Order P25-02

VICTORY SQUARE LAW OFFICE
INTERNATIONAL LONGSHORE WORKERS UNION LOCAL 500

Carol Pakkala
Adjudicator

February 24, 2025

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Summary: Victory Square Law Office (organization) applied for relief for itself and its union client (Union) (collectively, the organizations) under s. 37(b) of the *Personal Information Protection Act* to disregard outstanding and future access requests made by the respondent. The adjudicator found the outstanding access requests were frivolous and authorized the organizations to disregard them. The adjudicator also found that future access requests from the respondent were likely to be frivolous because there is no live issue between the parties and granted further relief on that basis.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c. 63, ss. 23 and 37(b).

INTRODUCTION

[1] This inquiry considers a joint application by Victory Square Law Office (VSLO) for authorization for it, and its client, the International Longshore Workers Union Local 500 (Union) (collectively, the organizations), to disregard current and future requests by a former Union member (respondent) for access to, and correction of, the respondent's personal information. The respondent has made many requests under the *Personal Information Protection Act*[1] (PIPA) to the organizations over the past five years.

[2] The organizations made a joint submission seeking relief under PIPA. The respondent also made submissions regarding their position in the inquiry.

[1] SBC 2003, c. 63. Through the remainder of this order references to sections of an enactment are references to PIPA unless otherwise stated.

ISSUES

[3] The issues I must decide in this application are as follows:

1. Are the respondent's outstanding requests frivolous or vexatious for the purposes of s. 37(b)?[2]

2. What relief, if any, is appropriate?

[4] Previous OIPC orders have established that the applicant organization has the burden of proof in a s. 37 application.[3]

DISCUSSION

Background

[5] The respondent filed a claim of harassment, bullying, and violence in the workplace to their[4] Union. This claim was investigated by the Union and resolved in October of 2018 (workplace investigation).

[6] On March 30, 2020, the respondent submitted an access request, under s. 23 (access to personal information), to the Union for information related to the workplace investigation. The Union did not initially respond to that request. The respondent filed a complaint with the OIPC about this lack of response. VSLO eventually responded on behalf of the Union and itself to the respondent's March 30, 2020 request and the OIPC discontinued its investigation.[5]

[7] VSLO responded to the March 30, 2020 request by providing 400 pages of records containing the respondent's personal information, with the exception of information protected by solicitor-client privilege. The respondent made subsequent requests for information related to the investigation, including the two outstanding requests the organizations are asking for permission to disregard.

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[2] PIPA s. 37(b) allows an organization to request authorization from the Commissioner to disregard access and correction requests on the basis that such requests are either frivolous or vexatious. However, the organization confirmed, by way of an email to the OIPC dated October 29, 2024, that its position in this inquiry is that the respondent's requests are frivolous, but not vexatious.

[3] Order P24-04, 2024 BCIPC 18 at para 6; Order P22-01, 2022 BCIPC 12 (CanLII) at para 3; and Order P10-01, 2010 BCIPC 21 (CanLII) at para 9.

[4] I intentionally use gender neutral pronouns to protect the identity of the respondent.

[5] The OIPC investigator's findings letter dated April 29, 2024 in file P23-93348 discontinued the investigation. In file P24-96888, the OIPC denied the respondent's request for a reconsideration of its decision to discontinue that investigation.

[8] The respondent has filed numerous complaints with the OIPC related to various requests for access to their personal information arising from their former employment.[6]

Details of the Requests

[9] The organizations seek authorization[7] to disregard the respondent's requests dated October 8, 2024[8] and October 11, 2024 (Requests) and any future requests for the same information. The Requests are handwritten and are composed in a manner that makes it difficult for me to discern what the respondent is actually requesting.

[10] In my view, the Requests appear to relate to personal information which the OIPC has previously found was provided to the respondent in response to their March 30, 2020 request under s. 23. In the Requests, the respondent also seems to be asking for full disclosure from the organizations of all of their requests to the OIPC along with a number of process related questions.

[11] The organizations say that after they made their s. 37 application, the respondent made a further request on November 4, 2024.[9] I reviewed this request which asks for "complete and full disclosures of ALL or any of my requests for records are "frivolous" and please cc to OIPC".[10] I view this letter as the respondent's opinion of the organizations' position about the requests being frivolous. I find this letter is not an access request under PIPA.

Request for authorization to disregard – s. 37 (b)

[12] Section 37 of PIPA provides, in part:

> If asked by an organization, the commissioner may authorize the organization to disregard [access or correction] requests … that
>
> …
>
> (b) are frivolous or vexatious**.**

[13] Relief under s. 37 applies only to requests about personal information made under ss. 23 (access) and 24 (correction).

