



Order F25-44

Board of Education of School District 73 (Kamloops/Thompson)

D. Hans Hwang
Adjudicator

June 13, 2025

CanLII Cite: 2025 BCIPC 52
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 52

Summary: An individual requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), from the Board of Education of School District 73 (School District) to information about construction projects. The School District applied for authorization to disregard the request under s. 43 of FIPPA. The School District says the request is vexatious, excessively broad and repetitious or systematic and responding to it would unreasonably interfere with its operation. The adjudicator determined that the individual's request was not vexatious, excessively broad, repetitious or systematic. The adjudicator declined to authorize the School District to disregard the individual's access request.

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

INTRODUCTION

[1] The Board of Education of School District 73 (School District) 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 an access request from a named company and its president, who the School District jointly referred to as the "applicant". I will refer to them jointly as the respondent in this s. 43 application.

[2] The School District says the request is vexatious in accordance with s. 43(a). The School District also says that responding to the request would unreasonably interfere with its operations because the request is excessively broad and repetitious or systematic under s. 43(c).

BACKGROUND

[3] The respondent is the president of an electrical installation service company (respondent's company). The respondent's company placed a bid for

construction projects of two elementary schools in the School District. The respondent's company was initially selected as a subcontractor in the tendering process. A general contractor subsequently changed its bid form and selected a different company as a subcontractor instead of the respondent's company.

[4] On December 2, 2024, the respondent requested access to records under FIPPA about the tendering process and the School District responded to the request. The respondent made another request on February 18, 2025 (outstanding request). The School District applied for authorization, under s. 43, to disregard the outstanding request.¹

[5] Both parties provided written inquiry submissions.²

Preliminary Matters

Matters outside the Commissioner's jurisdiction

[6] The respondent submits the School District was non-compliant with policies and laws that are required to ensure a fair tendering process.³

[7] As an administrative decision-maker, I must only act within the jurisdiction granted to me by FIPPA. I do not have any statutory authority to make findings in this inquiry about whether the School District acted in contravention of the various laws and policies about tendering process. For that reason, although I have read the respondent's entire submissions, I will only consider and comment on the portions relevant to the issues I am deciding in this inquiry.

Assessing fees for processing access requests

[8] In its initial submission, the School District says that it considers the respondent to be a "commercial applicant" and it will charge fees accordingly if it is required to respond to the outstanding request or future access requests. I understand this to be a reference to the fact that the fee schedule in the *Freedom of Information and Protection of Privacy Regulation* (Regulation) allows a public body to charge commercial and individual applicants a different amount of fees to process an access request. Section 1 of the Regulation defines a commercial applicant as "a person who makes a request for access to a record to obtain information for use in connection with a trade, business, profession or other venture for profit".

¹ The School District's s. 43 application is dated March 4, 2025.

² The School District submitted an initial submission, and the respondent submitted a response submission. The School District chose not to submit a reply submission.

³ Respondent's submission at page 1.

[9] The issue of what fee the School District will assess if it is ultimately unsuccessful in this s. 43 application and is required to respond to the outstanding request is not relevant to the issue as set out in the notice of application. For that reason, I will not consider or make any decision about what fees, if any, the School District is authorized to charge under the Regulation.

School District sharing its submission with third parties

[10] The School District also requests the OIPC's direction on whether it is "lawful" for the School District to share its submission in this proceeding with third parties to help them to defend themselves against the respondent in the future.⁴ This request is, like the fee matter, outside the scope of the issues to be decided in this inquiry. Therefore, I will not provide any direction about that other than to say that there is personal information in the School District's submission, so it should carefully consider s. 22(1) and review its responsibilities under Part 3 of FIPPA which addresses the collection, use, disclosure, protection and retention of personal information by public bodies.

ISSUES

[11] The issues I must decide in this inquiry are as follows:

1. Is the respondent's outstanding request frivolous or vexatious under s. 43(a)?
2. Would responding to the respondent's outstanding request unreasonably interfere with the operations of the School District because the request is excessively broad under s. 43(c)(i), or repetitious or systematic under s. 43(c)(ii)?
3. If the answer to either 1 or 2 above is yes, what remedy, if any, is appropriate?

[12] The burden of proof is on the School District to show that ss. 43(a), 43(c)(i) and 43(c)(ii) apply to the outstanding request.⁵

DISCUSSION

Section 43

⁴ School District's Initial submission at page 3.

⁵ Order F17-18, 2017 BCIPC 19 (CanLII) at para 4; Order F18-09, 2018 BCIPC 11 (CanLII) at para 2.

