Order F24-29

MINISTRY OF ATTORNEY GENERAL

Elizabeth Vranjkovic
Adjudicator

April 12, 2024

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Summary: The Ministry of Attorney General (Ministry) applied for authorization to disregard one outstanding access request and certain future access requests under ss. 43(a) and 43(c)(ii) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that the Ministry was authorized to disregard part of the outstanding request in accordance with Order F23-61 and that the remaining portion of the outstanding request was vexatious. The adjudicator authorized the Ministry to disregard the outstanding request and certain future access requests.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 43(a) and 43(c)(ii).

INTRODUCTION

[1] The Ministry of Attorney General (Ministry) applied to the Office of the Information and Privacy Commissioner (OIPC) for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard one outstanding access request and certain future access requests from an access applicant (the respondent in this s. 43 application).[1]

[2] The Ministry says that the outstanding request is vexatious (s. 43(a)) and that responding to the outstanding request would unreasonably interfere with the Ministry's operations because the outstanding request is systematic (s. 43(c)(ii)).

Preliminary Matters

[3] Some preliminary matters arise in this case.

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[1] From this point forward, whenever I refer to a section number throughout this order, I am referring to a section of FIPPA.

Should I recuse myself from the application?

[4] In his response submission, the respondent raises concerns with one of my previous orders (Order F23-61) and an *in camera* decision that I made during this application.[2] The respondent says that my position is "highly irregular and not in keeping with natural justice or administrative propriety." The respondent also says that it would be "improper" for me to continue as an adjudicator.[3] I have considered the respondent's concerns about me to the extent that they relate to fairness and can be understood as an allegation of bias.

[5] Procedural fairness requires that an affected person has an opportunity to present their case fully and fairly, and have decisions affecting them made using a fair, impartial and open process appropriate to the statutory, institutional and social context of the decision.[4] The concept of bias is linked to the need for impartiality, which is the requirement that a decision-maker approach a case with an open mind.[5]

[6] There is a strong presumption of impartiality and it is displaced only where a real likelihood or probability of bias has been shown.[6] The burden of proof is high and it lies with the party alleging bias.[7] The test for a reasonable apprehension of bias is:

> …what would an informed person, viewing the matters realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.[8]

[7] The fact that a decision maker has heard another proceeding involving the same party does not, on its own, displace the presumption of impartiality.[9] Administrative decision makers can, and often do, decide the outcome of multiple proceedings involving the same parties.

[8] In my view, the fact that I decided Order F23-61 and made an *in camera* decision during this application would not lead a reasonable and informed person to conclude that I would not be impartial or decide this application fairly. I find that the respondent has not shown that there is any actual bias or a reasonable

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[2] Order F23-61 also dealt with a s. 43 application by the Ministry in relation to one of the respondent's access requests and certain future access requests.
[3] Respondent's response submission at pages 2-3.
[4] *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 28.
[5] *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 22.
[6] *Ibid* at para 25.
[7] *Ibid* at para 26.
[8] *Ibid* at para 20.
[9] *Pereira v Dexterra Group Inc*, 2023 BCCA 201 at para 14.

apprehension of bias in me deciding this application. Therefore, I decline to recuse myself from this matter.

Should the Commissioner appoint an individual external to the OIPC to decide this application?

[9] The applicant makes extensive submissions about what he perceives to be conflicts within the OIPC.[10] He raises concern about the OIPC hiring lawyers who work for the OIPC and represent other parties in proceedings before the OIPC. He also raises concerns about OIPC adjudicators subsequently accepting positions at the Ministry.

