



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order F18-37

OFFICE OF THE AUDITOR GENERAL OF BRITISH COLUMBIA

Meganne Cameron
Adjudicator

August 27, 2018

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Summary: The Office of the Auditor General applied for relief from access requests made by a husband and wife pursuant to s. 43 of FIPPA. The adjudicator concluded that responding to the husband's requests would unreasonably interfere with the OAG's operations due to the systematic nature of the requests and that some of his requests were also frivolous and vexatious. As a result, the adjudicator authorized the OAG to disregard the husband's requests. In addition, the adjudicator authorized the OAG to disregard the husband's future access requests in excess of one open request at a time for two years from the date of this decision. The OAG was not entitled to relief under s. 43 with regards to the wife's request.

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

INTRODUCTION

[1] The Office of the Auditor General (OAG) applies for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard 23 access requests it received from two individuals.

[2] One respondent is a former employee of the OAG (the Respondent) who made 35 requests for records under FIPPA after his employment ceased. The OAG responded to 13 of the 35 requests and seeks authorization to disregard the remaining 22 requests (Outstanding Requests). The OAG says the Outstanding Requests are repetitious and systematic and that responding to them would unreasonably interfere with its operations (s. 43(a)). It further submits

that 13 of the Respondent's Outstanding Requests are also frivolous and vexatious (s. 43(b)).

[3] The second respondent is married to the Respondent (Respondent 2).¹ She made two requests for records to the OAG. The OAG seeks authorization to disregard her second request pursuant to s. 43(a) or 43(b).²

[4] The OAG also seeks authorization to disregard any future requests of both respondents, over and above one open request at a time, for a period of two years and to restrict the time it spends on any one request from either respondent to no more than seven hours.

[5] The respondents submit that the OAG has not established that s. 43 applies and say that it should not be granted authorization pursuant to that section.

ISSUES

[6] The issues before me are as follows:

1. Are the respondents' access requests repetitious or systematic and if so, would they unreasonably interfere with the OAG's operations?
2. Are the respondents' access requests frivolous or vexatious?
3. If the answer to either question is yes, what is the appropriate remedy?

Previous decisions have established that the OAG has the burden of proof under s. 43.³

DISCUSSION

Preliminary Matters

[7] The Respondent submits that ss. 6(1), 28 and 29 of FIPPA are also at issue in this proceeding.⁴ These matters were not listed in the Notice of Section 43 Application that the Office of the Information and Privacy Commissioner

¹ OAG initial submission, at para. 3; Respondent initial submission, at para. 3; Respondent 2 submission, at p. 1.

² OAG initial submission, at para. 131 and Schedule A.

³ Order F18-09, 2018 BCIPC 11 (CanLII), at para. 2; Citing: Auth. (s. 43) 99-01 (December 22, 1999) available at: <https://www.oipc.bc.ca/decisions/170> at p. 7.

⁴ Respondent submission, at pp. 31-34. Section 6(1) requires public bodies to respond to requests openly, accurately and completely. Sections 28 and 29 relate to the accuracy of personal information in the custody or control of a public body.

(OIPC) gave the parties at the start of this proceeding. There are other processes available to the Respondent under FIPPA to address these matters and the evidence before me indicates that he is currently pursuing some of those options.⁵ The sections the Respondent refers to are not relevant to the s. 43 matter and I will not consider them further.

[8] I also note that a significant portion of the Respondent's submissions do not address the matters at issue in this proceeding. While I have carefully reviewed all of the points the Respondent raised and the previous OIPC decisions he referred me to, in this decision I will address only those points which are relevant to the matters at issue.

Section 43 of FIPPA

[9] Section 43 of FIPPA reads as follows:

- 43 If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that:
- (a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or
 - (b) are frivolous or vexatious

[10] The British Columbia Supreme Court provided the following guidance with regard to the application of s. 43:

Section 43 is an important remedial tool in the Commissioner's armoury to curb abuse of the right of access. That section and the rest of the Act are to be construed by examining it in its entire context bearing in mind the purpose of the legislation. The section is an important part of a comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance. The legislative purposes of public accountability and openness contained in s. 2 of the Act are not a warrant to restrict the meaning of s. 43. The section must be given the "remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects" that is required by s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238.⁶

[11] Former Commissioner Loukidelis has said that any decision to grant a s. 43 authorization must be carefully considered, as relief under that section

⁵ Affidavit of OAG Executive Director of Finance and Administration (Executive Director), Exhibit A.

⁶ *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para. 33.

curtails or eliminates the rights of access to information.⁷ Another past commissioner has cautioned that, “[g]ranted section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation.”⁸

[12] I will first consider whether the respondents’ requests are repetitive or systematic. If they meet either of those two criteria, it is then necessary to determine whether responding to the requests would unreasonably interfere with the operations of the OAG due to the repetitive or systematic nature of the request.⁹

Section 43(a) – Repetitious requests

[13] Auth. (s. 43) 99-01 states the following regarding the meaning of “repetitious”:

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.¹⁰

[14] Requests which repeat a previous request to which the public body has already responded are obviously repetitive.¹¹ The requests do not have to be identical to be repetitive. In Decision F05-01, former Commissioner Loukidelis found that requests which all related to the respondent’s employment and other related disputes were sufficiently connected to be repetitive.¹² In that case, the respondent consistently returned to the same general issue, specific event or correspondence and made multiple requests regarding the same meeting or letter.¹³

Are the Respondent’s Outstanding Requests repetitive?

