews. It said it had no records of PAC approvals.

*August 2020 to October 2020*

[17] The respondent stopped making requests in January 2020 and resumed in August 2020, as follows:

- Requests related to SD52's video surveillance systems:
  - regarding School A and School B: video images of himself taken at specified dates and times; annual reviews of the video surveillance systems; PAC approvals of the video surveillance systems; and Privacy Impact Assessments (PIAs) for the video surveillance systems;
  - records of how the personal information collected by SD52's video systems is stored or encrypted;
  - records of privacy training for staff for video surveillance staff at School A;
  - records of which school washrooms in SD52 have video surveillance outside their entrances;
  - criteria for collecting the personal information collected by these video systems;
  - records showing how SD52 determined there were no other less privacy invasive means for collecting this personal information;
  - video images of the respondent's child taken at School C, at specified dates and times;
  - records of when and how long one of these videos was recorded;
  - video images from each of School C's cameras showing empty halls;
  - records of what SD52 did to follow up on a video at School C noted as "lost" in an annual review or associated annual reviews for 2017 and 2018;
  - PIAs for video surveillance systems for SD52's buses; and
  - records showing how SD52 considered that its notices for the video surveillance of its buses comply with s. 27(2).
  
- Requests related to SD52's budgets and other operations:
  - budget and annual financial statement for School C;
  - budgets and discretionary expenses for all schools in SD52;
  - the school plan for School C;
  - manuals with instructions and guidelines for preparing school plans;
  - rules and policy statements regarding school plans;
  - manuals of SD52's operational and administrative procedures;
  - SD52's guidelines on copyright; and
  - a suggestion that SD52 update its copyright regulation.

- Requests related to SD52's information and privacy management:
  - procedures for protection and confidentiality of student records;
  - orders permitting health officers to access student records;
  - procedures for the exchange of student records and how they are exchanged with other school districts;
  - records of staff training for the exchange of student records;
  - audits of exchanges of student records;
  - list of records available without a request under s. 71 of FIPPA;<sup>21</sup>
  - how many staff at School A are authorized to handle personal information;
  - how many SD52 employees have received privacy training;
  - how SD52 ensures that temporary staff handling personal information receive privacy training;
  - privacy related manuals, instructions and guidelines issued to SD52 employees;
  - methods of encrypting the respondent's personal information;
  - any security audit of systems containing the respondent's personal information and how SD52 addressed concerns arising from any such audit;
  - record of appointment of SD52's privacy officer;
  - procedures for storing student records;
  - information incident report regarding the sharing of the respondent's child's student record;
  - suggestion that SD52 update School C's student registration form to include several specified requirements;
  - suggestion to update privacy management procedures for the exchange of student records;
  - report on the transfer of the respondent's child's student record;
  - all of SD52's PIAs;
  - suggestions that SD52 consider including certain items in its lists of records available without a request under s. 71(1) and that it publish certain manuals under s. 70 of FIPPA;<sup>22</sup> and
  - records showing whether or not SD52 proposes to include PIAs in its list of records available without a request under s. 71 of FIPPA.

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<sup>21</sup> Section 71(1) of FIPPA says that "the head of a public body must establish categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act".

<sup>22</sup> Section 70(1) of FIPPA requires public bodies to make certain manuals, instructions, guidelines, rules and policy statements available to the public without a request under FIPPA.

[18] SD52 responded to all of these requests. It provided the respondent with responsive records in some cases.<sup>23</sup> In others, SD52 said there were no responsive records.<sup>24</sup> In still others, SD52 provided links to relevant resources on its website.<sup>25</sup>

[19] Most of these earlier, concluded requests were requests for records under FIPPA. Others were suggestions that SD52 update its forms, bylaws, guidelines or regulations or requests for records that SD52 makes routinely available on its website. These latter types of requests were not, in my opinion, access requests for records under FIPPA.

[20] While I do not have to consider if the earlier, concluded requests were systematic, they provide important context for considering the outstanding requests. In my view, the earlier requests form part of the continuum of requests and exhibit all the hallmarks of systematic requests. For instance:

- the requests delved, in minute detail, into topics of interest or concern to the respondent, principally SD52's management of personal information (including its video surveillance systems and the contents of its website) and its compliance with FIPPA and with the *School Act*,<sup>26</sup>
- the respondent made new requests based on records he had received in response to earlier requests;<sup>27</sup>

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<sup>23</sup> For example: video images and annual reviews.

<sup>24</sup> For example: PAC approvals; list of records available without a request under s. 71(1); procedures for and number of exchanges of student records; procedures for writing school plans.

