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Order F13-18

VANCOUVER COASTAL HEALTH

Hamish Flanagan, Adjudicator

September 5, 2013

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Summary: VCH sought authorization to disregard outstanding and future requests by the respondent relating to residential care provided to the respondent's mother. The adjudicator concluded that the respondent's requests are systematic and unreasonably interfere with VCH's operations. VCH is authorized to disregard one outstanding request and future requests relating to the respondent's mother's care at a residential care facility.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 43.

Authorities Considered: **B.C.:** Decision F12-01, 2012 CanLII 22871 (BCIPC); Auth. (s. 43) 99-01, <http://www.oipc.bc.ca/decisions/170>; Decision F05-01, 2005 CanLII 11955 (BCIPC); Decision F11-04, 2011 BCIPC 40 (CanLII); Decision F06-03, 2006 CanLII 13535 (BCIPC); Decision F06-12, 2006 CanLII 42644 (BCIPC); Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Decision F10-09, 2010 BCIPC 47 (CanLII).
ONT.: Order M-618, [1995] O.I.P.C. No. 385.

Cases Considered: *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC).

INTRODUCTION

[1] This is an application by the Vancouver Coastal Health ("VCH") for authorization to disregard outstanding requests and future requests for records about matters related to the residential care of the respondent's mother under the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[2] VCH submits that the respondent's requests are systematic and repetitious and unreasonably interfere with VCH's operations under s. 43(a) of FIPPA, and are frivolous and vexatious under s. 43(b) of FIPPA. They seek relief from responding to two outstanding requests from the respondent, and from responding to all future requests from the individual for:

- a) records about the care the respondent's mother received at a residential care facility;¹
- b) records about VCH's investigation into the respondent's mother's care; and
- c) records about the respondent's freedom of information requests to date.

ISSUES

[3] The issues are:

1. Whether the respondent's requests are:
 - a. systematic or repetitious and also unreasonably interfere with VCH's operations under s. 43(a) of FIPPA; or
 - b. frivolous or vexatious under s. 43(b) of FIPPA.
2. If the answer to either question under 1. is yes, what is the appropriate relief?

DISCUSSION

[4] To set this matter in context, VCH provided me with copies of the respondent's six previous request letters (some contain multiple requests), beginning in February 2008. All of the requests to date have related to residential care provided to the respondent's mother in a VCH-contracted residential care facility and subsequent investigations by VCH into her care at that facility. The respondent's mother resided at the care facility from April 2000 until her death there in October 2000.

[5] VCH also provided copies of OIPC investigators' assessments of whether the respondent's requests had been adequately responded to. At the respondent's request, the OIPC has investigated five of the six previous requests

¹ The residential care facility provides services under contract to VCH.

for records and concluded in each case that VCH had responded openly, accurately and completely under s. 6 of FIPPA.

The Outstanding Requests

[6] VCH says there are two outstanding request letters from the respondent dated February 21, 2013 and March 19, 2013 which it has not responded to pending the outcome of this application.

February 21, 2013 letter

[7] VCH says the February 21, 2013 letter contains requests for:

- 1) progress notes made by two staff;
- 2) records relating to the respondent's mother being moved to a new room;
- 3) courier documents; and
- 4) notes related to a meeting the respondent had with a VCH employee.

[8] The respondent argues that the February 21, 2013 letter is not a request for records but a clarification and a response to a letter from VCH dated February 18, 2013.

March 19, 2013 letter

[9] The respondent agrees this letter is a request. He requests from VCH copies of:

- 1) a letter the respondent wrote to a VCH employee that the VCH employee responded to in March 2008;
- 2) an email from an MLA to a VCH employee;
- 3) communication between the Ministry of Health and a VCH employee; and
- 4) a letter the respondent wrote to a VCH employee that the VCH employee responded to in May 2008.

Positions of the Parties

[10] VCH says that the outstanding requests unreasonably interfere with VCH's operations because they are both systematic and repetitious, within the meaning of s. 43(a) of FIPPA, and frivolous and vexatious within the meaning of s. 43(b) of FIPPA.

[11] The respondent's submissions mostly criticize the way VCH and a particular employee have responded to his previous requests. They do not directly address VCH's s. 43 arguments except to deny that the February 21, 2013 letter is a request for records.

Section 43(a): repetitious or systematic

[12] A public body may be authorized under s. 43(a) to disregard requests that:

- (a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests

[13] I will first consider whether the requests are repetitious or systematic. If they meet either of those two criteria, it is necessary to determine whether responding to the requests would unreasonably interfere with the operations of the public body.²

Are the Requests Repetitious?