[15] The Respondent made his first request on the day his employment with the OAG ceased. He asked for any records that mentioned him over a period

⁷ Auth. (s. 43) 02-02 (November 8, 2002) at para. 15. Available through the OIPC website at: <https://www.oipc.bc.ca/decisions/172>

⁸ Auth. (s. 43), (October 31, 1996) at para. 3. Available through the OIPC website at: <https://www.oipc.bc.ca/decisions/162>.

⁹ Order F13-18, 2013 BCIPC 25 (CanLII), at para. 13; Decision F12-01, 2012 CanLII 22871 (BC IPC), at para. 4.

¹⁰ Auth. (s. 43) 99-01 (December 22, 1999) at para. 4.3. Available through the OIPC website at: <https://www.oipc.bc.ca/decisions/170>.

¹¹ Order F13-18, 2013 BCIPC No. 25, at para. 15.

¹² Decision F05-01, 2005 CanLII 11955 (BC IPC), at para 17.

¹³ Decision F05-01, 2005 CanLII 11955 (BC IPC), at paras. 14 and 17.

of approximately one year (Request 1).¹⁴ Request 1 was detailed in nature and included electronic and print records and noted specific systems and named officials and employees that the Respondent wanted included in the OAG's search for records.¹⁵

[16] The Respondent made a second request to the OAG one month later for records related to the "health firing whistleblower" and the former Auditor General. He submits that he requested this information to draw a connection between the OAG and the "health firings" and establish that executives at the OAG's failure to "speak up, and to act," may have caused innocent people to be fired.¹⁶

[17] Approximately two weeks after the Respondent made the second request, the OAG provided him with responsive records to Request 1. The Respondent says that the records he received were improperly severed and that a significant amount of information was missing.¹⁷ He requested that the OIPC review the OAG's severing decision and filed a complaint to the OIPC about the adequacy of the OAG's response (Complaint).¹⁸ Based on the parties' submissions it is my understanding that there are open investigation files with the OIPC relating to both matters and they are not in issue before me.¹⁹

[18] After receiving the records in response to Request 1, the Respondent made 33 more requests for information to the OAG over a period of approximately three months.²⁰ The OAG has responded to 12 of those 33 requests and seeks authorization to disregard the 22 Outstanding Requests.²¹

[19] I have reviewed Respondent's requests to the OAG. Broadly, the Outstanding Requests are for records containing the following information:

- the Respondent's personal information;
- the OAG's processing of the Respondent's previous access requests;
- communications between the OAG and OIPC
- employee job descriptions;
- officials' and employees' expenses and calendar entries;

¹⁴ Affidavit of Executive Director, Exhibit B at p. 13.

¹⁵ Affidavit of Executive Director, Exhibit B at p. 13.

¹⁶ Respondent submission, at p. 18.

¹⁷ Respondent submission, at para. 4.

¹⁸ Notice of Request for Review; Affidavit of Executive Director, Exhibit E.

¹⁹ Respondent submission, at p. 3 and para. 5.3. Also, Affidavit of Executive Director, Exhibit A at p. 2. The OAG also refers to the investigation of this complaint in its Reply Submission at paras. 3 and 4.

²⁰ Table of requests in the Affidavit of the Executive Director, Exhibit A at pp. 2-9. Copies of the requests are located in the same affidavit at Exhibits B through LLL.

²¹ The additional outstanding request is FOI_18_01, regarding the "whistleblower."

- harassment policies, procedures and records;
- employee complaints and/or communications about harassment and/or inappropriate behaviour in the workplace;
- information about Workplace Environment Satisfaction surveys; and
- information related to diversity in the workplace and workplace safety issues.

[20] I do not find that the Respondent's Outstanding Requests are repetitious. For a request to be repetitious, it must be either seeking the same information, or be sufficiently connected to another request. In this case, some of the Outstanding Requests ask for the same type of information, but it is in relation to different records, events, or time frames.

[21] The OAG asserts that the Respondent's requests are repetitious in that they are attempts to locate records that will establish that the OAG has committed wrongs.²² However, in my view, this alone is not sufficient to establish that the requests themselves are repetitious, especially if the requests are for different information connected only by an applicant's belief that it may help him establish what he seeks to prove.

[22] In this case, the Outstanding Requests relate to broad topics such as a "whistleblower", OAG employee calendar entries, office expenses and workplace environment surveys, as well as requests for the Respondent's own personal information. Unlike Decision F05-01, the Outstanding Requests are not sufficiently connected to be repetitious. Furthermore, although the Respondent has made 13 identically phrased requests for information about the processing of his previous requests, all 13 are for a different subset of information and the responsive records would not overlap. This may be indicative of a pattern of requesting information, but I find that it is not repetitious.