<sup>25</sup> For example: procedures for storing student records; appointment of SD52's privacy officer; School C's school plan.

<sup>26</sup> For example: SD52's video surveillance systems in its schools or buses; its budgets, financial management and other operations; staff privacy training; information management and procedures; content of school forms; whether SD52 provides compliant privacy notices and proper security for personal information; specific aspects of SD52's website, including protection of personal information; procedures for the storage and transfer of student records; and the existence of a personal information directory and categories of records and manuals available without a request under FIPPA.

<sup>27</sup> The respondent's request of January 4, 2020 (records of how his personal information was accessed and used) followed up on his request of December 19, 2019 in which he requested and received his video images taken at School B; his requests of October 2, 2020 (SD52's compliance with s. 30 of FIPPA regarding his personal information) followed up on his requests of August 8 and 16, 2020 in which he requested and received his video images taken at School A and School C; his request of October 5, 2020 (for records about a "lost" video, as noted in an annual review) followed up on his request of August 8, 2020 for annual reviews; and his requests of October 15, 2020 (video images of School C's empty halls, his child's video image and records of when and how long each camera collected the child's images) followed up on his requests of August 8, 2020 for video images at School C.

- he frequently followed up on his requests, asking when he could expect a response;<sup>28</sup>
- he frequently disputed or followed up on SD52's responses, for example, by: expressing concern that SD52 had no responsive records;<sup>29</sup> suggesting that SD52 should have disclosed certain records;<sup>30</sup> asking that SD52 clarify or reconsider its responses to his requests;<sup>31</sup> and asking that SD52 implement his detailed suggestions for updating SD52's regulations, bylaws or procedures;<sup>32</sup>
- his requests often arrived in clusters of 2-5 discrete requests and increased in frequency with time, often with only a day or two between clusters.<sup>33</sup>

[21] In addition, some of the earlier, concluded requests displayed repetitive characteristics, in that they repeated, or were substantially similar to, other requests.<sup>34</sup> Moreover, these requests were frequently embedded in, or scattered throughout, lengthy and convoluted emails to SD52 in which the respondent aired, at some length, his views on or concern about SD52's handling of various personal information matters.

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<sup>28</sup> For example, regarding his requests of: August 16, 2020 (he made three follow-ups); August 23, 2020; August 25, 2020; August 27, 2020; September 9, 2020; October 1, 2020; October 2, 2020; October 5, 2020; October 9, 2020; October 13, 2020; October 15, 2020; October 16, 2020; and October 27, 2020.

<sup>29</sup> For example, regarding SD52's response to the following: his request of September 9, 2020 for records on video surveillance of SD52's washroom entrances; his requests of October 1, 2020 for records regarding privacy training of SD52's staff.

<sup>30</sup> For example, regarding the following: his request of August 16, 2020 for PIAs on SD52's video surveillance systems (he said SD52 should have disclosed a PIA); his request of October 27, 2020 for all of SD52's PIAs (he said he should have received PIAs in addition to those for SD52's video surveillance).

<sup>31</sup> For example, regarding SD52's response to his requests of: August 8, 2020; August 16, 2020; August 25, 2020; September 9, 2020; October 1, 2020; October 15, 2020; and October 27, 2020.

<sup>32</sup> For example, regarding SD52's responses to the following: his request of August 25, 2020 for written procedures on the handling of student records (he asked that SD52 implement reasonable security procedures); his requests of August 27, 2020 for a list of records available without a request under s. 71 of FIPPA (he asked that SD52 implement his suggestions for updates to SD52's FIPPA bylaw); his requests of September 4, 2020 for records regarding transfers of student records (he asked that SD52 augment its procedures in eight specified areas).

<sup>33</sup> He made 15 requests in August 2020, 17 requests in September 2020 and 22 requests in October 2020.

<sup>34</sup> For example, his requests of September 25, 2020 for budget and financial information about School C were almost identical to his requests of September 7, 2020. The requests related to SD52's video surveillance systems at various schools (video images, PAC approvals, PIAs, annual reviews) were all on the same topics. The request of October 16, 2020 for "sound procedures" for the handling of student records repeated the request of August 25, 2020. The requests of September 22, 2020 for records regarding video surveillance of SD52's washrooms duplicated his requests of September 9, 2020 for such records.

