Summary: The Provincial Health Services Authority (PHSA) requested authorization to disregard a request from the respondent under s. 43(c)(i) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that PHSA had established that the request was excessively broad, under s. 43(c)(i) and that responding to the request would unreasonably interfere with its operations. The adjudicator provided PHSA with authorization to disregard the request.

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

INTRODUCTION

[1]   This inquiry decides an application by the Provincial Health Services Authority (PHSA) under s. 43(a) and (c)(i) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) for authorization to disregard an access request made by an individual (the respondent). PHSA submits that the respondent made one request under FIPPA for all emails sent or received by any of its employees containing any information about a series of Covid-19 vaccine batches over the course of a four-year period. The request is dated November 21, 2024. PHSA asks the Office of the Information and Privacy Commissioner (OIPC) for authorization under s. 43(a) and (c)(i) to disregard that request.

ISSUE

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

1. Whether the respondent's access request is frivolous or vexatious, for the purposes of s. 43(a);

2. Whether the respondent's access request is excessively broad and responding to it would unreasonably interfere with the operations of PHSA in accordance with s. 43(c)(i); and

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

[3]   FIPPA does not assign a burden of proof in cases where public bodies request relief under s. 43. Past orders and decisions on s. 43 have placed the burden of proof on the public body.[1]

DISCUSSION

[4]   **Background –** PHSA is the health authority responsible for specialized health care and related services in British Columbia, including the BC Centre for Disease Control (BCCDC). These services include public health surveillance, detection, treatment, prevention and consultation. The BCCDC supports the Province's response to the COVID-19 pandemic, including in relation to research and data analysis and public health surveillance related to the virus.

[5]   The respondent is a member of the public who is critical of the safety of COVID-19 vaccines. He is particularly concerned about the case of a physician whom the College of Physicians and Surgeons of British Columbia (College) had sought to discipline. The College accused this physician of engaging in unprofessional conduct and contravening various professional standards by publishing statements about vaccinations, treatment and public measures relating to COVID-19 that the College says were misleading, incorrect or inflammatory. The physician had questioned the efficacy of COVID-19 vaccines, as well as their development and approval process. He also had advocated the efficacy and safety of an antiparasitic drug as a treatment for COVID-19, which he encouraged individuals to obtain at animal feed stores.

[6]   The respondent has made FIPPA requests to a series of public bodies for information relating to the physician's case, including statistics and other information about adverse effects following immunization concerning certain batches of vaccines that the physician identified. The respondent made 11 such requests to PHSA prior to the request at issue here.

Preliminary Issue

[7]   In his response submission, the respondent has offered to narrow his access request to reduce the volume of responsive records, subject to PHSA complying with certain conditions.[2] Nothing in the parties' inquiry submissions and evidence indicates that PHSA took him up on his offer by responding to his

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[1] See for example, Order F23-38, 2023 BCIPC 46 (CanLII), para. 3.
[2] Respondent's response submission, paras. 59-75.

access request and withdrawing this s. 43 application. Therefore, my task remains unchanged, and I will decide the three issues set out above. My role is not to facilitate a negotiated settlement of the parties' dispute or judge whether a proposal to resolve it is reasonable.

SECTION 43

[8]   Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right of access to information under FIPPA by authorizing a public body to disregard requests. The relevant provision reads as follows:

> **43** If the head of a public body asks, the commissioner may authorize the public body to disregard a request under sections 5 or 29, including because
>
>> (a)   The request is frivolous or vexatious
>>
>> …
>>
>> (c)   responding to the request would unreasonably interfere with the operations of the public body because the request
>>> (i) is excessively broad,

[9]   As such relief restricts an individual's right to access information, the Commissioner grants relief under s. 43 applications only after careful consideration and in exceptional cases.[3]

[10]   For reasons that will become clear below, I will first address the application of s. 43 (c)(i).

Section 43(c)(i) – excessively broad

[11]   Section 43(c)(i) allows the Commissioner to authorize a public body to disregard an access request, if responding to the request would unreasonably interfere with the operations of the public body because the request is excessively broad.

[12]   As confirmed in Order F24-92 and Order F23-98, s. 43(c)(i) has two parts and PHSA must prove both. First, it must demonstrate that the request is excessively broad. Second, it must establish that responding to the request would unreasonably interfere with its operations.[4]

Part 1: Is the request excessively broad?