Is Respondent 2's second request repetitious?

[23] Respondent 2 made two access requests to the OAG. The OAG asks for authorization to disregard her second request pursuant to s. 43(a). It did not provide a copy of the second request and did not say that it was repetitious.²³ Nonetheless, I have considered whether it meets the criteria set out above.

[24] Based on the parties' submissions I understand that Respondent 2's first request was for her own personal information and her second request was about an alleged privacy breach.²⁴ I find that these requests are not repetitious.

²² OAG initial submission, at para. 112.

²³ Affidavit of Executive Director, at para. 59; Also, Exhibit OO.

²⁴ Respondent 2 submission, at p. 1, paras. 4, 51 and 59; OAG initial submission, at paras. 131-134; Affidavit of Executive Director, Exhibit OO at p. 87.

Section 43(a) – Systematic requests

[25] The plain meaning of the word “systematic” is something that is characterized by a system.²⁵ A system is a method or plan of acting that is organized and carried out according to a set of rules or principles.²⁶

[26] Previous orders have concluded that systematic requests may have the following characteristics:

- 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;
- revisiting 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 OIPC; and
- 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.²⁷

[27] Previous orders have also specified that the fact that a respondent’s requests increase in frequency over time may be an indicator that the requests are systematic.²⁸

Are the Respondent’s Outstanding Requests systematic?

[28] *The parties’ submissions* - The OAG submits that the Respondent’s requests for his personal information are systematic, characterized by a methodical and deliberate plan to request records, on a “rolling basis” that reference his name (or variations of it) or that relate to the processing of his past access requests.²⁹ It says that his requests for non-personal information seek information over a significant period, generally from 2014 to the present, and are attempts to locate records that will establish the OAG has committed wrongs. The OAG submits that these types of requests were found to be systematic

²⁵ Order F13-18, 2013 BCIPC 25 (CanLII), at para. 23; Auth. (s. 43) 99-01 (December 22, 1999), at para. 4.3.

²⁶ Order F13-18, 2013 BCIPC 25 (CanLII), at para. 23; Auth. (s. 43) 99-01 (December 22, 1999), at para. 4.3.

²⁷ Order F13-18, 2013 BCIPC 25 (CanLII), at para. 25.

²⁸ Decision F06-03, 2006 CanLII 13535 (BCIPC), at paras. 51 and 53.

²⁹ OAG initial submission, at paras. 99-101. By “rolling basis” I understand the OAG to mean that the Respondent has a practice of making a new request starting where a previous request for the same type of information left off.

in previous orders.³⁰ It makes the following additional points in support of its submission that the Respondent's requests are systematic:

1. The requests have increased in frequency: 35 requests in total in just over four months and 14 requests made in "the first eleven days" of a month.³¹
2. He has filed reviews and made complaints about the responses he has received from the OAG.³²
3. He relies on information received in responses to access requests to make further access requests and is "combing" through the records contained in a response package to identify further issues.³³
4. He has made repetitive requests regarding the "processing" of previous requests, the Complaint and his Request for Review with the purpose of inundating the OAG with requests.³⁴

[29] The Respondent denies that his requests are systematic.³⁵ He says that:

My persistence in asking for my own records is projected as a methodical effort that is deliberately planned to "overburden" in a way that has a discernable pattern. The only deliberate pattern I have demonstrated is refusing to be misled and intimidated by the OAG's inadequate or lack of response to my outreaches. I believe that the OAG has trouble accepting this because the Office, from my personal observation and experience of working there, considers itself beyond reproach in almost all aspects of its conduct.³⁶

[30] He submits that his requests to the OAG are similar to those in Decision 04-01.³⁷ In that case an adjudicator concluded that making specific requests for personal information over a short period of time in locations where the information was likely held was not systematic for the purposes of s. 43(a), particularly when the respondent intended to use the information in an upcoming

³⁰ OAG initial submission, at paras. 106-107 and 113.

³¹ OAG initial submission, at paras. 102-103; Citing: Decision F06-03, 2006 CanLII 13535 (BC IPC). While the OAG submits that 14 requests were made within the first 11 days of a month, Exhibits YY to LLL of the Affidavit of the Executive Director indicate that the 14 requests were all made on the same day within a period of 12 minutes.

³² OAG initial submission, at para. 107; Citing: Decision F06-12, 2006 CanLII 42644 (BC IPC), at paras. 34-36.

³³ OAG initial submission, at para. 108-109; Citing Order F13-18, 2013 BCIPC 25 (CanLII).

³⁴ OAG initial submission, at para. 111.

³⁵ Respondent submission, at para. 98.

³⁶ Respondent submission, at para. 99.