### ***The outstanding requests***

[22] SD52 requests authorization to disregard the following outstanding requests, a table of which it provided with its submission:<sup>35</sup>

#### **September 30, 2020**

- records that describe the constitution and/or bylaws of SD52 and its PACs (#45);

#### **October 29, 2020**

- records listing information incidents from September 2018 to September 2020; if no such list exists, a request that SD52 compile one or provide severed copies of the information incident reports (#70, 71);

#### **November 5, 2020**

- records of any “sound procedures” in place to ensure confidentiality of student records (#72);<sup>36</sup>

#### **November 6, 2020**

- records/logs [with reference to nine specified types of logs or similar records] describing how and where School C received the respondent’s child’s student records from the child’s previous school district; the current conditions under which his child’s records are being stored and secured; the process by which his child’s student records were copied and/or transferred to SD52 (#73);

#### **November 11, 2020**

- PIAs for SD52’s facilities (#74);
- records of video camera modifications, replacements, upgrades or maintenance done since July 2016 (#75);

#### **November 18, 2020**

- records defining points of building access for SD52’s systems, as referred to in SD52’s video surveillance regulation (#76);

#### **November 19, 2020**

- request that SD52 reconsider its response to the respondent’s request on video notices regarding a named school;

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<sup>35</sup> SD52’s initial submission, page 4, and Exhibits A to PP to Secretary-Treasurer’s affidavit. Where SD52 assigned numbers to these requests, I have included them in parentheses at the end of each entry.

<sup>36</sup> The term “sound procedures” comes from SD52’s regulations on the handling of student records.

**November 21, 2020**

- request that SD52 reconsider its response to respondent's request on how many staff handle personal information at one of SD52's schools;

**November 23, 2020**

- request that SD52 implement recommended mitigation actions described in AL20-020 from the Canadian Centre for Cyber Security;

**November 24, 2020**

- records establishing consent for parents/students entered into 23 named personal information banks (PIBs) (#77);
- records establishing notice to parents/students entered into the same 23 PIBs (#78);
- records establishing notice to employers of requirements/restrictions of use of information in the same 23 PIBs (#79);

**November 26, 2020**

- records that describe how SD52's website, combined with Google Analytics and autotrack.js, is constrained to prohibit personally identifying information from being disclosed inappropriately (#80);
- records that describe how SD52 informs its website users that their activity is being monitored and reported outside Canada (#81);
- records that describe how SD52 determined that an opt out option for users that do not consent to such monitoring is not a necessary feature of SD52's website (#82);
- documentation that describes how SD52 determined that no other, more privacy protective, analytics option can be used on SD52's website (#83);

**November 27, 2020**

- budget for School C not included in response to request for budgets of all SD52's schools;
- request for clarification of table of discretionary expenditures for SD52's schools;

**December 7, 2020**

- request that SD52 reconsider its response to respondent's video request;

**December 12, 2020**

- request for clarification: does SD52 accept or deny a duty to follow the spirit and intent of "our" Core Policies and Procedures Manual, appropriate use policy and information incident management policy;

**December 15, 2020**

- records describing the following: how SD52 fulfils consent requirements for s. 27(2) and s. 33.1 of FIPPA regarding the Middle Year Development Instrument (MDI) PIA and Information Sharing Agreement (ISA); PIAs for MDI PIA and ISA with Human Early Learning Partnership (HELP); records describing how SD52 will fulfil “our” duties under s. 5 of FIPPA; communications between SD52 and the OIPC on HELP; any other agreements between SD52 and HELP at UBC (#84, 85, 86);

**December 16, 2020**

- PIAs for 17 specified software projects;

**January 3, 2020**

- video images of himself at School D; annual review of School D’s video surveillance system; PAC approval of School D’s video surveillance system; PIA for School D’s video surveillance system (#s 87, 88, 89).

***Are the respondent’s outstanding requests systematic?***

[23] SD52 said that the respondent’s outstanding requests are systematic and listed a number of factors in support of its position.<sup>37</sup>

[24] The respondent argued that there are only 11 outstanding requests and disagreed that they are systematic:

I believe a more accurate characterization of my requests are [*sic*] “reactionary”, there is no system, there is no plan, I observe behaviour; I worry about how it might affect my child; I ask questions; and as best I am able, I attempt to seek accurate, factual information from experts before drawing conclusions. Our district submission implies that it prefers parents to bring concerns forward without first investigating and firmly establishing the facts, I do not yet understand the rationale behind this approach.<sup>38</sup>

[25] The respondent said his interest is to ensure that the protection of the personal information SD52 collects is “appropriately proportionate” and “my immediate priority is to accurately access [*sic*] the privacy impact the implementation of our district procedures [*sic*] placed upon my family”.<sup>39</sup>

<sup>37</sup> SD52’s initial submission, pp. 2-3; Affidavit of SD52’s Secretary Treasurer, para. 7.