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[3] Order F22-08, 2022 BCIPC 8 (CanLII), para. 29.
[4] Order F24-92, 2024 BCIPC 105 (CanLII), para. 16; Order F23-98, 2023 BCIPC 114 (CanLII), para. 6.

[13]   The first part of the test is about whether the request itself is excessively broad. Previous orders have underlined the key question is whether the request is likely to result in the production of an excessive volume of responsive records. In determining what kind of volume is "excessive," they have considered the purpose of s. 43, which is to curb abuse of the right of access and give all access applicants a fair opportunity to have their request processed. As a result, they have held that a request is excessively broad when it generates a volume of responsive records that can be fairly characterized as "overwhelming" or "inordinate".[5]

[14]   PHSA submits that the respondent's request is excessively broad as it touches on many areas that PHSA is involved in relating to vaccines and BC's COVID-19 response: overseeing vaccine procurement, purchasing distribution, and public health coordination, managing supply forecasting, allocations, logistics and public health directives and the "Get Vaccinated" platform.[6] It describes the request as follows:

> the Applicant's Request, as currently framed, necessitates an extensive search across multiple departments and systems. The anticipated volume of records generated from such a search is expansive. PHSA had significant responsibilities in relation to the COVID-19 vaccination program in British Columbia, and it is expected that records referencing vaccine lot numbers exist in a broad range of program areas, contexts and for differing purposes.[7]

[16]   It notes that the request covers the entire health authority. This involves searching the email accounts of 25,000 employees for any emails that contain reference to the vaccine lot numbers. PHSA asserts that this will capture a broad range of records relating to "a wide variety of administrative, clinical, public health, clerical, purchasing, procurement and other routine communications".[8]

[17]   PHSA submits affidavit evidence from its Director of Cyber Security Intelligence, Analytics and Monitoring (director) The director says that PHSA's IT department conducted a preliminary search to estimate the number of responsive records. It centred this test search on the BCCDC, which it identified as a business area likely to have records. This test involved 246 employees and identified 1,078 items. PHSA extrapolates from this data that a search of the emails of all employees of the authority would take about 25 hours and could be reasonably expected to result in 100,000 responsive records totalling 425 GB of data. It notes that the time required to search for the records is only a fraction of the time required to process the records in response to the request.[9]

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[5] See for example Order F23-98, paras. 37-39.
[6] PHSA's initial submission, para. 24.
[7] PHSA's initial submission, para. 6.
[8] PHSA's initial submission, paras. 25-26.
[9] PHSA's initial submission, para. 27.

[18]   The respondent submits that the affidavit of the director is not credible. The respondent alleges that the director lacks relevant expertise and that the sample search he conducted goes beyond his demonstrated competence. The respondent concludes that the estimate of 100,000 emails is inflated and unreliable. He bases his argument on the allegation that the director did not distinguish between emails and other types of records, such as videos, images, or spreadsheets that are outside the scope of his request.[10]

[19]   The respondent also submits that the test search was methodologically unsound, because it involved the business area most likely to have records. By applying the estimate across all other business areas, which would be less likely to have records, the respondent alleges that the director has inflated the estimate.[11]

[20]   In reply, PHSA submits that all of the items identified in the sample test search were emails or attachments to emails, in accordance with the respondent's request. In defence of its sample test search, PHSA notes the respondent's own evidence is that his FIPPA requests to other public bodies produced "a significant and unexpected volume of responsive communications". PHSA submits that this is consistent with the director's evidence.[12]

Analysis

[21]   The question at issue is whether the request is excessively broad. PHSA has the burden of proving that it is. It is not plain and obvious from the wording of the request whether it is excessively broad. Nevertheless, PHSA's evidence demonstrates that it is a large organization with about 25,000 employees, all of whom together could potentially have a very large number of responsive records in their email accounts. In addition, while the subject matter of the request is restricted to specific vaccine lots, the context of the request with respect to those lots is open-ended. Although the respondent indicates a particular interest in the safety of the vaccines identified by those lot numbers, the scope of the request is not restricted to vaccine safety; it encompasses procurement, receipt, storage, pricing, transportation, administration, delivery and any other aspect of the vaccines about which any employee may have had communications. This is a broad range of subject matters.