³⁷ Auth. (s. 43) 04-01 (September 10, 2004), at para 48, available at: <https://www.oipc.bc.ca/decisions/174>.

appeal.³⁸ The Respondent says that his requests relate to the unresolved dispute between himself and the OAG regarding his dismissal and that the information he seeks is critical in helping him answer questions about the conduct of the Auditor General and her staff.³⁹

[31] He says that he did not intend to “methodically cause disruption” or abuse FIPPA. He refers me to Auth. (s. 43) 03-01 where former Commissioner Loukidelis determined that the fact that an applicant made a request “on average” every six or seven weeks was not the same as saying that the requests had some sort of system to them, nor was it enough to conclude that a respondent had “methodically” requested access to records under the Act.⁴⁰

[32] The Respondent also disputes the manner in which the OAG has calculated and characterized his requests. He says that he has submitted only four requests for his “personal records” and that he made the other requests because of the “OAG’s lack of engagement” in response to his “direct outreaches [...] with the organization, to find out whether certain individuals within the office were unintentionally missed in the course of canvassing for records.”⁴¹ He states that the reason he “did not stop submitting FOI requests was because the OAG had ignored and/or disregarded his attempts at explaining what was missing, why and where.”⁴²

[33] *Analysis* – I agree with the OAG’s submission that the Respondent’s requests in this proceeding are similar to those of the respondent in Decision F05-01.⁴³ In that case, the former Commissioner determined that the respondent had a pattern of requesting records based on what he saw in previous records he had already received and accepted the public body’s argument that the requests were methodical and deliberate, and therefore, systematic. The former Commissioner said:

Step by step, the respondent has requested, often in minute detail, records on various aspects of his employment and that of others; related matters such as security services; interactions, communications or incidents with other employees; his access to information files; MSDL’s organizational re-structuring, staffing and hiring processes; emails involving him; information supporting statements made in letters or emails to him; and other matters of concern to him. He has also made a number of requests for records related to matters referred to in records he had

³⁸ Respondent submission, at para. 97; Citing: Auth. (s. 43) 04-01 (September 10, 2004), at para. 48, available at: <https://www.oipc.bc.ca/decisions/174>.

³⁹ Respondent submission, at paras. 98-99.

⁴⁰ Respondent submission, at para. 99; Citing: Auth. (s. 43) 03-01 (December 10, 2013) at para. 21, available at: <https://www.oipc.bc.ca/decisions/173>.

⁴¹ Respondent submission, at para. 100.

⁴² Respondent submission, at para. 103.

⁴³ Decision F06-12, 2006 CanLII 42644 (BC IPC).

already received in response to earlier access requests, in one or two cases regarding events from the 1990s.

He has also often followed up on responses to FOI requests with questions about the records (or lack thereof), requests for information on relevant orders and why, in cases where the Ministries had subsequently released records, the Ministries had not disclosed the records earlier. He has also followed up with questions on the contents of the records and with questions about the responses to his access requests. As an example of the latter, in a request for emails on a particular topic, upon being told that there were no emails, he made a series of requests for information on email backup tapes, whether they existed, where they were stored, the use made of them and so on. The respondent also requested reviews of or made complaints about a number of the responses he had received, for example, where he was told no records existed or he had already received records responsive to his request in response to earlier requests.⁴⁴

[34] In this proceeding, the Respondent's requests are detailed and many arise out of the content of the responsive records that he has already received. It is apparent that the Respondent has been combing through the responsive records from earlier requests and basing his new requests on his assessment of what information he believes is missing. He has also followed up with questions about the records and has requested reviews or made complaints to the OIPC.⁴⁵ Instead of waiting for the outcome of those processes, he has made a series of new access requests in an effort to uncover the information he believes has been improperly withheld. He has also made repeated requests for his own personal information, with a new request starting where a previous request for the same type of information left off and has made multiple requests for information relating to the "processing" of previous requests.⁴⁶

[35] Specifically, a total of 17 of the 22 Outstanding Requests are aimed at locating information the Respondent believes is missing from the records the OAG provided in response to Request 1.⁴⁷ The Respondent's submission supports this conclusion. He says:

I would argue that most of the FOI requests I have submitted relate to my personal and private records, how they were search[ed] (in light of their inadequacy), how they were processed, records about calendars because

⁴⁴ Decision F06-12, 2006 CanLII 42644 (BC IPC), paras. 34-35.

⁴⁵ For example: Affidavit of Executive Director, Exhibits D, E, H, J and PP.

⁴⁶ Affidavit of Executive Director, Exhibit A: Requests FOI_18_24 and FOI_18_26 for requests on a rolling basis and Requests FOI_18_29 to FOI_18_41 for those regarding "the processing" of previous requests.

⁴⁷ Affidavit of Executive Director, Exhibit A: Requests FOI_18_05, FOI_18_24, FOI_18_26 and FOI_18_29 to FOI_18_42.