[10] The respondent says that the "conflictual" relationships between the OIPC and the Ministry would not pass the reasonable person test. The respondent also specifically asks the delegate to "make comment on this issue" and says the OIPC has "the onus to recuse itself broadly given such incestuous behaviour."[11] For example, he says:

> With such massive and overt conflict, … it truly begs the question whether the OIPCBC should be involved in adjudicating on the matters. It is argued herein that indeed any such position of the OIPCBC generically is improper. It would be even more so hazardous that the OIPCBC would continue in that manner by essentially fully endorsing the same and which would thereafter be required to have the entirety reviewed through a judicial review…[12]

[11] No provision in FIPPA allows this application to be decided by someone other than the Commissioner or his delegate. The legislature clearly intended that the Commissioner's power to decide if s. 43 applies would be exercised by the Commissioner personally or a person to whom he has delegated his powers.[13] I have been delegated the power to decide s. 43 applications and inquiries under s. 56(1).[14]

[12] The only provision in FIPPA that contemplates an external adjudicative process is where the OIPC is the public body that is the subject of a complaint, access request, or request for correction of personal information.[15] None of those circumstances exist here. In any event, I am not satisfied that any of the relationships described by the respondent amount to a conflict of interest. For

[10] Respondent's response submission at pages 7-9.
[11] Respondent's response submission at page 9.
[12] Respondent's response submission at page 8.
[13] Sections 56 and 49.
[14] The Commissioner publishes his delegations on the OIPC website: https://www.oipc.bc.ca/about/legislation.
[15] Section 60(1).

these reasons, I am not persuaded that I should not decide this application because I am a delegate of the Commissioner.

In camera decision

[13] The respondent takes issue with my decision to allow the Ministry to provide some information *in camera*. In brief, I understand him to be saying that the *in camera* information impacts the fairness of the application and that the *in camera* information should be openly disclosed.[16]

[14] The courts have expressly recognized the Commissioner's power under s. 56(4)(b) to accept information *in camera*.[17] The OIPC decides *in camera* requests in accordance with the principles of procedural fairness and aims to strike an appropriate balance between a public body's ability to fully argue its case and an opposing party's right to understand that case and respond to it. I took that approach in this case. Nothing the respondent says about the *in camera* decision persuades me that I should reconsider my *in camera* decision.

Issues and allegations outside the scope of this application

[15] Some of the respondent's submission strays away from the s. 43 issue in this application. For example, the respondent says that the Ministry does not respond to access requests in a timely manner and raises the s. 7 time limit for a response.[18] The respondent also asks the assigned adjudicator to specifically address issues other than s. 43.[19]

[16] The OIPC's notice of s. 43 application and its *Instructions for Written Inquiries*, both of which were provided to the respondent at the outset of the application, clearly explain that parties may not add new issues without the OIPC's prior consent. Past orders and decisions of the OIPC have consistently said the same thing.[20] The respondent did not apply to the OIPC for permission to add any new issues in the application and he did not explain why he is only raising them at this late stage of the application process.

[17] I am not satisfied that there are any exceptional circumstances that warrant adding new issues into the application at this late point. As a result, I

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[16] Respondent's response submission at pages 9-10, 18, 20-21 and 27.
[17] *Greater Vancouver Mental Health Service Society v British Columbia (Information and Privacy Commissioner)*, 1999 CanLII 6922 (BC SC) at paras 90-92.
[18] Respondent's response submission at pages 37 and 39-40.
[19] For example, at pages 7 and 41 of the respondent's response submission, he asks me to comment on the offence provisions of FIPPA and the *Canadian Charter of Rights and Freedoms.*
[20] For example, Order F12-07, 2012 BCIPC 10 at para 6; Order F10-27, 2010 BCIPC 55 at para 10.

have focused my discussions below only on the evidence and submissions relevant to deciding the s. 43 issue.[21]

Respondent's materials for this application

[18] The respondent requests that "all past submissions for information to the [Ministry] and other Ministries… any relevant Inquiry documentation, and any other corroborative information… be present before the Delegate herein for this Inquiry."[22] The respondent then refers to numerous OIPC orders and file numbers throughout his submissions. The respondent also says that he "place[s] before" the adjudicator all of the materials submitted in the judicial review of Order F23-23.[23]

[19] The OIPC's *Instructions for Written Inquiries* say that a party's submissions must include "a copy of any supporting documentary evidence."[24] The respondent did not provide a copy of the materials described above.