[14] Auth. (s. 43) 99-01³ states:

The plain meaning of the word "repetitious" in s. 43 is something that is characterized by repetition. Repetition is the act of repeating an act or things. To 'repeat' an act or thing, in turn, is to do the act or other thing over again one or more times.

[15] Requests which repeat a previous request to which the public body has already responded are obviously repetitious.⁴ In Decision F05-01,⁵ former Commissioner Loukidelis found that requests which all related to the respondent's employment and other related disputes were sufficiently connected to be repetitious.

[16] VCH submits that the respondent's requests all focus on three points:

- 1) the care received by the respondent's mother at a residential care facility;
- 2) VCH's investigation of the respondent's mother's care; and
- 3) VCH's responses to the respondent's freedom of information requests.

² Decision F12-01, 2012 CanLII 22871 (BCIPC).

³ Auth. (s. 43) 99-01, <http://www.oipc.bc.ca/decisions/170>, at p. 3.

⁴ 2005 CanLII 11955 (BCIPC).

⁵ 2005 CanLII 11955 (BCIPC).

[17] VCH points to examples of the repetitive nature of the requests, in particular, repetition in the respondent's February 21, 2013 and April 11, 2012 letters.

[18] The respondent's submission does not directly address whether his requests are repetitious. However, the respondent states that the February 21, 2013 letter, cited by VCH as evidence of the repetitive nature of his requests, is not a request for records. I will first consider whether the February 21, 2013 letter is a request, because this impacts on the strength of VCH's submission about repetitive requests.

[19] The February 21, 2013 letter begins "I am writing in regard to your letter dated Feb 18, 2013..." Most of the letter comprises argument about VCH's response to previous requests, and in particular the conduct of a VCH employee. While VCH says that the letter contains four requests for records, only two paragraphs appear phrased as requests, being the request for:

- 1) progress notes made by two staff; and
- 2) records relating to the respondent's mother being moved to a new room.⁶

[20] Several factors support the view that the February 21, 2013 letter, despite first appearances, is not a request for records, including:

- the respondent's submission that his motivation for the February 21, 2013 letter was not to make a request but to respond to VCH's letter of February 18, 2013, which he considered intimidating;
- the context in which these two paragraphs appear immediately after a reference to an earlier April 11, 2012 request and paraphrase of that earlier request; and
- the respondent's style of writing apparent from his previous requests which often involve quoting or paraphrasing previous correspondence before replying to it.

[21] Therefore I take the view that the February 21, 2013 letter is not a request for records. Because I find the February 21, 2013 letter does not contain a request under FIPPA, it is not subject to the relief granted below. Section 43 of FIPPA does not provide the OIPC with any powers authorizing public bodies to disregard communications from applicants or to absolve them from responding to such communications.⁷ However, there is also no requirement in FIPPA for

⁶ Last two paragraphs of p. 2 of the February 21, 2013 letter.

⁷ Decision F11-04, 2011 BCIPC 40 (CanLII).

public bodies to respond to questions or other kinds of communications from applicants, other than to provide access to records requested in accordance with s. 5.⁸ VCH can deal with the February 21, 2013 letter as it considers appropriate. I note that the OIPC has previously found VCH's response to the April 11, 2012 request, which the February 21, 2013 letter references, was adequate.

[22] Despite my finding that the February 21, 2013 letter is not a request, I agree with VCH that some of the respondent's other requests are repetitious, including his March 19, 2013 letter. The respondent's unwavering concern about his late mother's care has resulted in an intense interest in any documents that relate to that care. As a result, his previous and outstanding requests focus on a tightly related set of events. The respondent's requests generally do not precisely overlap previous requests because they are often phrased as requests for documents that have not previously been supplied. However, because of the broad scope of some of the early requests, later requests do overlap earlier ones. For example, one of the items in the respondent's April 16, 2012 request is for "all residuals of communications in VCH file (including your self and or legal counsel and up to date) and Villa Cathay up to date."⁹ His March 19, 2013 letter then requests documents that are subsets of the information requested in this earlier request. Therefore some of the respondent's requests are repetitive. However, given my conclusion below about the systematic nature of the requests I do not need to discuss this ground further.

Are the Requests Systematic?

[23] The plain meaning of the word "systematic" in s. 43 is something that is characterized by a system. In turn, a system is a method or plan of acting that is organized and carried out according to a set of rules or principles.¹⁰

[24] VCH has, in my view, accurately characterized the respondent's access requests as systematic.

[25] The respondent's requests share several key characteristics with other cases where requests have been found to be systematic.¹¹ These characteristics include that the respondent:

- has a pattern of requesting more records, based on what he sees in records already received;

⁸ Decision F11-04, 2011 BCIPC 40 (CanLII).