I did not believe all records about meetings held about me had been provided, as well as other records that helped shed light on the environment of suppression and oppression at the OAG. I was compelled to submit most of [the] FOIs as a direct result of the banged and ill-handled first FOI request.⁴⁸

[36] Based on the Respondent's submissions and my review of his requests, I find that he has pursued the information he seeks in a methodical and deliberate manner, with the objective of either obtaining all of the information he believes is missing from the records he has been provided, or locating information that will prove records have been withheld. I am satisfied that these 17 requests are systematic.

[37] The remaining five of the Respondent's Outstanding Requests are aimed at locating evidence that would prove the OAG "is deficient in terms of ethical principles."⁴⁹ The Respondent submits that based on his own experience of working at the OAG, it is his opinion that the OAG has a complicated relationship with the "truth and truth claims."⁵⁰ It is clear to me that his interest is not in the totality of the information the records he has requested. His goal is to identify pieces of information in those records that will support his views about the OAG.⁵¹

[38] In my view, he has also pursued this information in a methodical and deliberately-planned manner. For example, all five of the Outstanding Requests cover roughly the same period of time between 2014 and 2018.⁵² Additionally, four of the five Outstanding Requests were submitted within one month. I also note that although each request is for a distinct type of information, they are drafted similarly and broadly, with an aim to capture anything loosely related to the specific topic and are also further connected by the fact that the Respondent believes the responsive records will demonstrate that the OAG is ethically deficient.

[39] The manner in which the Respondent has made the remaining five Outstanding Requests is similar to the respondent's requests in Decision F06-03. In that matter, the adjudicator concluded that a former UBC student had systematically probed into various programs which he had been involved, applied

⁴⁸ Respondent submission, at para. 10.1.

⁴⁹ Respondent submission, at para. 24.

⁵⁰ Respondent submission, at para. 6.

⁵¹ For example, the Respondent made request FOI_18_14 (for information related to the OAG's food, beverage and catering expenses) because he wondered whether the people who mistreated him at the OAG were sober: Respondent submission, at para. 42.

⁵² Affidavit of Executive Director, Exhibit A; Requests FOI_18_14, FOI_18_21 and FOI_18_23 are for the exact same timeframe. Request FOI_18_16 includes up to 2017 and FOI_18_01 is for a larger period of time, 2011-2018.

for, complained about or appealed. He requested information about the school's financial reports, employee job descriptions, fees paid to a law firm, contracts with construction companies, university policies regarding harassment and disability accommodation and staff training courses, among other subjects. The adjudicator concluded that the respondent's requests were systematic for the purposes of s. 43(a).

[40] I am similarly satisfied that the five remaining Outstanding Requests in this proceeding are systematic for the purposes of s. 43(a). In making these requests, the Respondent has, with each request, deliberately cast a wide net in hopes of unearthing records to support his negative opinion of the OAG. I find the Respondent is acting in accordance with a systematic plan to make broad requests for information for the same time-frame in rapid succession.

[41] In summary, I find that all 22 of the Respondent's Outstanding Requests are systematic for the purposes of s. 43(a).

Is Respondent 2's second request systematic?

[42] Neither the OAG nor Respondent 2 made submissions regarding whether her second request was systematic. As noted above, she made two requests: one for her own personal information and one about an alleged privacy breach. I find that these requests do not meet the criteria to be considered systematic requests.

Section 43(a) - Unreasonable interference with OAG's operations

[43] As I have concluded that the Respondent's Outstanding Requests are systematic, the next step is to determine whether responding to them would unreasonably interfere with the OAG's operations.

[44] The OAG submits that the time required to process the Outstanding Requests will unreasonably interfere with its ability to fulfill its responsibilities to other individuals who make access requests.⁵³ In support of its argument, the OAG provides an affidavit from its Executive Director of Finance and Administration (Executive Director), responsible for financial operations and budgeting of the OAG as well as the facilitation of FIPPA requests.⁵⁴

[45] The OAG's evidence is that the requests made by the Respondent comprise 95% of the requests received by the OAG in 2018 and that the OAG has already provided him 4000 pages of responsive records.⁵⁵ The Executive

⁵³ OAG initial submission, para. at 116.

⁵⁴ Affidavit of Executive Director, at paras. 1-2.

⁵⁵ Affidavit of Executive Director, at para. 83.

Director says that the Communications Coordinator assists the Executive Director in dealing with FIPPA requests. Due to the increase in volume of the Respondent's requests, they have not been able to manage the work, so in April 2018 a Records and Information Management Coordinator and an Office Assistant were reassigned in order to assist them with the Respondent's FIPPA requests.⁵⁶

[46] The OAG estimates that responding to the Outstanding Requests will require more than 950 employee hours and cost the OAG over \$54,000 in salaries.⁵⁷ The OAG's evidence is that it would take approximately three and a half months for two full-time employees devoting seven hours a day to complete the Outstanding Requests. The OAG says that it has had to hire a consultant, who anticipates the review will cost more than \$70,000 to complete, to assist with processing the Respondent's access requests given their volume and complexity.⁵⁸

