Order F26-93

ISLANDS TRUST

Carol Pakkala
Adjudicator

October 28, 2026

CanLII Cite: 2026 BCIPC 118
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 118

Summary: The Islands Trust (Trust) requested authorization to disregard a portion of an access request under ss. 43(c)(i) (responding to the request would unreasonably interfere with its operations) and 43(d)(ii) (excessively broad) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that the Trust did not meet its burden of proving that ss. 43(c)(i) or (d)(ii) apply and, therefore, denied its application.

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

INTRODUCTION

[1] This inquiry decides an application made by the Islands Trust (Trust) to the Office of the Information and Privacy Commissioner (OIPC). The Trust applied for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA)[1] to disregard part of a multi-part access request made by an individual (respondent).

[2] During the submissions phase, the respondent requested permission from the OIPC to add ss. 6 and 25 to this inquiry. An OIPC adjudicator reviewed the request and declined to add these issues.[2]

[3] Both parties provided written inquiry submissions.[3]

---

[1] From this point forward, unless otherwise specified, where I refer to section numbers, I am referring to sections of FIPPA.
[2] Adjudicator's decision letter dated September 23, 2026.
[3] I use the term written submissions loosely for what was provided by the Trust. The Trust provided an email dated October 1, 2026, outlining its view of the access request. Further, in

Preliminary Matters

Procedural issues

[4] The respondent identifies a number of concerns about the process followed by the OIPC in this matter. Many of these concerns relate to what occurred prior to the submissions phase, including what happened during the investigation and mediation stage. I cannot comment on that process because I am not privy to it.

[5] An inquiry is a *de novo* process, meaning that what occurred in the earlier stages of the OIPC process are not considered by an adjudicator. Some of the respondent's concerns do, however, relate to the fairness of this inquiry so I will address them here. Overall, I understand the respondent's concern to be about their ability to respond fully to the Trust's application. This concern relates first to the materials before me, and second, to the issues in this inquiry.

Materials

[6] First, the respondent asks to be provided with copies of all inquiry communications between the Trust and the OIPC that are before me. The respondent requests the opportunity to answer anything in them upon which the Trust relies.[4] I confirm that the respondent has received the same information from the Trust that I will consider in reaching my decision below.

[7] The respondent also complains that the OIPC's *Instructions for Written Inquiries* says that an investigator's fact report is provided for written inquiries, yet no fact report was prepared in this case.[5] Without one, the respondent says they have to establish every fact for themselves, including the fact that they did not refuse to narrow the access request at issue as alleged by the Trust.[6] The respondent says they were informed by the OIPC's Registrar of Inquiries that the parts of the instructions about a fact report did not apply here.[7]

[8] While I can see that no fact report was prepared for this inquiry, I am not persuaded it had any impact on the respondent's ability to respond to this application. A fact report summarizes the facts that can be agreed upon by the parties prior to an inquiry. In the absence of a fact report, the parties must

---

reply to the respondent's submission, the Trust sent an email referring back to its October 1, 2026 email.

[4] Respondent's submission at para 22.

[5] The *Instructions for Written Inquiries* are designed to explain general procedures. Procedures are tailored to fit less common types of matters, including s. 43 applications which are expedited. A fact report is generally not prepared for s. 43 applications and submission timelines are shortened.

[6] Respondent's submission at para 212.

[7] Respondent's submission at para 3.

instead make their respective submissions about all of the facts, and I will make the appropriate findings.

Issues

[9] Second, on the matter involving the issues in this inquiry, the respondent alleges certain deficiencies in the information they received from the OIPC about the inquiry process. The respondent says:

> The respondent has never known the case. No notice has ever named the part of s. 43(c) relied on. Section 43(d)(ii) is no longer argued, and has not been withdrawn. Section 43(b) has never been named as a ground in any notice.[8]

[10] I understand the respondent to mean the OIPC's Notice of Section 43 Application (Notice) said that the Trust was seeking authorization under ss. 43(c) and 43(d)(ii) but did not specify which subsection of s. 43(c) was at issue.[9] The respondent is also correct in observing that the Trust's materials cite s. 43(c) generally without specifying a subsection.