[13] Section 43 gives the OIPC the discretion to authorize public bodies to disregard certain access requests. Sections 43(a), 43(c)(i) and 43(c)(ii) state:

If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 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, or

(ii) is repetitious or systematic.

[14] Section 43 is a remedial tool used to curb abuse of the right of access. It is not punitive in nature.⁶ Section 43 applications require careful consideration because granting this relief curtails or eliminates the rights of access to information granted by the Legislature under FIPPA.⁷

Vexatious, s. 43(a)

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

[16] Vexatious requests include those made in bad faith, such as for a malicious purpose or for the purpose of harassing or obstructing the public body. Past orders have found requests to be vexatious in the following circumstances:

- The purpose of the requests was to pressure the public body into changing a decision or taking an action;
- The respondent was motivated by a desire to harass the public body;
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions; and
- The request was intended to be punitive and to cause hardship to an employee of a public body.⁸

⁶ *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at paras 32-33; Order F19-34, 2019 BCIPC 37 (CanLII) at para 14.

⁷ Decision-Auth (s. 43) 99-01 (December 22, 1999) at 3. Available on the OIPC website at <https://www.oipc.bc.ca/documents/decisions/158>.

⁸ Order F22-08, 2022 BCIPC 8 (CanLII), at paras 81-83, and the decisions cited therein.

[17] 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.⁹

*Parties' submissions*¹⁰

[18] The School District submits that the outstanding request is vexatious. It says that after it responded to the respondent's first access request, he "waged an ongoing campaign of rambling, threatening email harassment, filed numerous complaints with OIPC in connection with that, and made a complaint against [the School District's lawyer] to the Law Society (which was promptly dismissed). Now, he has commenced this new request for information, and we can reasonably expect this same pattern of behaviour to repeat, unless and until OIPC rejects this as abuse of the right of access."¹¹

[19] In support of its positions, the School District provided copies of emails sent by the respondent to the School District and general contractors.¹² The School District submits that these emails were sent as a bullying tactic and show the respondent was acting in bad faith.

[20] The respondent says that the outstanding request was neither vexatious nor frivolous,¹³ and he says that the School District did not perform its duty under FIPPA.

[21] As the School District does not argue the respondent's outstanding request is frivolous,¹⁴ I will consider solely whether the outstanding request is vexatious.

⁹ Auth. (s. 43) 02-02, (November 8, 2002), at pp 4-8.

¹⁰ In its initial submission, the School District asserts that the OIPC must look at and consider any complaints or requests the respondent had filed with the OIPC against other school districts that hired a general contractor and a subcontractor involved in the tendering process in which the respondent's company was initially selected as a subcontractor. As outlined above, the burden of proof is on the School District; and the standard of proof is on a balance of probabilities. This means that the School District must demonstrate a preponderance of evidence in support of their position and prove that the proposition advanced is more likely than not (see *Kolesnykov v. ICBC*, 2004 BCSC 173 (CanLII) at para 31, citing *Bevacqua v. I.C.B.C.* (1999), 1999 BCCA 553 (CanLII)). If the School District wanted the OIPC to look at any materials it believes are necessary to prove its case, it should have put them forward in its inquiry submission. Therefore, I will not consider any materials not provided in the submissions and evidence the parties provided.

¹¹ School District's Initial submission at page 2.

¹² School District's Initial submission at page 3. Sixteen emails were about the respondent's December 2024 request, one email was the outstanding request, and two emails were to follow up the outstanding request.

¹³ Respondent's submission at page 2.

¹⁴ School District's Initial submission at page 2.

Analysis and findings

[22] For the reasons that follow, I find the outstanding request is not vexatious.

[23] I find the respondent's December 2024 request is relevant circumstance with regard to the respondent's behaviour, so I will consider records requested in the December 2024 request and the outstanding request.

[24] In December 2024, the respondent requested "a copy of [School District] Contract T24023 Bid Form Schedule A of the tender documents under Contract Law Contract".¹⁵ After the request, the respondent sent an email to the School District, clarifying his request by asking more specifically for: "all-tender documents including correspondence (emails etc.) issued with [third parties] to SD 73 which should be within SD 73 custody and control."¹⁶

[25] The outstanding request is for:

any and all internal and external communications within School District 73 possession or archived from the initial design to the tender award with respect to Project #23016 Pineview Valley Elementary School Kamloops and Project #21014 Parkcrest Elem Kamloops including but limited to text, phone records, emails, meeting minutes, and pdf documentation correspondence with SD 73, [two corporate third parties] and any other 3rd Party regarding the following:

- Sound System Section 27 41 16 BIAMP design and authorization of procurement of sole sourced equipment
- Public Address System Section 27 51 16 Bogen Nyquist E7000 System design and authorization of procurement of sole sourced equipment

[26] The respondent does not state what the time frame of the outstanding request is. In its submission, the School District says that one of the two projects was tendered three years ago, and based on that I understand the requested records will date back at most three years.