⁹ Exhibit "K" to Muller affidavit.

¹⁰ Auth. (s. 43) 99-01, <http://www.oipc.bc.ca/decisions/170>, at p. 3.

¹¹ Decision F05-01, 2005 CanLII 11955 (BCIPC); Decision F06-03, 2006 CanLII 13535 (BCIPC); Decision F06-12, 2006 CanLII 42644 (BCIPC).

- appears to be combing over records deliberately in order to identify further issues;
- sometimes revisits some of his earlier freedom of information requests;
- very systematically raises issues with the public body about their responses to his freedom of information requests, and then often (again systematically) takes his issues to review by OIPC; and
- the respondent's behaviour suggests he has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events.

[26] In Decision F06-03,¹² Adjudicator Francis noted the respondent's requests increased in frequency over time before concluding the respondent's requests were systematic. I note the same trend here, with five of the eight request letters being sent in just over a year. The other three request letters were made in 2008 (two) and 2009.

[27] I have analyzed all the respondent's requests and related correspondence carefully. I am satisfied the respondent's conduct demonstrates a clear systematic pattern. In light of previous decisions on systematic requests, I consider the respondents requests to be systematic within the meaning of s. 43(a).

Would Responding to the Requests Unreasonably Interfere in the Operations of the Public Body?

[28] VCH says the respondent's requests cause unreasonable interference with its operations. They say the requests are repetitive and overlapping, and that previous decisions have acknowledged that this type of request is difficult to deal with because in each case it is necessary to determine what the applicant wants, if the public body has already provided the records, or, in the case of new requests, if the public body has the requested records.

[29] The respondent's requests are handwritten and often involve multiple requests, interspersed with argument about a VCH employee's conduct and assertions that VCH has not adequately responded to previous requests. I agree with VCH's submission that, like the respondent in Decision F05-01,¹³ the respondent's habit of interweaving requests for records with privacy complaints, questions and demands for explanations makes it difficult to determine what the respondent is asking for, thereby imposing greater demands on VCH's staff. The

¹² 2006 CanLII 13535 (BCIPC).

¹³ 2005 CanLII 11955 (BCIPC), at para. 29.

discussion above about whether the respondent's February 19, 2013 letter is a request illustrates this problem.

[30] I note that this case involves fewer completed and outstanding requests than previous s. 43 decisions. The respondent has made eight applications (some contain multiple requests) in just over five years.¹⁴ However, the relationship between the respondent and the public body, and therefore the scope of the respondent's requests, is much narrower than in previous cases, where, for example, the respondent was a former employee or former student of the applicant public body. I am also mindful of the limited scope and historic nature of the respondent's issues, and that the OIPC has investigated five of the six previous requests and concluded in each case that VCH had responded openly, accurately and completely to the requests for records under s. 6 of FIPPA. These circumstances provide a high level of certainty that all possible substantive records have been provided. These factors support my view that spending time responding to additional requests like the ones in the March 19, 2013 letter would not be a good use of public resources.

[31] I am satisfied that the respondent's requests would unreasonably interfere with VCH's operations and hinder its ability to carry out other tasks and responsibilities, including responding to freedom of information requests from others.

Section 43(b): frivolous or vexatious

[32] Given the above conclusions it is not strictly necessary that I consider these grounds but for the sake of completeness I will.

[33] When determining whether a request is frivolous or vexatious, it is essential to keep in mind the legislative purposes of FIPPA.¹⁵ In Auth. (s. 43) 02-02, former Commissioner Loukidelis cited a non-exhaustive list of factors that may be relevant in the circumstances of a given case under s. 43 of FIPPA:

- Regardless of how it is so, a frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
- ...
- The class of "frivolous" requests includes requests that are trivial or not serious, again remembering the words of caution in Order M-618.

¹⁴ In Decision F06-12, 2006 CanLII 42644 (BCIPC), the respondent made 41 requests in just over 2 years. In Decision F06-03, 2006 CanLII 13535 (BCIPC), the respondent had made 56 requests in approximately 5 years. In Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, the respondent made 18 requests in less than one year.

¹⁵ Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, at para. 27.

- 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 harassing or obstructing the public body.
- The fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious...To be clear, the fact that access requests are repetitious or systematic in nature cannot, in the face of the explicit test under s. 43(a), be sufficient to warrant relief under s. 43(b). Alongside other factors, however, the fact that repetitious requests have been made may support a finding that a particular request is frivolous or vexatious.¹⁶

Are the Requests Frivolous?