[11] Despite s. 43(c)(i) not being directly identified, I am satisfied the respondent was aware that the Trust was relying on s. 43(c)(i) and had a fair opportunity to be heard on that issue.

[12] In response to what the Trust did submit in this inquiry, the respondent made extensive submissions about s. 43(c)(i), including about applicable orders.[10] She also says that what the Trust describes in its submission "matches s. 43(c)(i)".[11] Further, the respondent acknowledges that the only other s. 43(c) subsection, namely s. 43(c)(ii), cannot apply in this case because it is about interference with the operations of the ministry of the minister responsible for FIPPA.[12]

[13] Therefore, I am satisfied the respondent had an adequate opportunity to respond to what the Trust argued about s. 43(c)(i), regardless of the fact that the Notice listed s. 43(c) rather than specifically s. 43(c)(i).

[14] The respondent also says that s. 43(d)(ii) is no longer argued by the Trust so it should have been removed from the Notice. However, I can see that the Trust's August 5, 2026 application says that it relies on s. 43(d)(ii) and its submissions do not say it is no longer relying on that provision. Therefore, I find that s. 43(d)(ii) is still at issue in this inquiry so I will consider it.

---

[8] Respondent's submission at para 15.
[9] The Notice also quoted the full text of s. 43.
[10] See for example, respondent's submission at paras 174-181.
[11] Respondent's submission at para 14.
[12] Respondent's submission at paras 109 and 134.

[15] The respondent further says that the Trust argues s. 43(b) which was not named as a ground in the Notice. I understand the respondent to mean I should not consider s. 43(b).[13]

[16] The OIPC's *Instructions for Written Inquiries*, provided to the parties at the outset of this application, explain that parties may not add new issues without the OIPC's consent. Past orders and decisions of the OIPC have consistently confirmed this approach.[14]

[17] Section 43(b) is not listed as an issue in the Notice, the Trust did not request permission from the OIPC to add it, and the respondent opposes the addition. Further, I see no exceptional circumstances to support the late addition of s. 43(b). For all of these reasons, I decline to add s. 43(b) and will not consider it further.

BACKGROUND[15]

[18] Bowen Island Municipality (Bowen) is incorporated under the *Islands Trust Act.*[16] Under this Act, Bowen must obtain approval for its official community plan bylaws from the Trust. The object of the Trust is to preserve and protect the islands. Further, Bowen is required to allow the Trust to comment on land use bylaw amendments prior to any public hearings.

[19] The respondent lives on Bowen Island. The access request relates to an attempt to establish a winery/cidery on a neighbouring property. The land use bylaw applicable to that property previously excluded vineyards from allowable agricultural land use. The exclusion existed, at least in part, due to water and sewage capacity concerns.

ISSUES AND BURDEN OF PROOF

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

1. Would responding to the access request unreasonably interfere with the operations of the Trust under s. 43(c)(i)?

2. Is the request excessively broad under s. 43(d)(ii)?

---

[13] The Trust does name s. 43(b) in its initial submission and says nothing about the respondent's comments on it in its reply.
[14] Order F12-07, 2012 BCIPC 10 (CanLII) at para 6.
[15] These background details are taken from the submissions of both parties and are not in dispute.
[16] RSBC 1996, c 239.

[21] As the party applying for relief under s. 43, the Trust bears the burden of proving that it applies.[17]

DISCUSSION

The access request

[22] The Trust seeks authorization to disregard the part of the respondent's access request that reads as follows:

> Any records the Islands Trust holds bearing on the vineyard and/or winery provisions in the Bowen Island Land Use Bylaw, their origin, history, or removal, including records from the period when land use on Bowen Island was governed by the Bowen Island Local Trust Committee (including under Official Community Plan Bylaw No. 139, 1996). For this category, please treat the request as not limited by date.

Section 43

[23] Section 43 gives the Commissioner the power to grant a public body permission to disregard an access request. Public bodies do not have the authority to disregard access requests on their own; they must obtain permission to do so from the Commissioner.[18]

[24] The relevant portions of s. 43 in this case provide as follows:

> 43 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
>
> …
>
> (c) responding to the request would unreasonably interfere with the operations of
>
> (i) the public body, or
>
> …
>
> (d) the request is
>
> …
>
> (ii) excessively broad.