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[6] OIPC Files: P22-90611; P22-92193; P23-92312; P23-94906; P24-96030; P24-98597; P23-93243; P23-93348; P24-96888; P24-96962; and P24-98658. Other files were opened against the Union (85803 and 85804) and involved questions about jurisdiction between PIPA and federal legislation.

[7] The organization applied to the OIPC for this relief on October 25, 2024.

[8] The Organizations' submissions talk about an October 9 request, but I view this as a typographical error as I can see the handwritten request is dated October 8, 2024.

[9] Organizations' submission at para 38.

[10] Respondent's November 4, 2024 letter.

[14] It is important to note that PIPA does not require organizations to answer questions about matters unrelated to the organization's duties under PIPA regarding the individual's personal information and their access or correction request. Individuals have no recourse when an organization refuses to answer questions.[11] I point this out because the Requests include questions that do not relate to the organizations' processing of the Requests or management of the respondent's personal information. My analysis below will only involve the application to disregard the portions of the Requests that relate to access to information.

[15] The wording of s. 37 of PIPA is very similar to the wording of s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).[12] Both sections allow an organization to ask the OIPC to disregard an access request that is frivolous or vexatious. Previous orders and decisions have found the interpretation of s. 43 of FIPPA to be helpful in interpreting s. 37.[13] I agree and adopt the same approach.

[16] The OIPC has broad discretion to consider an application for authorization to disregard an access request. However, the OIPC has repeatedly made clear that this authorization is an "extraordinary remedy"[14] that should only be granted after careful consideration and only in exceptional cases.[15] Owing to the extraordinary nature of the relief, the OIPC judiciously exercises its discretion to authorize an entity to disregard requests.

[17] The word "frivolous", while not defined in PIPA, generally means that a claim lacks, or is insufficient, in merit.[16] Previous OIPC Orders and Decisions have identified the criteria for determining whether access or correction requests are frivolous or vexatious. For instance, past orders have provided a list of factors that I find are helpful in making this assessment and adopt here:

- A frivolous and vexatious request is one that is an abuse of the rights granted by the Act.
- A "frivolous" request is a request 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 have been made for an ulterior purpose –

[11] Order P22-01, 2022 BCIPC 12 at para 9.
[12] RSBC 1996 c 165.
[13] Order P24-12, 2024 BCIPC 109 (CanLII) at para 27; Order P24-04, 2024 BCIPC 18 (CanLII) at para 22; Order P10-01, 2010 BCIPC 21 (CanLII) at para 18; Order P14-01, 2014 BCIPC 5 (CanLII) at para at para 15; Decision P05-01, 2005 CanLII 18157 (BC IPC) at paras 12-14.
[14] Order F23-37, 2023 BCIPC 44 (CanLII) at para 13.
[15] Order P24-12, 2024 BCIPC 109 (CanLII) at para 27 relying upon Order F22-08, 2022 BCIPC 8 (CanLII) para 29; and Order F23-37, 2023 BCIPC 44 (CanLII) at para 13.
[16] Former Commissioner Loukidelis interpreted the meaning of frivolous in Order F18-37, 2018 BCIPC 40 at para 53 citing Auth. (s. 43) 02-02 (November 8, 2002) available at: https://www.oipc.bc.ca/decisions/172.

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 harassment or obstruction.
- 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.[17]

Parties' submissions, s. 37(b)

[18] The organizations outline the history leading to the Requests which I summarize as follows:

- March 30, 2020:[18] The respondent requested information related to the Union's investigation of their 2018 harassment claim against their employer, including date and times the investigation was dismissed or withdrawn, and an itemized account of the respondent's wages and compensation that was dismissed or withdrawn.
- March 9, 2023:[19] The respondent repeated the March 30, 2020, request and added requests for correspondence between the respondent and the organizations and between the organizations.
- February 2, 2024: The respondent repeated the March 30, 2020, request and added requests that were not for personal information, so the organization imposed a processing fee which the respondent did not pay.
- March 8, 2024:[20] The respondent repeated the February 2, 2024 request. This request led to the OIPC issuing a findings letter concluding that the organization has provided as accurate and complete a response as is reasonably possible to the original March 30, 2020, request.

[19] The organizations say after receiving its application to disregard the Requests, the respondent made a further request on November 4, 2024. This communication is the one I described above that, in my view, is not an access request under PIPA, so I consider it no further.