[20] I am not satisfied that it is appropriate for me to consider all of the materials referenced by the respondent. It would be impractical to do so given the number of inquiries referenced by the respondent throughout his submissions and the lack of precision in what specifically the respondent wants me to consider from those inquiries. Acceding to the respondent's request would require me to search through all of his past inquiry and judicial review materials and then determine which of the many arguments in this application are supported by those materials. I consider it inappropriate in my role as adjudicator to perform those tasks on the respondent's behalf. Therefore, I decline to consider any submissions or supporting evidence from past OIPC matters not actually placed before me in accordance with the *OIPC's Instructions for Written Inquiries*.

[21] I note that the Ministry has provided a copy of the respondent's submissions and supporting evidence from the application that led to Order F23-61 as part of its supporting evidence. To be clear, I will consider those materials in this application because they were provided as evidence in accordance with the OIPC's *Instructions for Written Inquiries*.

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[21] I cannot and am not required to discuss every point the respondent makes: *White v The Roxy Cabaret Ltd*, 2011 BCSC 374 at paras 40-41.
[22] Respondent's response submission at page 1.
[23] Respondent's response submission at page 24.
[24] *Instructions for Written Inquiries* at page 4. Available at https://www.oipc.bc.ca/guidance-documents/3970.

Affidavit evidence

[22] The respondent says that the Ministry's affidavit evidence is "defective" because of his concerns with the substantive content of the affidavits and because the affiants and commissioners of the affidavits are not identified.[25]

[23] The Ministry submits that its affidavits are not defective and were properly executed. It explains that the OIPC granted permission to submit the identities of the affiants and commissioners *in camera*.[26]

[24] I granted the Ministry permission to submit the identities of the affiants and commissioners *in camera*. I can see that the affidavits were properly executed. Additionally, the respondent has not provided adequate evidence that the affidavits are falsified or improper for any other reason. As a result, I accept the Ministry's affidavits as evidence in this application.

Res judicata

[25] The respondent says that the Ministry is attempting to re-litigate matters that were decided in Order F22-08, which is barred by the principles of estoppel and res judicata.[27] In Order F22-08, the adjudicator denied the Ministry's s. 43 application to disregard certain access requests made by the respondent.[28]

[26] As I noted in Order F23-61, in response to the same argument from the same respondent, *res judicata* is a doctrine with two branches, issue estoppel and cause of action estoppel. Issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding. Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding.[29]

[27] Order F22-08 dealt with a different access request than the access request before me. Thus, the issue before me was not decided by Order F22-08, nor could this matter have been the subject of the application that led to Order F22-08. As a result, I find neither issue estoppel or nor cause of action estoppel apply to this s. 43 application.

Identity of the Ministry's lawyers

[28] The Ministry does not identify any individual lawyer as the author of its submissions, instead it says that its submissions are from "Legal Services

[25] Respondent's response submission at pages 34-35.
[26] Public body's reply submission at para 21.
[27] Respondent's response submission at page 22.
[28] Order F22-08, 2022 BCIPC 8.
[29] *Erschbamer v Wallster*, 2013 BCCA 76 at para 12.

Branch" generally. The respondent takes issue with this approach and says the Ministry should not be hiding the names of its lawyers.[30]

[29] In the inquiry that resulted in Order F23-61, the lawyer who authored the Ministry's submissions was openly identified. In the respondent's submissions in that inquiry, he consistently berated that lawyer in a significant and personal way that served no clear purpose for arguing the issues in dispute.[31] In light of that conduct, I am not persuaded that I should require the Ministry to disclose the names of the lawyer(s) who prepared its inquiry submissions.

ISSUES

[30] I must decide whether to grant the Ministry relief under ss. 43(a) or 43(c)(ii). More specifically, I must decide:

1. Is the outstanding request vexatious (s. 43(a))?

2. Would responding to the outstanding request systematically interfere with the operations of the public body because the request is systematic (s. 43(c)(ii))?