[25] Section 43 is "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."[19] Previous orders have clearly established that relief under s. 43 will only be granted in exceptional cases after careful

---

[17] Order F18-09, 2018 BCIPC 11 (CanLII) at para 2; Order F17-18, 2017 BCIPC 19 at para 4; and Auth. (s. 43) 02-02, [2002] BCIPCD No. 57 available at https://www.oipc.bc.ca/documents/decisions/160.
[18] Order F18-25, 2018 BCIPC 28 at para 14.
[19] *Crocker v British Columbia (Information and Privacy Commissioner*) [*Crocker*] 1997 CanLII 4406 at para 33.

consideration of the circumstances.[20] Granting such relief is extraordinary because it curtails or eliminates the rights of access to information created by the Legislature through FIPPA.[21]

[26] Section 43 is remedial, not punitive in nature.[22] It is not a mechanism for public bodies to avoid their obligations under FIPPA.[23] However, s. 43 serves an important purpose and recognizes that when an individual access applicant overburdens a public body with an access request, it interferes with the ability of others to legitimately exercise their rights under FIPPA.[24]

Nature of this s. 43 application

[27] The Trust's submission in this inquiry is in a brief email. The Trust provided no affidavit evidence in support of its application. Given the extraordinary nature of this remedy, in my view, significantly more effort should have gone into the Trust's application and reply. Instead, the Trust chose to focus on the respondent's actions which are not at issue in this application.[25]

[28] To support its s. 43 application, the Trust relies in large part on the respondent's alleged refusal to narrow the access request. I am not persuaded there was such a refusal. The email the Trust provided to support this argument does not indicate the respondent is refusing. Further, the respondent says in their submission that they were not asked, nor did they refuse, to narrow this request. The Trust says nothing in response to this denial, instead it merely points back to the same email it provided in support.

[29] The respondent says the Trust has not even tried to make a case in this application.[26] In my view, the Trust's submissions demonstrate it put very little effort into making its case. Despite this lack of effort, I can see that the respondent took considerable time and effort to respond.

[30] The respondent further points out that the Trust has paused the entire multi-part access request pending the outcome of this application about one part. The respondent urges me to give effect to the principle that s. 43 is not a mechanism for a public body to avoid its obligations under FIPPA.[27]

---

[20] See Order F26-50, 2026 BCIPC 62 (CanLII) at para 27 and Order F22-08, 2022 BCIPC 8 (CanLII) at para 29.
[21] Auth (s. 43) 99-01, p. 3. Available at https://www.oipc.bc.ca/decisions/170.
[22] *Crocker, supra,* note 19 at para 32.
[23] Auth (s, 43) (19 December 1997), p.1. Available at https://www.oipc.bc.ca/decisions/168.
[24] Auth (s. 43) 99-01, p. 8. Available at https://www.oipc.bc.ca/decisions/170.
[25] The respondent objects to the Trust's focus on their behaviour and I agree that the sections relied upon by the Trust are not about that behaviour.
[26] Respondent's submission at para 270.
[27] Respondent's submission at para 271.

Analysis -s. 43(c)(i)

[31] Section 43(c)(i) allows the Commissioner to authorize a public body to disregard an access request because responding to it would unreasonably interfere with the operations of the public body.

[32] Deciding what constitutes unreasonable interference with a public body's operations rests on an objective assessment of the facts. This assessment will vary depending on the size and nature of the public body's operation.[28]

[33] A recent order authorized a public body to disregard an access request based on affidavit evidence that responding to it would consume nearly 10,000 hours of staff time.[29] There, the adjudicator noted that the standard of "unreasonable" interference is a high bar and even serious or significant interference may not clear that bar.[30] I agree with this statement because s. 43 provides for an exceptional remedy.

[34] I understand the Trust's arguments on s. 43(c)(i) to be two-fold. First, it argues the time-period covered by the access request is excessive and second, that the work of responding would be disruptive. I deal with each argument next.