[47] The Executive Director also says that because the office of 112 employees is small, requests often target the same individuals and can make it difficult to manage ongoing operations. For example, she says that Requests 14, 15 and 16 involve the human resources team who she says are currently in the process of recruiting for 12 positions and that as a result, the OAG has had to engage external consultants to manage the recruitment load.⁵⁹

[48] The OAG submits that the challenges it faces in processing the Respondent's outstanding requests are similar to those faced by the public body in Decision F06-12. In that case two analysts and one manager were in charge of processing an applicant's 41 requests which made up 28% of the overall requests to the public body.⁶⁰ Two additional employees were hired on a temporary basis to assist. The public body said it had already spent over 300 hours dealing with the requests and that the requests had an impact on their ability to do their jobs under FIPPA.⁶¹ Based on that evidence, former Commissioner Loukidelis concluded that respondent's requests were systematic and would unreasonably interfere with the operations of the public body.⁶²

[49] The Respondent says that he is sceptical of the OAG's submissions with regard to unreasonable interference and that he "doubts the methodology used in calculating hours presented in support of this application."⁶³ He submits that

⁵⁶ Affidavit of Executive Director, at para. 3-4 and 84.

⁵⁷ Affidavit of Executive Director, at para. 86.

⁵⁸ Affidavit of Executive Director, at paras. 30 and 85-87; Also, Exhibit U.

⁵⁹ Affidavit of Executive Director, at para. 87.

⁶⁰ Decision F06-12, 2006 CanLII 42644 (BC IPC), at paras. 37-38.

⁶¹ Decision F06-12, 2006 CanLII 42644 (BC IPC), at para. 39.

⁶² Decision F06-12, 2006 CanLII 42644 (BC IPC), at para. 42.

⁶³ Respondent submission, at paras. 115 and 121.

the OAG handles hundreds of public inquiries each year and that it is misleading to say that his requests (and those of Respondent 2) have taken up 100% of the time staff designate to deal with public inquiries. He says that if the OAG would engage with applicants instead of being dismissive it would not be as burdened by the process.⁶⁴

[50] The Respondent refers me Auth. (s. 43) 03-01 where former Commissioner Loukidelis concluded that “a large number of records is not enough to cross the threshold of what is an unreasonable interference with a public body’s operations.”⁶⁵ I note that the former Commissioner pointed out that the respondent’s requests in that case made up only “some 6.2% of the requests [the public body] received during the relevant period” and consumed approximately 17% of the access and privacy manager’s time.⁶⁶ In contrast, the OAG’s evidence was that the Respondent’s access requests account for 95% of the requests made to the OAG this year and that responding to the Outstanding Requests would consume more than 950 employee hours as well as significant additional consulting fees.⁶⁷ In my view, Auth. (s. 43) 03-01 is not analogous to the current situation.

[51] Based on the affidavit evidence provided by the Executive Director, I am satisfied that the Respondent’s systematic requests would unreasonably interfere with the OAG’s operations and hinder its ability to carry out other tasks and responsibilities. Within the relatively short time of six months, the Respondent has sent an excessive number of access requests, some of which are for large amounts of records. He sent six separate requests in three days and on another day he sent 14 separate requests in 12 minutes.⁶⁸ In total, including the requests the OAG has already responded to, the Respondent has made 35 requests in a period of just over four months.⁶⁹ I am satisfied that given the systematic nature of his requests and his unrelenting efforts to locate the information he seeks, responding would unreasonably interfere with the OAG’s operations. As such, the OAG is authorized to disregard all 22 of the Outstanding Requests.

[52] The OAG also seeks authorization to disregard 13 of 22 of the Respondent’s Outstanding Requests and Respondent 2’s second request pursuant to s. 43(b). Given my finding that s. 43(a) applies to all 22 of the Respondent’s Outstanding Requests, it is not strictly necessary for me to consider whether s. 43(b) also applies. However, for the sake of completeness, I will do so.

⁶⁴ Respondent submission, at paras. 117 and 120.

⁶⁵ Respondent submission, at para. 124; Citing: Auth. (s. 43) 03-01 (December 10, 2003) available at: <https://www.oipc.bc.ca/decisions/173>, at para. 27.

⁶⁶ Auth. (s. 43) 03-01 (December 10, 2003), at para. 28.

⁶⁷ Affidavit of Executive Director, at paras. 83 and 86.

⁶⁸ Affidavit of Executive Director, Exhibit A.

⁶⁹ Affidavit of Executive Director, Exhibits YY to LLL.

Section 43(b) - Frivolous or vexatious

[53] Former Commissioner Loukidelis set out the principles governing the interpretation and application of s. 43(b) in Auth. (s. 43) 02-02.⁷⁰ He considered the definitions of “frivolous” and “vexatious” found in *The Concise Oxford Dictionary* (8th edition): “frivolous” as “lacking seriousness; given to trifling, silly” and “vexatious” as “annoying or distressing thing.”⁷¹ He also cited the definitions from *Black’s Law Dictionary* (6th ed.):

Frivolous: Of little weight or importance. A pleading is “frivolous” when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defence is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense. ... [case citation omitted]. Frivolous pleadings may be amended to proper form, or ordered stricken, under federal and state Rules of Civil Procedure.