3. If the answer is yes to any of the above, what relief, if any, is appropriate?

[31] The burden of proof is on the Ministry to show that s. 43(a) or s. 43(c)(ii) applies to the outstanding request.[32]

DISCUSSION

Background[33]

[32] The respondent is a physician who was enrolled with the Medical Services Plan (MSP). For a number of years, he has been engaged in a dispute with the Province regarding its audit of his MSP billings and a subsequent Medical Services Commission (Commission) hearing and decision (together the "MSP matter"). The parties disagree about many of the background facts, including whether or not the Commission actually held a hearing. [34]

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[30] Respondent's response submission at pages 32-34.
[31] Exhibit B to the affidavit of the Ministry's Legal Counsel. See also Order F23-61, 2023 BCIPC 71 at para 42.
[32] Auth (s. 43) 02-02, [2002] BCIPCD No 57; Order F17-18, 2017 BCIPC 19.
[33] This background is from the following OIPC decisions relating to the respondent: Order F21-04, 2021 BCIPC 4; Order F22-08, *supra* note 28; Order F23-23, 2023 BCIPC 27 and Order F23-61, *supra* note 31.
[34] Public body's initial submission at para 17; respondent's response submission at page 23.

[33] The respondent has made numerous requests under FIPPA for records relating to the MSP matter. Throughout their submissions, both parties repeatedly refer to certain OIPC orders involving the respondent, so I will provide a brief overview of those orders here.

[34] In 2022, the Ministry, the Ministry of Finance, and the Ministry of Health jointly applied to the OIPC requesting the Commissioner exercise his discretion under s. 56(1) to not conduct any more of the respondent's inquiries that relate to the MSP matter. In March 2023, the OIPC's Director of Adjudication (Director) found the respondent was abusing FIPPA's review and inquiry processes and cancelled his files that were at inquiry and at investigation and mediation (the abuse of process order).[35] The abuse of process order is the subject of a judicial review, but as of the issuance of this order, the BC Supreme Court has not made a decision in that matter.

[35] In 2022, the respondent made the following request for the period of October 16, 2021 to December 15, 2022 (the 2022 request):

> All material held by the Attorney General's department and Legal Services Branch which relates to me. This should include files, notes, correspondence, email, voice communication records, and any other similar that relate to me. This should necessarily be inclusive of notes and e-mails of without prejudice discussions in any regard relating to me. This material should also be inclusive of any materials from the BC Sheriff Service and any material shared with the Special Investigations Unit of the Ministry of Health.

[36] In the resulting order, Order F23-61, I found that the 2022 request was vexatious. I also found that the 2022 request was systematic and responding to it would unreasonably interfere with the Ministry's operations. I authorized the Ministry to disregard the 2022 request and future requests over and above one request at a time for a period of five years.[36]

[37] On October 24, 2023, the respondent made the following access request, which is the request at issue, for the period of October 16, 2021 to October 24, 2023 (the outstanding request):

> All material held by the Attorney General's department and Legal Services Branch which relates to me, [respondent's name]. This should include files, notes, correspondence, e-mail, voice communications records, and any other similar that relate to me. This should necessarily be inclusive of notes and e-mails of without prejudice discussions in any regard relating to me. This material should also be inclusive of any materials from the BC Sheriff

[35] Order F23-23, *supra* note 33.
[36] Order F23-61, *supra* note 31.

> Service and any material shared with the Special Investigations Unit of the Ministry of Health.

[38] The outstanding request clearly overlaps with the 2022 request. It is for the same information for the same period of time plus an additional period of time. The inclusion of the respondent's name in the outstanding request does not, in my view, modify the request in any way.

[39] As a result, I confirm that the Ministry is authorized by Order F23-61 to disregard the portion of the outstanding request that overlaps with the 2022 request. To be clear, the Ministry is authorized to disregard the portion of the outstanding request that is for records dating from October 16, 2021 to December 15, 2022. The only portion of the access request that remains at issue is the portion of the request that is for records dating from December 16, 2022 to October 24, 2023. I will refer to this as the remaining portion of the outstanding request.

Section 43

[40] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right to access information under FIPPA.

[41] Section 43 allows the Commissioner to authorize a public body to disregard a request, including because:

> (a) the request is frivolous or vexatious,
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> …
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> (c) responding to the request would unreasonably interfere with the operations of the public body because the request
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> …
>
> (ii) is repetitious or systematic.