Time period - 50 year assertion

[35] The Trust says that responding to the access request is not feasible within the FIPPA time frame for providing records and would interfere with its normal operations.

[36] The Trust says to fulfill the request it would need to go back 50 years to when the local trust committee took on the role of land use planning before Bowen was created. Further, it says that without a specific bylaw amendment, it would need to review every amendment made to the bylaws to see if it addresses wineries, and if it did, to then pull the records for that bylaw.[31]

[37] The Trust also says that all land use planning records before 1999 were transferred to the Municipality and that for those records, it would direct the respondent to the Municipality.[32] The respondent says, and I agree, that if the Trust does not hold the pre-1999 records, then there is no need to conduct a search for 50-year's worth of records.[33] The Trust does not respond to this point.

---

[28] *Crocker, supra* note 19 at para 37.
[29] Order F26-50, 2026 BCIPC 62 (CanLII) at para 38.
[30] *Ibid* at para 43.
[31] Trust's initial submission, pp. 1-2.
[32] Trust's initial submission, p. 2.
[33] Respondent's submission at para 156.

[38] Even if I agreed that the request would require the Trust to go back through 50 years of records, which I do not accept, a potentially long timeframe alone does not persuade me that s. 43(c)(i) applies.[34] I have no basis upon which to assess what a 50-year time period even means in terms of how many records the Trust holds, how they are stored, or what is involved in searching for them.

Disruptive work

[39] The Trust also says the work of responding to the request would be disruptive and interfere with its normal operations as it would take considerable time to undertake the search.

[40] Disruption of workflow is not, in itself, an unreasonable interference and public bodies have an obligation to respond to FIPPA access requests. The nature of responding may disrupt other work, particularly where a public body has a small staff with varying responsibilities. I have no information before me about the size of the Trust's operation or about the responsibilities of its staff. Further, I have no estimate of the staff time and cost required to respond.

[41] The Trust does not adequately explain, and I cannot see, what the search would require that would make it disruptive, let alone unreasonably interfere with its operations. I find the Trust has failed to establish that responding to the access request would unreasonably interfere with its operations.

[42] For all of the above reasons, I find that s. 43(c)(i) does not apply.

Section 43(d)(ii) – excessively broad

[43] As mentioned at the outset, the respondent points out that despite the Trust's August 5, 2026 application stating that it relies on s. 43(d)(ii), the Trust's submissions do not actually argue that it applies.[35] I agree.

[44] In its submissions, the Trust does not even mention s. 43(d)(ii), or say the request is excessively broad. For this reason alone, the Trust has failed to establish that s. 43(d)(ii) applies. However, for the sake of completeness, I will consider the request itself to see if it is excessively broad.

[45] Prior orders have established that "excessively broad" means the request is likely to result in an overwhelming or inordinate amount of responsive material.[36] The respondent says, and I agree, the Trust has not shown that the

[34] For a similar finding, see Order F22-59, 2022 BCIPC 67 (CanLII) at para 49.
[35] Respondent's submission at para 135.
[36] Order F26-50, 2026 BCIPC 62 (CanLII) at para 45, Order F25-68, 2025 BCIPC 79 at para 17, and Order F23-98, 2023 BCIPC 114 at para 39.

request would generate a volume of responsive records that can fairly be called overwhelming or inordinate.

[46] After reviewing the request, I cannot see, and the Trust does not say, how it is excessively broad. I can see that it names one bylaw by number, identifies the specific subject matter as vineyard and winery provisions, and specifies that it is not limited by date.

[47] In my view, the respondent's explanation for the request's lack of time parameters is reasonable. The respondent explains that the purpose of the request is to determine when the vineyard and winery provisions entered the land use bylaw, and the respondent does not know when that occurred.[37]

[48] For all of the above reasons, I find that the request is not excessively broad so s. 43(d)(ii) does not apply.

CONCLUSION

[49] For the reasons given above, I deny the Trust's request to disregard the respondent's access request under s. 43 of FIPPA.

October 28, 2026

ORIGINAL SIGNED BY

Carol Pakkala
Adjudicator

OIPC File No.: F26-02526

[37] Respondent's submission at para 196.