[27] It is obvious that records requested in the outstanding request are different than records requested in the December 2024 request. Also, based on the parties' submissions I understand the number of the FIPPA requests the respondent has made to the School District is two.

[28] In my view, the respondent's behaviours as outlined by the School District do not support its assertion that the respondent is "using freedom of information as a weapon". The School District's argument about the respondent's behaviours

¹⁵ Respondent's December 2, 2024 access request.

¹⁶ Respondent's December 4, 2024 email.

is relevant where it provides evidence of the respondent's intent. Intent is central to applications for relief under s. 43(a). If the intent of an access request is to vex a public body rather than to seek access to the information, s. 43 relief is available.¹⁷ Hostility or ill will between an access applicant and a public body is insufficient, without more, to establish that an access request is vexatious.¹⁸

[29] The School District seems to be saying the respondent's behaviour is vexatious because he sent follow up emails and went to the OIPC for help with the December 2024 request. I can see that most of the emails the respondent sent to the School District are about how it handled the December 2024 request and his dissatisfaction with the tendering process. Many of those emails were sent before he approached the OIPC for assistance regarding the December 2024 request. One of the emails the School District mentions appears to be his request to the OIPC for a review of the School District's decision regarding the December 2024 access request.¹⁹ I note that only one of the emails the School District says are concerning, was sent after the outstanding request. It is an email complaining about the fact that the general contractor did not select the respondent to be a subcontractor.²⁰

[30] I cannot agree with the School District suggestion that exercising a statutory right to request assistance from the OIPC regarding a public body's response to an access request under FIPPA is vexatious behaviour. In addition, there is nothing in the respondent's emails that persuades me that his intention for making the outstanding request is vexatious rather than a desire to access the requested records.

[31] In summary, I can see nothing, and the School District does not provide sufficient evidence, to indicate that in making the outstanding request the respondent is acting to cause the School District to suffer an unnecessary load of work; trying to punish or harass the School District; or to pressure it into taking particular actions other than merely responding to the request. In addition, there is nothing in the outstanding request to suggest that he is using it to express displeasure with the School District. Even if the respondent did not like the result of the tendering process and the School District's response to the December 2024 request, I do not think this is sufficient to demonstrate that the respondent made the outstanding access request for the purpose of causing hardship to the School District.

[32] Therefore, I find that the outstanding request is not vexatious and s. 43(a) does not apply.

¹⁷ Order F25-14, 2025 BCIPC 17 (CanLII) at para 33.

¹⁸ Order F21-34, 2021 BCIPC 42 (CanLII) at para 56.

¹⁹ Respondent's February 19, 2025 email.

²⁰ Respondent's March 16, 2025 email.

Unreasonable interference, s. 43(c)

[33] Under s. 43(c), the Commissioner may authorize a public body to disregard a request if responding to it would unreasonably interfere with the operations of the public body because it is excessively broad (s. 43(c)(i)) or it is repetitious or systematic (s. 43(c)(ii)).

[34] Sections 43(c)(i) and 43(c)(ii) each have two parts and the School District must prove both. First, it must show that the request is excessively broad, repetitious or systematic. Second, the School District must show that responding to the requests would unreasonably interfere with its operations.²¹

Is the request excessively broad under s. 43(c)(i)?

[35] For the reasons that follow, I find the School District has provided insufficient evidence that the outstanding request is excessively broad.

[36] The question is whether the request itself is likely to result in an excessive volume of responsive records. A request is excessively broad if it would result in an “overwhelming” or “inordinate” volume of responsive records.²²

[37] “Excessively broad” does not refer to the volume of records that may need to be searched to find responsive records. The amount of time and effort required to search for responsive records goes to whether responding to the request would unreasonably interfere with a public body’s operations, which is the second part of the test.²³

[38] The School District’s submission about why the outstanding request is excessively broad is brief. It says:

We further submit here, that the request is excessively broad. And in particular, one of the two projects was tendered 3 years ago. The broad scope of records requested here is overwhelming, inordinate, would require a significant amount of the Public Body’s staff resources, and further escalate legal expenses that have already run high.²⁴

[39] The respondent says that his request was not excessively broad.²⁵

[40] I cannot see, and the School District does not sufficiently explain, how and why the fact that some of the records are three-years old makes the request excessively broad and how it is likely to result in an overwhelming or inordinate

²¹ Order F22-59, 2022 BCIPC 67 (CanLII) at para 42.