[42] Public bodies do not have discretion to disregard access requests on their own; they must obtain permission from the Commissioner.[37]

[43] Given that relief under this section curtails or eliminates the rights to access information, s. 43 applications must be carefully considered.[38] According to former Commissioner Flaherty, granting s. 43 applications should be the

[37] Order F18-25, 2018 BCIPC 28 at para 14.
[38] Auth (s. 43) 99-01 at page 3. Available at https://www.oipc.bc.ca/decisions/170.

"exception" and not a mechanism for public bodies "to avoid their obligations under FIPPA."[39]

[44] However, s. 43 serves an important purpose. It exists to guard against the abuse of the right of access.[40] It recognizes that when an individual overburdens a public body with access requests, it interferes with the ability of others to legitimately exercise their rights under FIPPA.[41] In this way, s. 43 is "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."[42]

[45] The Ministry submits that both ss. 43(a) and 43(c)(ii) apply. I will first determine if s. 43(a) applies and then turn to s. 43(c)(ii).

Vexatious, s. 43(a)

[46] Section 43(a) allows the Commissioner to authorize a public body to disregard an access request because the request is frivolous or vexatious.

[47] FIPPA does not define vexatious, however a vexatious request is one that is an abuse of the rights conferred under FIPPA.[43] Vexatious requests include requests made in bad faith, such as for a malicious purpose or requests made for the purpose of harassing or obstructing the public body.[44] Past orders have found requests to be vexatious because:

- The purpose of the requests was to pressure the public body into changing a decision or taking an action;[45]
- The respondent was motivated by a desire to harass the public body;[46]
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions;[47] or
- The requests were intended to be punitive or to cause hardship to an employee of a public body.[48]

[39] Auth (s. 43) (19 December 1997) at page 1. Available at https://www.oipc.bc.ca/decisions/168.
[40] Auth (s. 43) 99-01, *supra* note 38 at page 7.
[41] *Ibid*.
[42] *Crocker v British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 at para 33 [*Crocker*].
[43] Auth (s. 43) 02-02, *supra* note 32 at para 27.
[44] *Ibid*.
[45] Decision F08-10, 2008 CanLII 57362 (BC IPC) at paras 38-39; Order F13-16, 2013 BCIPC 20 at para 20.
[46] Order F13-18, 2013 BCIPC 25 at para 36.
[47] Decision F10-11, 2010 BCIPC 51; Order F20-15, 2020 BCIPC 17 at para 22.
[48] Order F19-44, 2019 BCIPC 50 at para 33.

[48] Additionally, in Auth (s. 43) 02-02, former Commissioner Loukidelis said that the fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious.[49]

Parties' positions, s. 43(a)

[49] The Ministry says that the outstanding request is vexatious because it is part of the respondent's ongoing pattern of abusive behaviour, as described in the abuse of process order.[50]

[50] The Ministry also says that the respondent made the outstanding request for improper purposes rather than to access information.[51] It says that it is improbable that the respondent genuinely believed that the Ministry would respond to the outstanding request after it successfully applied for authorization to disregard the 2022 request.[52]

[51] The respondent says that all access requests should result in access to information.[53] He notes that it was the Ministry who choose not to respond to his access request and says he has a legislated ability to obtain his personal information.[54] The respondent says that the abuse of process order is the subject of judicial review and disputes that his previous access requests all related to the MSP matter.[55]

Analysis and findings, s. 43(a)

[52] For the reasons that follow, I find that the remaining portion of the outstanding request is vexatious because it is an abuse of the right of access given by FIPPA and was made for improper purposes.

[53] Although I have already found that the Ministry is authorized to disregard part of the outstanding request, in my view, it is relevant to consider the entirety of the outstanding request to determine whether the remaining portion of the outstanding request is vexatious.