Vexatious: Without reasonable or probable cause or excuse. ... [case citation omitted]⁷²

[54] The former Commissioner then provided a non-exhaustive list of factors to assist with determining if a request is frivolous or vexatious. The following are the factors that I consider to be most relevant in this proceeding:

- Regardless of how it is so, a frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
- ...
- A “frivolous” request is one that is 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 be for an ulterior purpose – 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 “frivolous” requests includes requests that are trivial or not serious...
- 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.

⁷⁰ Auth. (s. 43) 02-02 (November 8, 2002) available at: <https://www.oipc.bc.ca/decisions/172>.

⁷¹ Auth. (s. 43) 02-02 (November 8, 2002) available at: <https://www.oipc.bc.ca/decisions/172>, at para. 19.

⁷² Auth. (s. 43) 02-02 (November 8, 2002) available at: <https://www.oipc.bc.ca/decisions/172>, at para. 19.

- The fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious...⁷³

Are the Respondent's Outstanding Requests frivolous or vexatious?

[55] The OAG seeks authorization to disregard 13 of the Outstanding Requests.⁷⁴ These requests are for records relating to the “processing” of previous requests. The OAG says that these requests have been made solely for the purpose of burdening the OAG and not in an attempt to secure information that may be of assistance to the Respondent personally or in the public interest. The OAG further submits that the requests do “not further the purposes” of FIPPA.⁷⁵

[56] The Respondent disputes the OAG's characterization of his requests as frivolous or vexatious and submits that the requests were made to view records about himself, as well as those which may allow him to better understand the work environment at the OAG.⁷⁶ He refers me to Order F17-36, where the adjudicator concluded that the respondent's requests, although frustrating to process, were not frivolous or vexatious.⁷⁷ The adjudicator in that proceeding emphasized that the requests were not made in bad faith and that the respondent genuinely wanted access to his personal information.⁷⁸

[57] The Respondent submits that he had no intention of abusing FIPPA and states that what he did, in particular submitting 14 requests in one day, “was a frustrated reaction in response to a closed, intransigent and non-communicating Public Body.”⁷⁹ He reiterates that “if the OAG had responded to my very first FOI request in a proper manner there would have been no need for me to submit either follow-up FOI requests or FOIs about the processing of my previous FOIs.”⁸⁰

[58] As previously discussed, the Respondent has made it clear that he is seeking information that will prove that the OAG did not adequately respond

⁷³ Auth. (s. 43) 02-02 (November 8, 2002), at para. 27.

⁷⁴ Affidavit of Executive Director, Exhibit A: Requests FOI_18_29 to FOI_18_41. OAG initial submission, at para. 130.

⁷⁵ OAG initial submission, at para. 133.

⁷⁶ Respondent submission, at p. 44.

⁷⁷ Respondent submission, at p. 44; Citing: Order F17-36, 2017 BCIPC 40 (CanLII), at para. 32. I also note that at para. 129 of the Respondent's submission he refers me to ten additional BC Orders where s. 43 applications were not authorized. The Respondent did not explain how these cases apply to the current proceeding. I have reviewed each of the orders he has referenced and do not see any direct application, therefore I have not referred to them individually.

⁷⁸ Order F17-36, 2017 BCIPC 40 (CanLII), at para. 33.

⁷⁹ Respondent submission, at para. 90.

⁸⁰ Respondent submission, at p. 37.

to his first access request.⁸¹ This is evident from his statement that the expectation is for him “to sit back and just accept” that the OAG has done its due diligence in complying with FIPPA.⁸² He argues that the evidence regarding the manner in which the OAG “processed” his requests proves they are “arrogantly ignorant of their statutory obligations.”⁸³

[59] The Respondent’s concerns about the adequacy of the OAG’s response to Request 1 are currently being addressed through the OIPC’s complaint procedures.⁸⁴ I accept that the Respondent genuinely wants access to his personal information. However, it is an abuse of the rights conferred by FIPPA to, in essence, conduct a collateral complaint investigation while the same issue is before the OIPC. The Respondent’s submissions demonstrate the 13 Outstanding Requests were not made in good faith. It is clear he is attempting to conduct his own investigation, parallel to the Complaint or in an effort to supplement processes already underway or available to him pursuant to FIPPA. I find that these 13 Outstanding Requests are frivolous and vexatious within the meaning s. 43(b) and I authorize the OAG to disregard them.

Is Respondent 2’s request frivolous or vexatious?