<sup>38</sup> Respondent’s response submission, p. 2.

<sup>39</sup> Respondent’s response submission, p. 2.

*Analysis and finding*

[26] I acknowledge the respondent has concerns about his child's privacy. However, I consider that the outstanding requests continue the theme and pattern of the earlier, concluded requests. With the exception of request #45 (which I discuss below), I find that they also exhibit the same systematic characteristics, as follows:

- the requests concentrate in minute detail on the same topics of interest and concern to the respondent, principally SD52's handling of personal information (i.e., its video surveillance systems, PIAs on various topics and its compliance with FIPPA), aspects of SD52's website and its budgets and financial statements;<sup>40</sup>
- the respondent makes new requests based on records he received in earlier requests;<sup>41</sup>
- he follows up on requests by asking when he can expect a response;<sup>42</sup>
- he follows up on responses by expanding the scope of the request to include additional records;<sup>43</sup>
- he asks for reconsiderations of the access decisions;<sup>44</sup>
- the requests are frequently embedded in, or scattered throughout, lengthy and convoluted emails in which he discusses, at some length, his interest in or concern about SD52's handling of various matters; and
- the requests arrive in clusters, closely spaced.

[27] For these above listed reasons, with the exception of request #45, I find that the outstanding requests are systematic for the purposes of s. 43(a).

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<sup>40</sup> I include here requests 70 and 71 of October 29, 2020 and the unnumbered request of December 12, 2020 which refer to the BC government's core policy, information incident policies and appropriate use policies as the bases for requesting records or asking questions. These policies do not, as far as I know, apply to school boards in BC, although the respondent appears to think they do – or ought to.

<sup>41</sup> Request #73, of November 6, 2020, followed up on requests #65-67 of October 21, 2020 for incident reports regarding the respondent's child's student record and provides several suggestions as to what the records should contain. As well, the respondent continued to request PIAs even though he had earlier asked for all of SD52's PIAs.

<sup>42</sup> He followed up on November 6, 2020, November 18, 2020 and November 23, 2020.

<sup>43</sup> The request of December 16, 2020 for PIAs on software projects followed up on SD52's response to an earlier request for all of SD52's PIAs. The unnumbered request of December 12, 2020 followed up on the response to earlier requests for SD52's privacy manual and administrative procedures.

<sup>44</sup> The respondent asked for reconsiderations of SD52's earlier responses on November 19, 2020, November 21, 2020 and December 7, 2020.

***Are the respondent's outstanding requests repetitious?***

[28] SD52 said that the respondent's requests related to its video surveillance systems, its PIAs and its compliance with FIPPA are all repetitious.<sup>45</sup> The respondent did not expressly address this aspect of SD52's submission.

[29] I agree with SD52 that the outstanding requests related to SD52's video surveillance system and its PIAs are repetitious of earlier, concluded requests, as is the request for School C's budget and financial statements. Requests 72 and 73 also repeat earlier, concluded requests.

[30] With the exception of request #45, I find that all of these requests are repetitious for the purposes of s. 43(a).

***Request #45***

[31] The exception to my finding on the systematic and repetitious character of the respondent's requests is Request #45 of September 30, 2020. It is a request for the constitution and bylaws between SD52 and its PACs. The subject matter of this request does not relate to the respondent's other requests and does not repeat any of them.

[32] SD52's submission indicates that it notified the PACs under s. 23 of FIPPA in the fall of 2020 and at least one PAC consented to the disclosure of the relevant records.<sup>46</sup> SD52 did not explain how this request is systematic or repetitious. It is also not clear why SD52 has not simply responded to this request. I find that request #45 is not repetitious or systematic for the purposes of s. 43(a) and SD52 is not authorized to disregard it. SD52 must therefore respond to this request.

***Would the outstanding requests interfere unreasonably with SD52's operations?***

[33] SD52 said that the outstanding requests would interfere unreasonably with its operations. SD52 said that, while it is apparent or predictable in many cases that no records exist, it must still search for responsive records. In addition, SD52 said that the respondent's numerous follow-up communications add to its work of responding to the requests.<sup>47</sup>

[34] The Secretary-Treasurer deposed that SD52 has a small staff and he alone is responsible for processing FIPPA requests. He said he has been spending many hours on weekends processing the requests. He said that

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<sup>45</sup> SD52's initial submission, p. 2.