[54] As previously noted, in Order F23-61, I authorized the Ministry to disregard the 2022 request. I do not understand how the respondent would expect that repeating that request, with an expanded time period, would result in access to information. In my view, the repetition of the 2022 request is an abuse

[49] Auth (s. 43) 02-02, *supra* note 32 at para 27.
[50] Public body's initial submission at paras 50-51.
[51] Public body's initial submission at para 75.
[52] Public body's initial submission at para 79.
[53] Respondent's response submission at page 28.
[54] Respondent's response submission at page 28.
[55] Respondent's response submission at pages 25 and 38.

of the respondent's FIPPA rights and indicates that the outstanding request is vexatious.

[55] I am also satisfied that the remaining portion of the outstanding request is part of the respondent's ongoing abuse of FIPPA regarding the MSP matter. In the abuse of process order, the Director found that as follows with respect to the respondent:

> In my view, all of the above behaviours demonstrate that the Physician does not have a genuine interest in the FIPPA issues he raises with the OIPC or in accessing the information in dispute. His behaviour is unreasonable and indicates that he is acting in bad faith and has ulterior and vindictive motives for using the FIPPA review and inquiry processes – motives that are unrelated to the purposes for which FIPPA is intended to be used.
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> In conclusion, I find that the Physician's use of FIPPA's review and inquiry processes regarding the MSP matter is an abuse of process.[56]

[56] As I said in Order F23-61, I agree with the Director that the respondent's use of FIPPA's review and inquiry processes regarding the MSP matter is an abuse of process. An access request such as the outstanding request is a necessary precondition to proceeding to FIPPA's review and inquiry processes. I can see from the respondent's references to the MSP matter throughout his response submission in this matter that the outstanding request also relates to the MSP matter.[57] As a result, I find that the remaining portion of the outstanding request is part of the respondent's abuse of FIPPA related to the MSP matter and is therefore vexatious.

[57] Additionally, two aspects of the respondent's response submission persuade me that the remaining portion of the outstanding request was made for improper purposes.

[58] First, the respondent has repeated the same arguments in his response submission that previous orders have consistently said are irrelevant or unsubstantiated.[58] For example, the respondent objects to the Ministry's *in camera* evidence, raises the offence provisions of FIPPA and says that several individuals are in conflicts of interest. The fact that the respondent has raised the same arguments again here persuades me that he is using FIPPA for improper

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[56] Order F23-23, *supra* note 33 at paras 79-80. There is a judicial review of this order, however as of the date of this order, the BC Supreme Court has not made a decision in that matter.
[57] Respondent's response submission at pages 4, 21 and 23-24.
[58] For example, Order F23-61, *supra* note 31 at para 41; Order F21-04, *supra* note 33; Order F21-50, 2021 BCIPC 58; Order F22-08, *supra* note 28; Order F22-26, 2022 BCIPC 28; Order F22-38, 2022 BCIPC 43; and Order F22-43, 2022 BCIPC 48.

purposes, and not making these arguments because he actually believes they have any chance of success.

[59] Second, the respondent's submissions persuade me that he is acting vexatiously by using his submissions to berate individuals involved in the MSP matter and his OIPC files related to the MSP matter. For example, the respondent says:

- "the position of [myself] is highly irregular and not in keeping with natural justice or administrative propriety. It would be improper for her to continue as an Adjudicator given the above circumstances…"[59]
- "After receiving Order F21-04… it was evident that the Adjudicator had both falsified in the Order and made libellous comments…"[60]
- "The now "SEVERED" named lawyer in this Inquiry who provided the public body MAG initial submission is nominated for the British Columbia MAG Top Information Access Prevention Actors Award."[61]
- …I leave it to the inherent jurisdiction of the Delegate to make the appropriate referral of the Mystery lawyer providing the initial submission to local help resources in Victoria, British Columbia.[62]

[60] In my view, this language indicates that the outstanding request was made, at least in part, for the purpose of proceeding to inquiry and harassing individuals.

[61] In summary, I find that the remaining portion of the outstanding request is vexatious because the outstanding request was made for improper purposes and is an abuse of the respondent's FIPPA rights.