[34] As noted above, the word frivolous is usually associated with matters that are "trivial or not serious".¹⁷ The respondent's requests are important to the respondent because they reflect genuinely held concerns about his late mother's care. However, in an effort to uncover new records beyond what he has already received, he has started making what I find to be frivolous requests. For example, his most recent request is a March 19, 2013 request for documents he himself authored and sent to VCH.

Are the Requests Vexatious?

[35] The word "vexatious" is usually taken to mean "with intent to annoy, harass, embarrass or cause discomfort".¹⁸ However, previous orders have noted that access to information requests may be vexing or irksome due to the nature of the request, and vexatious is meant to signify something more than that which is annoying or distressing.¹⁹

[36] I have found some requests repetitive, which provides some support for them also being vexatious. The fact that many of the requests are based on the responses to previous requests, and are interspersed with wide-ranging criticisms of VCH and its employee's conduct also suggest that the respondent is using access requests to express his frustration at VCH's response to his previous requests. In these circumstances, I believe that in the respondent's desire to uncover additional records, he has begun to make requests that are motivated by a desire to harass VCH and therefore are vexatious.

¹⁶ Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, at para. 27.

¹⁷ Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, at para. 27.

¹⁸ Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, at para. 20 citing Ontario Order M-618, [1995] O.I.P.C. No. 385, at para. 15.

¹⁹ Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, at para. 27.

What is the Appropriate Relief?

[37] VCH seeks authorization to disregard:

- 1) the outstanding requests;
- 2) all future requests from the respondent for:
 - a. records about the care the respondent's mother received at Villa Cathay;
 - b. records about VCH's investigation into the respondent's mother's care; and
 - c. records about the respondent's freedom of information requests to date.

[38] In considering whether to authorize VCH's requests, I "must bear in mind the objective of s. 43, which is to avoid requests that constitute an unreasonable interference with the operations of the public body."²⁰

[39] VCH submits as relevant factors in support of the relief it seeks that:

- 1) the respondent continues to apply for records that have already been supplied, are subject to solicitor client privilege, or do not exist;
- 2) there are no live issues between the parties;
- 3) no live issues will arise in the future;
- 4) there will be no new responsive records in the future because the respondent's mother is deceased; and
- 5) any new requests will be requests about previous requests.

[40] I agree with the tenor of VCH's submissions. The substance of the respondent's requests relate to events of more than a decade ago. The nature of the events which are the focus of the respondent's requests mean there are no live issues between the parties. This office has investigated and concluded VCH conducted an adequate search for records that relate to the respondent's mother's care and VCH's investigation into that care on three occasions, so I am confident the respondent has received all records of any relevance relating to the subject matter specified by VCH in its request for relief.

[41] FIPPA does not normally require public bodies to disclose copies of records that have already been provided to the same applicant through a previous request.²¹ As a result, public bodies do not normally require relief

²⁰ *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC), at para. 27.

²¹ Decision F11-04, 2011 BCIPC 40 (CanLII); Decision F10-09, 2010 BCIPC 47 (CanLII).

under s. 43 to deal with such requests.²² However, this is a case where the overlapping and systematic nature of the respondent's requests means that relief is merited to achieve the purpose of s. 43 – to prevent unreasonable interference with VCH's operations.

[42] I acknowledge the emotional and personal nature of the concerns driving the respondent's requests. But I also note VCH has patiently responded to requests, sometimes providing the same records more than once, despite systematic and sometimes repetitive requests. VCH has expended considerable resources to address the underlying motivation for the respondent's repeated requests, including having senior staff review the respondent's concerns about the conduct of those providing care to the respondent's mother near the end of her life.

[43] If VCH were required to respond to the existing request and future requests relating to the specified subjects, it would expend scarce resources when it has been found to have responded adequately in the past. VCH would have to take resources away from other applicants' requests or other activities. An authorization for VCH to disregard the existing request and future requests relating to the specified subjects avoids waste of public resources and interference with the rights and needs of others.

CONCLUSION

[44] In light of all the factors and circumstances, I consider the following authorizations are appropriate to provide relief against unreasonable interference with VCH's operations under s. 43 of FIPPA:

1. VCH is authorized to disregard the respondent's March 19, 2013 request for records.
2. VCH is authorized to disregard any access request made by the respondent, or made on his behalf regarding:
 - a. records about the care the respondent's mother received at the Villa Cathay residential care facility;
 - b. records about VCH's investigation into the respondent's mother's care; and
 - c. records about the respondent's freedom of information requests to date.

²² Decision F11-04, 2011 BCIPC 40 (CanLII).

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3. Given the historical nature of the subject matter it covers, no time limit is necessary for this authorization.

September 5, 2013

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

OIPC File No.: F13-52546