<sup>46</sup> Exhibit T to Secretary-Treasurer's affidavit.

<sup>47</sup> SD52's initial submission, p. 3.

dealing with the respondent's requests and with the related matters the respondent has raised with the OIPC has hindered his ability to attend to his operational duties (these include managing risk, financial planning and budgets, labour relations, operations, information technology, communications, district policies and corporate governance).<sup>48</sup>

[35] The respondent expressed surprise that SD52 was struggling to respond to his requests:

In contrast, I was surprised when I received a copy of our district s. 43 request on 2021-01-29. In the letter of 10-15-2020 there had been a mention that our district was "having difficulty" responding, but no indication that could be considered an an [sic] undue hardship. I have no interest interfering with the activities of our school district, in fact, my child's future depends upon a fully functioning school district. Accordingly, [sic] I have written 50 letters asking if our district needed more time. I am patient, and am at liberty to withdraw a request if our district had made a compelling case. In addition to ensuring that our district was aware of the request, (in case of a postal issue) each letter was also intended as an opening for this district to engage in dialog should the need arise.<sup>49</sup>

[36] SD52 acknowledged that the respondent has written "many letters" asking if it needs more time to respond. However, SD52 said, extending the time would not reduce the amount of work involved to respond and would not change the fact that each response "only seems to inspire [the respondent] to make further requests". SD52 added that it has one executive assistant who assists four senior district leaders and seven school board trustees and, thus, the available clerical time is limited.<sup>50</sup>

[37] In addition, the Secretary-Treasurer said that, every time the respondent requests his video images, SD52's maintenance foreman must be removed from his regular duties to spend many hours viewing footage to locate the requested images. The Operations Manager is then required to take over supervision of SD52's work crews.<sup>51</sup>

[38] The respondent questioned SD52's evidence that locating his video images was time consuming:

I like to walk in our neighbourhood, my child likes to play on the swings. I am also wary of undue surveillance. Our district mischaracterized my interest in surveillance cameras, as one cannot characterize the capabilities of a surveillance system by looking at a camera, one needs to

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<sup>48</sup> Affidavit of SD52's Secretary-Treasurer, paras. 58-59.

<sup>49</sup> Respondent's response submission, p. 3.

<sup>50</sup> SD52's reply submission, p. 3. All quotes are from this page.

<sup>51</sup> Affidavit of SD52's Secretary-Treasurer, paras. 58-59.

examine the image it captures. I am also aware that requesting an image gathered when other people are in frame is problematic. So when I have concerns about the privacy impact of a surveillance system, where possible, I will return at a measured time so that I may request an image that is easy for the district to extract. I understand that surveillance systems are explicitly designed to enable rapid extraction of images gathered at a specified time and place. I am also have [*sic*] heard of principals that are able to access camera records in near realtime. I do know that given a specified time and location, one can locate and extract a specified images from a multi-hour livestream from youtube.com within seconds, given that reality, our district cannot expect an applicant to have anticipated that it would take hours for a foreman to fulfill these requests.<sup>52</sup>

[39] SD52 replied that its video technology is old and “it is not a simple task to locate images or to then copy those images. The footage must be manually reviewed each time [the respondent] makes a request for copies of the footage in which he or his child appears”.<sup>53</sup>

#### *Discussion and analysis*

[40] There is no question in my mind that the respondent has deluged SD52 with a vast number of complicated and detailed requests since August 2020. SD52 did not explain how much time it had taken to process the earlier requests nor how much time it would likely take to respond to the outstanding requests. However, I accept the Secretary-Treasurer’s evidence that he has had to spend many weekend hours to date dealing with the respondent’s requests, his numerous follow-up communications<sup>54</sup> and his associated complaints to the OIPC. I also accept that the respondent’s requests have interfered unreasonably with the Secretary-Treasurer’s ability to attend to his regular duties, as well as that of SD52’s maintenance foreman.

[41] I am satisfied from the nature of the outstanding requests that it would take the Secretary-Treasurer many more hours to process them. I also accept that doing so would interfere unreasonably with SD52’s operations.

[42] I pause here to note that, under the FIPPA regulation, a public body may charge fees for searching for responsive records, after the first three hours of search time which must be free. SD52’s acknowledgement letters to the respondent mention this possibility but there is no indication that it attempted to manage the ever-increasing flow of requests by charging search fees. It also would have assisted SD52 and the respondent (and me) in keeping track of the

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<sup>52</sup> Respondent’s response submission, p. 2.