[62] Given that s. 43(a) applies, it is not necessary for me to consider whether s. 43(c)(ii) applies. However, for the sake of completeness, and because relief under s. 43 should be proportional to the harm and tailored to the circumstances, I will continue.[63]

Unreasonable interference with public body's operations because the request is systematic, s. 43(c)(ii)

[63] Under s. 43(c)(ii), the Commissioner may authorize a public body to disregard a request that would unreasonably interfere with the operations of the public body because the request is systematic.

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[59] Respondent's response submission at page 3.
[60] Respondent's response submission at page 10.
[61] Respondent's response submission at page 21.
[62] Respondent's response submission at page 22.
[63] *Crocker*, *supra* note 42 at para 54; Order F20-15, *supra* note 47 at para 34.

[64] Section 43(c)(ii) has two parts and the Ministry must prove both. First, the request must be systematic. Second, responding to the request must unreasonably interfere with the public body's operations.[64]

Is the request systematic?

[65] Systematic requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles.[65] Some characteristics of systematic requests may be:

- 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;
- Revising 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; and
- 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.[66]

[66] It is necessary to consider past requests when deciding whether an access request is systematic.[67]

[67] The Ministry says that the outstanding request is clearly systematic. The Ministry notes that the OIPC has already found that the respondent's history of access requests to the Ministry are part of an overall system relating to his MSP dispute.[68]

[68] In Order F23-61, I found that that the 2022 request was a continuation of the respondent's system of requesting all records about himself from the Ministry for sequential time periods.[69] I am satisfied that the remaining portion of the outstanding request is a continuation of that system because it is part of the respondent's eighth access request to the Ministry for all records about him and is for the time period immediately following the 2022 request.

[69] I turn now to whether responding the remaining portion of the outstanding request would unreasonably interfere with the Ministry's operations.

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[64] Order F22-08, *supra* note 28 at para 35.
[65] Order F13-18, *supra* note 46 at para 23.
[66] Order F18-37, 2018 BCIPC 40 at para 26.
[67] Auth (s. 43) 02-01 at para 24. Available at https://www.oipc.bc.ca/decisions/171.
[68] Public body's initial submissions at paras 86-87.
[69] Order F23-61, *supra* note 31 at paras 55-59.

Unreasonable interference

[70] Whether responding to an access request will unreasonably interfere with a public body's operations rests on an objective assessment of the facts; it will vary depending on the size and nature of the operation.[70] When assessing this issue, past orders have considered the impact of responding to the request on the rights of other access applicants.[71]

[71] The Ministry submits that since the outstanding request seeks the same records as the 2022 request plus almost a year's worth more, my findings about unreasonable interference from Order F23-61 apply here as well.[72]

[72] However, I am not satisfied that responding to the remaining portion of the outstanding request would unreasonably interfere with the Ministry's operations. The Ministry does not provide evidence specific to the remaining portion of the outstanding request, instead it relies upon the evidence it provided about the 2022 request in the application that led to Order F23-61. In the absence of evidence specific to the remaining portion of the outstanding request, I am not satisfied that responding to the remaining portion of the outstanding request would unreasonably interfere with the Ministry's operations.

What is the appropriate relief?

[73] Section 43 can be used to authorize a public body to disregard present and future FIPPA requests.[73] Any remedy under s. 43 must be proportional to the harm inflicted.[74] Previous orders have tailored remedies to the circumstances of each case and have considered factors such as:

- A respondent's right to her own personal information;
- Whether there are live issues between the public body and the respondent;
- Whether there are likely to be any new responsive records;
- The respondent's stated intentions;
- The nature of past requests; and
- Other avenues of obtaining information in the past and future available to the respondent.[75]

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[70] *Crocker*, *supra* note 42 at para 37.
[71] Order F17-18, 2018 BCIPC 19 at para 40; Order F13-18, *supra* note 46 at para 31.
[72] Public body's initial submission at para 90.
[73] *Crocker*, *supra* note 42 at paras 40-43; *Mazhero v British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 at para 15 [*Mazhero*].
[74] *Crocker*, *supra* note 42 at para 54.
[75] Order F20-15, *supra* note 47 at para 34.

As previously noted, the Ministry is authorized to disregard part of the outstanding request in accordance with Order F23-61. I authorize the Ministry to disregard the remaining portion of the outstanding request because it is vexatious.

