Order P22-01

WEYERHAEUSER COMPANY LIMITED

Jay Fedorak
Adjudicator

February 28, 2022

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Summary: The Weyerhaeuser Company Limited (Weyerhaeuser) applied for authorization under s. 37 of the *Personal Information Protection Act* (PIPA) to disregard an outstanding request for the respondent's personal information and any future requests. The adjudicator found that Weyerhaeuser had failed to establish that responding to the request would unreasonably interfere in its operations because of the systematic or repetitious nature of the request (s. 37(a)) or that the request was frivolous or vexatious (s. 37(b)). The adjudicator denied the request for relief.

Statutes Considered: *Personal Information Protection Act*, ss. 23, 37(a) and 37(b).

INTRODUCTION

[1] The Weyerhaeuser Company Limited (Weyerhaeuser) has applied for relief under s. 37 of the *Personal Information Protection Act* (PIPA) to disregard the respondent's request for her own personal information. PIPA gives individuals a right to request access to their own personal information, but organizations may request that the Commissioner grant them relief from responding to requests that are systematic and repetitious or frivolous and vexatious.

ISSUES

[2] The issues to be decided in this inquiry are:

1. Whether (a) the outstanding requests are systematic or repetitious and (b) responding to them would unreasonably interfere with Weyerhaeuser's operations in accordance with s. 37(a);
2. Whether the requests are frivolous or vexatious in accordance with s. 37(b); and

3. What the appropriate remedy would be.

[3] Although PIPA does not assign a burden of proof, previous Orders have established that the organization should provide evidence to demonstrate that s. 37(a) or s. 37(b) applies to the outstanding requests and the relief it seeks.[1]

DISCUSSION

[4] **Background –** The respondent is a former employee of Weyerhaeuser. Over the course of many years, she has made a large volume of requests to Weyerhaeuser for access to her own personal information under s. 23 of PIPA, as well as asking a large number of questions.

[5] The Office of the Information and Privacy Commissioner (OIPC) granted Weyerhaeuser relief under s. 37 of PIPA from responding to the respondent's requests in 2013.[2] Order P13-03 outlined the detailed history of the relationship between the parties. I will not repeat it here. The respondent submits that she has been in a dispute with Weyerhaeuser over a claim for unpaid vacation allowance. She also claims to be involved in divorce proceedings in which pension-splitting is an issue.

[6] **Requests at issue –** Weyerhaeuser has requested authorization under s. 37 to disregard the following:

1. The respondent's request, of November 15, 2021, for records containing her personal information created since Weyerhaeuser responded to her previous request in April 2021;
2. The respondent's question, of December 7, 2021, about whether Weyerhaeuser received a particular document from her physician; and
3. Any future access requests made by or on behalf of the respondent.

[7] **Section 37 –** Section 37 reads as follows:

> If asked by the organization, the Commissioner may authorize the organization to disregard requests under sections 23 and 24 that
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> (a) would unreasonably interfere with the operations of the organization because of the systematic and repetitious nature of the requests, or
> (b) are frivolous or vexatious.

[1] See for example Order P14-01, 2014 BCIPC 5 (CanLII); P10-01 2010 BCIPC 21 (CanLII); and P05-01, 2005 BCIPC 23 (CanLII).
[2] Order P13-03, 2013 BCIPC 35 (CanLII).

[8] Relief under s. 37 applies only to requests made under ss. 23 and 24. In this case, the requests at issue relate to s. 23, which reads as follows:

> **23** On request of an individual, an organization must provide an individual with the following:
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> (a) the individual's personal information under the control of the organization;
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> (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the organization;
>
> (c) the names of individuals and organizations to whom the personal information in paragraph (a) has been disclosed by the organization.

[9] It is important to note that PIPA does not require organizations to answer questions, except to provide information with respect to the management of the individual's personal information in accordance with s. 23(b) and 23(c). This means that, in most cases, there are no legal requirements for organizations to answer the questions of individuals, and individuals have no recourse when an organization refuses to answer questions.

[10] This also means that organizations do not need to seek relief from answering questions under s. 37. They may answer, or decline to answer, such questions, at their own discretion. In addition, the OIPC has no authority under s. 37 to grant such relief. The adjudicator in Order P13-03 stated this explicitly.[3] Nevertheless, I find it necessary to reiterate this point here as Weyerhaeuser is asking for authorization to disregard the December 7, 2021 question. It is not an access request under s. 23 and, therefore, s. 37 does not apply. Besides, I note that Weyerhaeuser has now responded to that question.[4]

[11] Therefore, the remainder of my analysis will involve only the application to disregard the access request of November 15, 2021 and any future access requests made by or on behalf of the respondent.

Issue 1(a): Is the outstanding request systematic or repetitious?

[12] Weyerhaeuser submits that systematic requests are made according to a method or plan based on a set of rules or principles. In this case, it asserts that the plan is to make a request, make it again and then add a new request and accuse Weyerhaeuser of improper motives. It submits that repetitious requests are requests that are made two or more times. It has provided examples of different past requests the respondent has made for the same records.[5]

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[3] Order P13-03, para. 20.
[4] Respondent's response submission, p. 21, paras. H5 and H6.
[5] Weyerhaeuser's initial request, paras. 35, 39 and 41.

[13] The respondent denies that what she is seeking is systematic or repetitious. She states that she is only requesting information created since her last request seven months earlier. She believes that making this request is necessary for her to ensure that her personal information is correct, as she asserts that there have been numerous examples in the past where she found that information that Weyerhaeuser held was inaccurate, in her opinion.[6]

[14] There is only one currently outstanding request. It is for information that the respondent has not requested previously. Despite her previous history of requests, this request is for personal information that she has not requested before. Therefore, it is not repetitious. I see no evidence that this particular request is part of an established pattern. Therefore, I find that the access request of November 15, 2021 is not systematic, and it is not repetitious.