<sup>53</sup> SD52’s reply submission, p. 3.

<sup>54</sup> In many cases, there are from one to five follow-up communications per request.

requests and related communications if SD52 had assigned numbers to the requests.

### ***Relief for outstanding requests***

[43] SD52 has requested authorization to disregard the outstanding requests. I find that those that were access requests for records under FIPPA<sup>55</sup> are repetitious and systematic and would unreasonably interfere with SD52's operations. Therefore, I authorize SD52 to disregard the following outstanding requests:

- requests #70 and 71 of October 29, 2020 (for information incidents)
- request #73 of November 6, 2020 (for records related to the transfer of the respondent's child's records to SD52)
- request #75 of November 11, 2020 (for records related to camera modifications)
- request #76 of November 18, 2020 (for records defining "points of access")
- requests #77, 78 and 79 of November 24, 2020 (for records of consent and notice related to 24 student information banks)
- requests #80, 81, 82 and 83 of November 26, 2020 (for records related to use of SD52's web site)
- requests #84, 85 and 86 of December 15, 2020 (for PIAs and other records related to the Middle Year Development Instrument and Human Early Learning Partnership)
- requests #87, 88 and 89 of January 3, 2020 (for video images, PIAs, PAC approvals and annual reviews for School D)

### ***Relief from future requests***

[44] I also have the ability to authorize SD52 to disregard future requests.<sup>56</sup> SD52 requests authorization to disregard all future access requests made by or on behalf of the respondent, over and above one open access request at a time, for a period of two years from the date of the authorization.<sup>57</sup>

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<sup>55</sup> See below for discussion of requests that were not requests under FIPPA.

<sup>56</sup> Order F21-04, 2021 BCIPC 04 (CanLII), *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC), at paras. 41 and 43, and *Mazhero v. British Columbia (Information and Privacy Commissioner)* (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

<sup>57</sup> Notice for this hearing.

[45] The respondent's response submission suggests that he has no understanding of, or sympathy for, the impact his requests have made on SD52's operations. The respondent has, in my view, been abusing his right of access under FIPPA, to the detriment of SD52's operations. Although the respondent said he is willing to work with SD52 on his requests, I am not persuaded that this is a genuine offer.

[46] Given the respondent's pattern of behaviour up to and after SD52's s. 43 application and the contents of his response submission, I am satisfied that the respondent intends to continue to barrage SD52 with the same kinds and volume of requests in future and that this will unreasonably interfere with SD52's operations. For these reasons, I consider it appropriate to set limits on the respondent's ability to make requests in future, as set out below.

***Relief not needed for some requests***

[47] SD52 does not need relief under s. 43(a) in order to disregard certain types of requests, which it is not obliged to respond to under FIPPA, such as questions or repeats of requests to which it has already responded. I include here any other communications that are not requests for records under FIPPA, for instance, requests or suggestions for things SD52 could do; requests that SD52 reconsider its responses; and requests for clarification.

[48] Therefore, I will not make any s. 43 order regarding the following communications from the respondent and SD52 is free to respond or not, as it chooses:

- requests that SD52 reconsider or clarify its responses to earlier access requests;
- requests that SD52 implement the respondent's suggestions for updating its forms, bylaws, guidelines and regulations;
- suggestions for items that SD52 could publish under ss. 70 and 71 of FIPPA;
- questions on whether SD52 intends to implement external policies;
- request for "sound procedures", including follow-up requests;
- requests for PIAs, including follow-up requests; and
- requests for School D's budget, including follow-up requests.

[49] In addition, the respondent said he was satisfied with SD52's actions following his November 23, 2020 request for "mitigation actions".<sup>58</sup> While it is debatable that this was actually a request for records under FIPPA, it is, in any case, no longer an issue.

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<sup>58</sup> Respondent's email of December 20, 2020 and his response submission, p.1.

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## CONCLUSION

[50] For reasons given above, I make the following authorizations under s. 43(a) of FIPPA:

1. SD52 is authorized to disregard the outstanding requests listed in paragraph 43 above;
2. SD52 is authorized to disregard future access requests from the respondent, or from anyone else acting on his behalf, for a period of two years from the date of this order, over and above one open access request at a time;
3. SD52 is authorized to decide what a request is; and
4. For the purposes of this authorization, an open access request is a request for records under s. 5 of FIPPA to which SD52 has not yet responded under s. 8 of FIPPA.

April 14, 2021

## ORIGINAL SIGNED BY

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Celia Francis, Adjudicator

OIPC File No.: F21-84878