[74] In the circumstances, I also find it is appropriate to grant some prospective relief. In Order F23-61, I authorized the Ministry to disregard any access request made by or on behalf of the respondent over and above one open access request at a time for a period of five years following the date of that order.[76] In the analysis below, I will consider whether to augment that existing future relief, and if so, by how much.

Parties' submissions, future relief

[75] The Ministry says that the outstanding request is evidence that the respondent is unwilling to stop his abuse of FIPPA and seeks exceptional relief.[77] The Ministry also says that, by repeating the 2022 request, the respondent has demonstrated that he will abuse his ability to have one open access request at a time.[78]

[76] The Ministry says that it would not be appropriate for it to have to dedicate any more of its resources to try to avoid the adverse impacts of the respondent's vexatious FIPPA behaviour, including by having to make another s. 43 application if the respondent makes future vexatious access requests.[79]

[77] Regarding future relief, the Ministry submits that the Commissioner has the power and duty to prevent the respondent's relentless abuse of FIPPA by augmenting the prospective relief granted in Order F23-61.[80] Specifically, the Ministry seeks authorization to disregard any future access requests from the respondent for at least two years and indefinite authorization to disregard:

- All access requests made by, or on behalf of, the respondent in excess of one open access request at a time;
- Any access request that seeks "all material" relating to the respondent; and
- Any access request seeking records relating to the MSP dispute or the respondent's FIPPA matters, including the individuals involved in those matters.[81]

[76] Order F23-61, *supra* note 31 at para 83.
[77] Public body's initial submission at paras 103, 106.
[78] Public body's initial submission at para 124.
[79] Public body's initial submission at para 111.
[80] Public body's initial submission at para 112.
[81] Public body's initial submission at para 136.

[78] The respondent says s. 43 is remedial, not punitive. The respondent says that he has only made one request, for material not yet provided to him, and the Ministry said it would have minimal responsive records.[82] The respondent also says that the relief sought is a ploy to delay his access to requested information.[83]

Analysis and findings, future relief

[79] In Order F23-61, I declined to authorize the Ministry to indefinitely disregard any access request that seeks "all material" relating to the respondent. In coming to that decision, I considered *Mazhero*, where Tysoe, J. held that "only in very exceptional circumstances would it be appropriate for the Commissioner to authorize a public body to disregard all future requests for personal information…"[84]

[80] At the time of Order F23-61, I was not persuaded that such very exceptional circumstances existed to justify interfering with the respondent's right to access his personal information. However, the fact that the respondent then repeated the 2022 request as part of the outstanding request despite the authorization to disregard that request in Order F23-61 persuades me that very exceptional circumstances exist here. The existing restrictions placed on the respondent have not had the remedial effect intended and there is no indication that the respondent's conduct will meaningfully change in the future. These circumstances warrant further remedial restrictions.

[81] As a result, I am satisfied that it is appropriate to authorize the Ministry to disregard any access request, or part thereof, made by, or on behalf of, the respondent for access to the respondent's personal information for a period of two years from the date of this order.

[82] It is important to recognize that other members of the public have an equal right to a share of the public resources allocated to respond to access requests. When an individual overburdens the FIPPA system, it has a negative impact on others who want to legitimately exercise their FIPPA rights. In my view, the respondent's behaviour reveals a failure on his part to recognize that the right of access to information under FIPPA comes with the responsibility to not abuse that right. Should the applicant persist in his abusive behaviour, and if the Ministry asks again, I may consider authorizing the Ministry to disregard any future access requests from the respondent for a period of time.

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[82] Respondent's response submission at page 32.
[83] Respondent's response submission at page 32.
[84] *Mazhero*, *supra* note 73 at para 28.

CONCLUSION

[83] For the reasons given above, I make the following authorization under s. 43 of FIPPA:

1. The Ministry is authorized to disregard the outstanding request.

2. For a period of two years from the date of this authorization, the Ministry is authorized to disregard any request, or part thereof, made by, or on behalf of, the respondent for access to the respondent's personal information.

April 12, 2024

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F23-94923