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[17] Order P22-01, 2022 BCIPC 12 at para 20 citing Decision P05-01, 2005 BCIPC 23 at para 12. See also Order P13-03, 2013 BCIPC No. 35 at para 29.
[18] The respondent filed a deemed refusal complaint which was resolved in P22-90611.
[19] The respondent filed a deemed refusal complaint which was resolved in P23-93243.
[20] The respondent filed an adequate search complaint which was resolved in the OIPC findings letter dated April 29, 2024 OIPC File No. P23-93348. See footnote 5 above.

[20] The organizations say the Requests are frivolous. Specifically, they say the respondent is seeking information that they have already provided in response to prior access requests. The organizations further say the prior disclosure contains all the respondent's personal information controlled by the Union, except for information protected by solicitor-client privilege.[21]

[21] The organizations say the Requests are not in accord with the legislative purposes of PIPA, which are to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes the right of the individual to know what personal information of theirs an organization has and to ensure that it is accurate and complete.[22]

[22] Finally, the organizations say the Requests are "heading toward bad faith" because the respondent repeatedly accuses the Union of covering up their access requests.[23] They say the Union has: made genuine efforts to respond to the respondent's prior requests; provided the respondent with more information than they were entitled to under PIPA; and has sent additional itemized responses to information requests even when those requests were for information that has already been provided to the respondent.

[23] The respondent says they were not aware of the OIPC investigation that resulted in the April 29, 2024 findings letter.[24] The respondent's submission contains numerous repeated requests for full and complete disclosures of all of their previous requests and the responses to those requests. Specifically, they request full and complete disclosure of the records already sent in response to their March 30, 2020 request and copies of the pages allegedly couriered by VSLO.[25]

[24] The respondent says they believe the organizations are engaging in a "cover up", including by saying the Requests are frivolous. The respondent does not say, and I cannot see, what is meant by a "cover up". The respondent says they believe they have the right to receive information in response to their requests.[26]

[25] In reply to the respondent's submission, the organizations say they have disclosed the respondent's entire personnel file.[27] The organizations say this manner of fulsome disclosure was appropriate to ensure the respondent received all information responsive to their confusing, lengthy, and numerous requests.

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[21] Organizations' submission at para 42.
[22] Organizations' submission at para 47.
[23] Organizations' submission at paras 47 and 53.
[24] The OIPC's investigator's findings letter dated April 29, 2024, OIPC File No. P23-93348, indicates they spoke to the respondent in the course of that investigation.
[25] Respondent's submission at para 5.
[26] Respondent's submission at para 18.
[27] Except that which was not subject to solicitor-client privilege.

They reiterate that the respondent continually makes repeated requests for disclosure of information that has already been disclosed to them.[28]

Analysis, s. 37(b)

[26] For the reasons that follow, I am satisfied the Requests are frivolous within the meaning of s. 37(b) and I authorize the organizations to disregard them.

[27] As noted above, a "frivolous" request is one that is made primarily for a purpose other than gaining access to information. I find the respondent had already received the requested information prior to making the Requests and for that reason the Requests were made for a purpose other than gaining access to information. Further, the respondent's concerns about the adequacy of the response to their March 30, 2020 request were thoroughly investigated in the OIPC's complaint procedures.

[28] In my view, the Requests continue a well-established pattern in which the respondent will make an access request, receive a response, and then make multiple follow-up requests in order to take issue with the response they have received and otherwise continue the underlying dispute. On this basis, I find that the Requests are concerned with criticizing the organizations rather than with gaining access to information. The criticisms include making accusations of impropriety (cover up), expressing displeasure, and continuing the long-resolved employment dispute which led to the initial access request.

[29] Taking all of this together, I find the Requests are frivolous because they were not made for a legitimate purpose under PIPA.

Future relief

[30] I have found that the respondent has abused their access rights under PIPA by making frivolous requests. Given their established pattern of continuing to request information which has already been provided to them, I find that future access requests to the organizations from the respondent are likely to also be frivolous. In this regard, I understand the organizations to be requesting that I authorize them to disregard any future access requests to the organizations for records which have been provided to him in response to his past access requests. As I explain below, such an order is not generally necessary. Here, however, I do find that some future relief is warranted.

[28] Organizations' reply submission at para 17.