Issue 1(b): Would responding to the request unreasonably interfere with Weyerhaeuser's operations?

[15] Weyerhaeuser submits that responding to the respondent's repeated requests unreasonably interferes in its operations. It asserts that it has spent more than 116 hours in responding to her previous requests.[7] The respondent counters that as her request only involves personal information that Weyerhaeuser has received between April and November 2021, it should not take much time to retrieve it.[8]

[16] I understand that Weyerhaeuser has expended considerable time and resources processing the respondent's access requests and answering her questions over many years. While this information is relevant context, the issue before me is whether responding to the respondent's only outstanding request would unreasonably interfere in Weyerhaeuser's operations in future.

[17] As Weyerhaeuser notes, the respondent has had no connection with the organization during the period covered by the request, other than in processing her access requests. It submits that the only information that would be responsive to this request would be records she already has or records relating to the administration of responding to her access requests and questions. Most of that information, it asserts, would be subject to legal privilege or would contain little personal information.[9]

[18] As Weyerhaeuser has indicated that there is little information responsive to the respondent's one outstanding request, it is difficult to see how responding to that request would interfere unreasonably in Weyerhaeuser's operations.

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[6] Respondent's response submission, p. 20, para. H11.
[7] Weyerhaeuser's initial submission, paras. 21 and 40.
[8] Respondent's response submission, p. 20, para. H7.
[9] Weyerhaeuser's initial submission, para. 29.

[19] Therefore, I find that responding to the access request of November 15, 2021 would not unreasonably interfere in its operations.

Issue 2: Is the request frivolous or vexatious?

[20] Previous Orders and Decisions have identified the criteria for determining whether requests are frivolous or vexatious. Decision P05-01 includes a list of factors that are helpful in making this assessment:

> - Regardless of how it is so, a frivolous and vexatious request is one that is an abuse of the rights under the [PIPA];
> - 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 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 fact that one or more requests are repetitive may support a finding that a request is frivolous or vexatious. … To be clear, the fact that access requests are systematic or repetitious in nature cannot … be sufficient to warrant relief … Alongside other factors, however, the fact that repetitious requests have been made may support a finding that a particular request is frivolous or vexatious.[10]

[21] In the context of the concept of "abuse of rights", it is important to understand precisely what those rights are. In this case, it is the s. 23 rights to access one's own personal information and to know how the organization has used and disclosed that personal information.

[22] The purposes of these rights are to allow "individuals to know what personal information of theirs an organization has and to ensure that it is accurate and complete."[11] The fact that the respondent has made vexatious requests in the past does not nullify her right of access to personal information created or collected since her most recent request. In this case, I note that the request is for a limited amount of information. Weyerhaeuser's own evidence indicates that it is unlikely to result in the disclosure of much information.

[23] The respondent submits that Weyerhaeuser has treated her unfairly in the past and has mismanaged her personal information. This includes the loss, and later rediscovery, of some of her records. She also asserts that she had found some of her personal information in the organization's records to be incorrect.

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[10] Decision P05-01, 2005 BCIPC 23, para. 27 most of which is cited in Order P13-03, para. 29.
[11] Decision P05-01, cited in Order P13-03, para. 30.

This, she says, suggests that she has a legitimate purpose in requesting access to personal information that she has not previously requested.[12]

[24] I note that Order P13-03 found that her outstanding requests at the time were vexatious. However, the circumstances of this case are different. There is only one outstanding request. She is requesting access to personal information that she has not requested previously.

[25] PIPA requires organizations to make every reasonable effort to ensure that personal information that it collects is accurate and complete under s. 33. It also gives individuals a right to request correction of their personal information. Individuals require access to their personal information under s. 23 to hold organizations accountable for their obligations under s. 33 and to determine whether to request correction of inaccurate information. These are legitimate purposes for requesting this personal information. The respondent submits that these are the reasons for making the access request of November 15, 2021. Therefore, I find that this request does not constitute an abuse of her rights under PIPA.

[26] With respect to whether the request is frivolous, Weyerhaeuser does not make submissions on this question. The respondent submits that her request is for a legitimate purpose. In accordance with the established test for determining whether requests are frivolous, there must be evidence that the request is made for a purpose other than obtaining access to the information. Given the limited nature of the personal information responsive to the request, it is difficult to imagine what other purpose she may have for making this request. I have already found that the request does not obstruct or vex the organization. The only purpose that is apparent to me is her legitimate interest in her personal information.

[27] Therefore, I find that the one outstanding request is not frivolous or vexatious.

Issue 3: Is there an appropriate remedy?

[28] In light of my finding that the one outstanding request is not repetitious, systematic, frivolous or vexatious, there is no need for me to apply a remedy. In particular, given my findings, I can see no justification for authorizing Weyerhaeuser to disregard the respondent's future requests. This is because once Weyerhaeuser responds to the access request of November 15, 2021, it will have provided the respondent with copies of all of her personal information in its control up to that date. In the event of a future request, the respondent would only be entitled to any of her personal information that would have come under Weyerhaeuser's control since November 15, 2021.

[12] Respondent's response submission, pp. 1, 19, 20 para H11.

[29] Therefore, I find that Weyerhaeuser already has at its disposal all remedies necessary to deal with future questions, future requests for new personal information and future requests for personal information that Weyerhaeuser had already provided.

CONCLUSION

[30] For the reasons given above, I find that ss. 37(a) and 37(b) do not apply. As a result, I conclude it is not appropriate to grant relief under s. 37 in relation to the outstanding request or future requests. The application is dismissed.

February 28, 2022

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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