²² Order F23-98, 2023 BCIPC 114 at paras 37 and 39. See also 2024 BCIPC 21 at paras 30-32.

²³ Order F23-98, 2023 BCIPC 114 at para 42.

²⁴ School District’s initial submission at page 3.

²⁵ Respondent’s submission at page 2.

volume of responsive records. Therefore, I am not satisfied the outstanding request is excessively broad. I find s. 43(c)(i) does not apply.

Is the request repetitious under s. 43(c)(ii)?

[41] I will now consider whether the outstanding request is repetitious or systematic.

[42] Repetitious requests are requests made more than once.²⁶ The fact that an applicant makes numerous requests does not mean that the requests are repetitious, as long as they are not requesting essentially the same information.²⁷

[43] The School District characterizes the respondent's outstanding request as repetitive and says that responding to it would unreasonably interfere with its operations.²⁸ The respondent says that his request was not repetitious.²⁹

[44] The question under s. 43(c)(ii) is not whether there is an overlap regarding the subject matter of the requests. Instead, the question is whether the applicant is seeking access to the same records. As I set out above, it is obvious, based on the wording of the respondent's two requests, that the records requested in the outstanding request are different than the records requested in December 2024. I cannot see how, and the School District does not sufficiently explain how it is that the outstanding request is "repetitious" and the respondent is seeking access to the same records for a second time.

Is the request systematic under s. 43(c)(ii)?

[45] 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.³⁰ 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

²⁶ Decision F12-01, 2012 CanLII 22871 (BC IPC) at para 5.

²⁷ Order F23-37, 2023 BCIPC 44 (CanLII) at para 45.

²⁸ School District's initial submission at page 5.

²⁹ Respondent's submission at page 2.

³⁰ Order F13-18, 2013 BCIPC 25 at para 23.

- 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.³¹

[46] The School District says that the respondent “will only continue with his systematic abuse of the right of access” if s. 43 relief is not provided.³² The respondent does not say anything about the School District’s systematic argument.

[47] For the reasons that follow, I find that the School District has not provided sufficient evidence that the outstanding request was systematic.

[48] The volume and frequency of access requests can be a relevant indicator of whether requests are systematic.³³ In this case, there is only one outstanding request at issue. This request was made in February 2025. The previous request was in December 2024. In my view, this cannot be characterized as high volume or high frequency of requests. Given the outstanding request is only the second request, I am not persuaded it reveals a method or plan of acting that is organized and carried out according to a set of rules or principles, in the way previous orders have said is systematic.

[49] The School District’s arguments about why it thinks the outstanding request is part of a systematic pattern are primarily about what it says is the respondent’s motivation for the access request. It says the respondent’s motivation is to review public bodies’ procurement practices and target several school districts working only with certain contractors. The School District also describes the respondent’s motivation as being in bad faith, malicious, and motivated by a desire to harass.³⁴ However, what the School District says has not convinced me the respondent’s motivation for the outstanding request is to harass, coerce, or manipulate. Instead, I see a genuine desire to gain knowledge and gather information relevant to the tendering process. In my view, this is a legitimate motive for seeking access to information.

[50] I find that, on balance, the School District’s submissions have not clearly established that the respondent’s outstanding request is systematic, in accordance with s. 43(c)(ii).

[51] Given the School District has not established that the outstanding request is excessively broad under s. 43(c)(i) or it is repetitious or systematic under s. 43(c)(ii), I do not need to decide whether responding to it would unreasonably interfere with the School District’s operations.

³¹ Order F18-37, 2018 BCIPC 40 at para 26.

³² School District’s initial submission at page 5.

³³ Order F23-37, 2023 BCIPC 44 (CanLII) at para 54.

³⁴ School District’s initial submission at page 2.

Conclusion, s. 43

[52] For the reasons above, I find the School District has not established that the February 18, 2025 outstanding request is vexatious under s. 43(a) or excessively broad, repetitious or systematic under s. 43(c). Therefore, the School District is not authorized to disregard the request.

June 13, 2025

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F25-00415