[31] In *Crocker v. The Information and Privacy Commissioner of B.C.,* the Supreme Court of British Columbia found that the language of s. 43 imports a remedial power to make prospective (or future-oriented) orders.[29]

[32] Previous orders have taken the following factors into account when tailoring remedies under s. 43 of FIPPA and I adopt these same factors in crafting a remedy under PIPA. Those factors include:

- A respondent's right to her own personal information;
- Whether there are live issues between the public body and the respondent;
- Whether there will likely be any new responsive records in the future;
- The respondent's stated intentions;
- The nature of past requests; and
- Other available avenues for obtaining information in the past and the future.[30]

[33] Future relief, if granted, must also not be wholly disproportionate to the harm inflicted on the public body.[31]

[34] I find the Respondent has demonstrated a well-established practice of making multiple access requests for the same information that they have already received, with little regard for the impact on the organizations. I have no evidence that there are any live issues between the respondent and those organizations. For example, I have no evidence to suggest the respondent continues to be a member of the Union thereby requiring any ongoing interaction.

[35] The Requests repeat earlier requests related to an employment matter which was concluded by the workplace investigation years ago. I cannot see what other information he might need to request from the organizations as there is no evidence of any need for the parties to interact or any live issue between them. In my view, if the respondent were to make a future request to the organizations related to the employment matter, there will be no new responsive records.

[36] I find the respondent's stated intention is to reveal an alleged cover up. I can see no evidence of a cover up. To the contrary, I am satisfied that the organizations have provided the respondent with disclosure responsive to the respondent's confusing, lengthy, and numerous requests.

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[29] *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para 49 [*Crocker*].
[30] Order F24-65, 2024 BCIPC 75 (CanLII) at para 37 citing Order F20-39, 2020 BCIPC 46 (CanLII) at para 43, citing Decision F06-03, 2006 CanLII 13535 (BC IPC) at para 69.
[31] *Crocker* supra note 27 at para 45.

[37] I note that previous orders deciding whether to grant future relief under FIPPA have established that public bodies are not normally required to disclose copies of records they have already provided to an access applicant, either through a previous request or by another avenue of access. A public body need only respond by identifying when they previously responded to the request and provided the records to the access applicant.[32] In my view, the same principle is applicable in context of PIPA.

[38] I can see from the respondent's extensive handwritten notes that their access requests are difficult to decipher. These requests clearly required significant manual review and communications with the respondent to clarify the scope of the requests before the organizations could inform the respondent that the records have already been provided. Given that the respondent has made repeated requests for information they have already received, I find the evidence establishes the respondent is likely to continue making requests for the same information. I consider it appropriate to specifically authorize the organizations to disregard future requests from the respondent in this case.

[39] It is readily apparent to me that the respondent does not trust the organizations. I am mindful that even the most sweeping order I could make would not stop the respondent from sending lengthy correspondence to them. However, I note in passing that the organizations do not require authorization from the OIPC under s. 37 to disregard a respondent's questions and opinions about the organizations' behaviour or decisions. Further, nothing in this order precludes the organizations in the future from applying under s. 37 to disregard new requests from the respondent which may fall outside the boundaries of the remedy provided in this order.

[40] In *Crocker*, the BC Supreme Court found that one of the remedies the Commissioner imposed – allowing the public body to disregard all requests from a respondent for a year – was "wholly disproportionate and clearly wrong", and would have set it aside.[33] However, the Court went on to find that such a remedy could be warranted in cases where, for example, the requests were "made habitually, persistently and in bad faith, or [were] clearly frivolous and vexatious".[34] In my view, the respondent's persistent pattern of making frivolous requests demonstrates that this is such a case. Further, based on the respondent's past behaviour, I am amply satisfied that he will continue to make frivolous requests to the organizations in the future.

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[32] See, e.g., Decision F11-04, 2011 BCIPC 40 (CanLII) at para 15; Decision F10-09, 2010 BCIPC 47 (CanLII) at para 26; and Order F20-34, 2020 BCIPC 40 (CanLII) at para 49.
[33] The one-year restriction had already expired when *Crocker* was decided: *Crocker*, *supra* note 27 at paras 45 and 50.
[34] *Ibid* at para 46.

[41] In my view, granting the organizations three years of relief from having to respond to any request from the respondent will best serve the purposes of s. 37.

Conclusion, s. 37(b)

[42] To summarize, I have found that the Requests are frivolous under s. 37(b), and so I have authorized the organizations to disregard them. I have found, based on the fact that there is a well-established pattern in the respondent's previous requests, that he is likely to make further frivolous requests in the future. I have therefore granted the organizations some relief from these anticipated future requests by allowing them to disregard access requests from the respondent for a period of three years from the date of this order.

ORDER

[43] For the reasons given above, make the following order under s. 52:

1. The organizations are authorized to disregard the respondent's October 8, 2024 and October 11, 2024 access requests.

2. The organizations are authorized, for a period of three years from the date of this order, to disregard all access requests from the respondent, or on the respondent's behalf.

February 24, 2025

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No.: P24-98597 P24-98658