[22]   PHSA has attempted to provide a reasonable estimate of the potential volume of records that may be responsive to the request. It conducted a test of a sample of the email accounts of approximately 250 employees from a business area likely to hold responsive records. I find this to be a reasonable sampling. It

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[10] Respondent's response submission, paras. 34-36.
[11] Respondent's response submission, para. 38.
[12] PHSA's reply submission, paras. 25-28; Respondent's response submission, paras. 44-45.

constitutes one per cent of the entire staff complement of a large organization. It is also reasonable to choose a business area likely to hold records, rather than one that was unlikely to hold records, as the purpose of the test sample was to locate some records.

[23]   In these cases, it is not necessary to use methodology that would meet the highest rigorous of scientific verification. Nor is it necessary to minimize the possible margin of error. The only requirement is to take a reasonable approach to determine a rough estimate of the volume of records.

[24]   In this case, PHSA has estimated over 100,000 responsive records. It is reasonable to assume that some records will cover multiple pages. I find that this constitutes an overwhelming or inordinate volume. Even in the event that the estimate has a margin of error of as high as 90 per cent, this would still result in 10,000 records, which I still would find to be overwhelming or inordinate.

[25]   I also find the affidavit evidence to be credible and the allegations of the respondent that the director lacks the necessary expertise to conduct the sample test to be unfounded. The director is responsible for the IT intelligence department, which I am satisfied has both the equipment and expertise necessary to search for responsive records. It was the director who affirmed in the affidavit that the information that he was presenting was correct to the best of his knowledge. The minor points of contention that the respondent has raised do not override the general reliability of the director's testimony.

[26]   Therefore, I find that the respondent's request is excessively broad. I must now determine whether processing the request will unreasonably interfere in the operations of the PHSA.

Part 2: Would responding to the request unreasonably interfere with PHSA's operations?

[27]   Previous orders have found that determining whether there would be an unreasonable interference in a public body's operations involves an objective assessment of the facts, in conjunction with the size and nature of those operations. Previous orders have also considered the impact of processing requests on the rights of other applicants.[13]

[28]   The adjudicator in Order F24-15 identified that the following activities are required in responding to FIPPA requests:

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[13] Order F24-15, 2024 BCIPC 21 (CanLII), para. 61 (Order F24-15 was quashed and sent back for reconsideration in *Besler v. British Columbia (Information and Privacy Commissioner)* 2025 BCSC 662 for reasons unrelated to the interpretation of s. 43(c)); Order F22-08, 2022 BCIPC 8 (CanLII), para 59; Order F17-18, 2017 BCIPC 19 (CanLII), para. 40; Order F13-18, 2013 BCIPC 25 (CanLII), para. 31.

- receive the request;
- communicate with the applicant, if necessary, to clarify the request;
- review the request to see if it overlaps with previous requests;
- assess any fees;
- search for and retrieve records that respond to the request;
- review and organize the records to remove duplicate pages;
- decide if any FIPPA exceptions to disclosure apply;
- manage the external consultant, if one was hired to assist the public body with responding to requests;
- consult with third parties and other public bodies, as necessary;
- prepare the records for disclosure, including severing them, if applying exceptions; and
- send the public body's decision letter and the records to the applicant.

[29]   PHSA submits that responding to the request would unreasonably interfere with its operations. As the director indicated in his affidavit, the test sample indicated a potential for up to 100,000 individual records being responsive. PHSA submits that responding to a request of this size imposes a significant administrative burden. Once staff have identified all of the responsive records, they require a considerable amount of time to extract and download each item from the email server to convert them to pdf format for purpose of responding to the request. They then must organize and collate the records, review them in accordance with the exceptions in FIPPA and conduct consultations with third parties and other public bodies where necessary.

[30]   Based on its extensive experience processing FIPPA requests, PHSA projects that it would take one to two minutes per record to extract, review and organize the documents. Based on the estimate of 100,000 records at just one minute per record, PHSA says, this would take 1,666.67 hours, which translates to 41.7 weeks. At two minutes per record, it projects 83.4 weeks.[14]

[31]   PHSA submits that this covers only the first stage of the processing. Even estimating the remaining functions at only an additional one to two minutes per record, this work would require a commitment of two employees for almost three years. This would divert staff and resources from processing the FIPPA requests of other applicants. As the current staff complement in PHSA's FIPPA office is one part-time and three full-time employees, this request alone would consume approximately one quarter of its total staff resources.[15]

[32]   The respondent contests PHSA's estimates of the amount of time required to process his request. As noted above, he suggests that the estimate of 100,000

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[14] PHSA's initial submission, paras. 27-32.
[15] PHSA's initial submission, para. 33.

is exaggerated. He also speculates that the time for processing the request is also exaggerated. He asserts that PHSA has not provided evidence to support its estimate. He also asserts PHSA could find efficiencies, but he does not specify what they would be.[16]

[33]   The respondent also submits that the PHSA's FIPPA office is understaffed. He compares PHSA in size with the Government of BC with respect to staffing in order to calculate the number of FIPPA requests it receives each year. He notes that the Government of BC with approximately 35,000 employees receives over 7,000 access requests per year. Based on PHSA's staff complement of approximately 25,000 employees, he projects that PHSA should receive over 5,000 access requests per year. He states that 3.5 FTEs are inadequate to deal with this number of requests. Even reducing his estimate by 75 percent, he projects over 1,200 requests per year and over 300 requests per FIPPA office staff member. He argues that this understaffing of the FIPPA office undermines PHSA's case that processing his request would unreasonably interfere in its operations.[17]

[34]   PHSA responds to the respondent's claims about the understaffing of the FIPPA office that, in fact, it receives only 200 request per year.[18]

Analysis

[35]   I accept in general the estimate of the work involved in processing the request that PHSA has provided. PHSA took a logical and systematic approach to conduct this estimate, using staff with expertise and experience with the relevant email system. Judging whether processing a request will unreasonably interfere in the operations of a public body does not require knowing with certainty the exact number of records involved and the precise number of minutes required to process each record.

[36]   The search of the emails of less than 250 employees returned over 1000 records. PHSA has demonstrated that it had a broad range of responsibilities for the vaccines at issue in this case that covered multiple business areas. Even if the actual number of records was significantly lower than the estimate of 100,000, processing tens of thousands of records would still represent a considerable workload. PHSA's estimate of the time involved in processing records for the respondent's request were reasonable and based on experience.

[37]   The applicant's attempts to discredit the director and the estimate in his affidavit do not persuade me. The director is responsible for the IT intelligence department that conducted the estimate. He has attested to the work that his

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[16] Respondent's response submission, para. 35.
[17] Respondent's response submission, paras. 50-53.
[18] PHSA's reply submission, para. 33.

staff completed. I give greater weight to the evidence of officials who work in the organization and have provided testimony based on their actual experience and knowledge of the FIPPA processes and who have provided calculations to demonstrate the logic of their submission. I give lesser weight to the opinions and speculation of an individual who does not work within the organization and has provided little more than vague criticism based on alleged minor inconsistencies in the evidence.

[38]   In summary, I find it reasonable to conclude that the processing of this request will reasonably require an inordinate amount of time and resources. It will also have a negative impact on the interests of other individuals who make access requests to PHSA.

[39]   Order F17-18 found that an applicant's 36 requests took up 27 per cent of the total requests received by a municipality, and that met the threshold of unreasonably interfering in the operations of that municipality.[19] Similarly, in this case, the respondent's single request could take up to 25 per cent of PHSA's total resources dedicated to FIPPA requests. I conclude that processing the respondent's request would unreasonably interfere in the operations of PHSA.

[40]   Therefore, I find that responding to the respondent's request would unreasonably interfere in the operations of PHSA in accordance with s. 43(c)(i).

Section 43(a) – frivolous or vexatious

[41]   As I have found that the request is excessively broad and processing it would unreasonably interfere in the operations of PHSA in accordance with s. 43(c)(i), I do not need to consider whether the request is also frivolous or vexatious in accordance with s. 43(a).

What relief would be appropriate?

[42]   In this case, there is only one request at issue. There are no conditions that I could place on the processing of this request that could reduce the inordinate administrative burden of responding to it. The only appropriate relief is to authorize PHSA to disregard the request.

CONCLUSION

[43]   For the reasons given above, under s. 58 of FIPPA, I find that PHSA has proven that the respondent's November 21, 2024 request is excessively broad and responding to it would unreasonably interfere with PHSA's operations. Therefore, s. 43(c)(i) applies and I authorize PHSA to disregard the request.

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[19] Order F17-18, para. 40.

May 27, 2025

ORIGINAL SIGNED BY

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Jay Fedorak, Adjudicator

OIPC File No.: F25-00042