[60] The OAG seeks authorization to disregard Respondent 2’s second request pursuant to section 43(b). The OAG says that this request is for documents relating to a reported privacy breach that was the subject of Respondent 2’s complaint to the OIPC.⁸⁵ It says that an OIPC investigator considered the complaint and determined that the alleged privacy breach was not an unreasonable invasion of Respondent 2’s privacy.⁸⁶ The OAG submits that it appears that Respondent 2 suspects that the OAG “acted in a retaliatory manner and seeks documents in support of her OIPC complaint.” It submits that this falls squarely within the meaning of frivolous or vexatious as described by Order 02-02.⁸⁷

[61] As noted above, the OAG has the burden of proof with regard to s. 43.⁸⁸ Based on the submissions provided by the OAG, I am unable to conclude that Respondent 2’s request falls within the meaning of frivolous or vexatious. I have not seen the request the OAG seeks authorization to disregard and I do not have

⁸¹ Respondent submission, at para. 65.

⁸² Respondent submission, para. 109.

⁸³ Respondent submission, para. 109.

⁸⁴ Affidavit of Executive Director, Exhibit A at p. 2 and Exhibit E.

⁸⁵ OAG initial submission, at para. 131.

⁸⁶ OAG initial submission, at para. 132.

⁸⁷ OAG initial submission, at para. 132.

⁸⁸ Order F18-09, 2018 BCIPC 11 (CanLII), at para. 2; Citing: Auth. (s. 43) 99-01 (December 22, 1999) available at: <https://www.oipc.bc.ca/decisions/170> at p. 7.

sufficient evidence to make a determination that it is frivolous or vexatious. I find that OAG has not established that s. 43(b) applies to Respondent 2's second request and the OAG is not authorized to disregard it.

Appropriate remedy

[62] The OAG is seeking the following authorization and orders pursuant to s. 43 of FIPPA:

- (i) authorization under ss. 43(a) and/or 43(b) to disregard the 23 outstanding access requests filed by [the Respondent and Respondent 2][...];
- (ii) an order authorizing the Public Body to disregard all future access requests from [the Respondent or Respondent 2] or access requests filed on his or her behalf, for a period of two years from the date of the Commissioner's order, over and above one open access request at any one time during the two-year period and further that the Public Body may determine what a single access request is for the purposes of this order; and
- (iii) an order that the Public Body not be required to spend more than seven (7) hours in responding to any one access request made by either of the Respondents, or filed on his or her behalf, during the two-year period.⁸⁹

Authorization to disregard outstanding requests

[63] For the reasons outlined above, I determined that responding to the Respondent's Outstanding Requests would unreasonably interfere with the OAG's operations because of the systematic nature of those requests pursuant to s. 43(a) and that 13 of those requests also met the criteria of "frivolous or vexatious" for the purposes of s. 43(b). The OAG is authorized to disregard all 22 of the Outstanding Requests.

[64] I concluded that the OAG did not establish that Respondent 2's second request met the criteria in either s. 43(a) or (b). The OAG is therefore not entitled to an authorization to disregard that request.

Future relief

[65] The OAG also requests authorization to limit the Respondent to one open access request at a time and to refuse to spend any more than seven hours responding to any one access request.

⁸⁹ OAG initial submission, at para. 134.

[66] In *Crocker v. The Information and Privacy Commissioner of B.C.*, the Supreme Court of British Columbia considered whether the Commissioner had jurisdiction to authorize a public body to disregard future requests and determined that the language of s. 43 imports a remedial power to make prospective orders.⁹⁰ In reaching this conclusion, the Court emphasized that s. 43 could not have been intended to increase the administrative burden on public bodies which would likely occur if the Commissioner did not have the power to make authorizations that extend to future requests.⁹¹ However, the Court noted that the Commissioner's discretion is not completely unfettered and the remedy must redress the harm to the public body seeking the authorization.⁹²

[67] The Respondent has demonstrated a well-established practice of making multiple access requests in quick succession with little regard for the impact on the public body.⁹³ I find that it is reasonable to restrict him to one request at a time for the next two years. The OAG has the discretion to determine what is "one" request.

[68] However, I am not satisfied that the OAG has provided sufficient evidence to establish that it is necessary to limit the amount of time it spends responding to any one of the Respondent's request to seven hours. The OAG's submissions indicate that three of the Respondent's Outstanding Requests would require an excess of 100 hours to respond to and that four others would require less than 30 hours. It offered no evidence regarding how much time it anticipated it would take to respond to the remaining 14 Outstanding Requests.⁹⁴

[69] As noted earlier, the Respondent also made a number of additional requests to which the OAG has already responded. The OAG provided evidence about the amount of time it took to respond to some of those requests. Of the 11 requests it provided information about, I note that only two required more than 40 hours to respond to and six took less than 10 hours.⁹⁵ This evidence does not suggest to me that the Respondent has a system of making requests that require such a large amount of time that it would be necessary to authorize the OAG to limit the amount of time it spends responding to any one request to seven hours.

[70] In my view, limiting the Respondent's future requests to one open request at a time will sufficiently prevent future requests from unreasonably interfering

⁹⁰ *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para. 49.

⁹¹ *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para. 49.

⁹² *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para. 54.

⁹³ Affidavit of Executive Director, Exhibit A.

⁹⁴ Affidavit of Executive Director, Exhibit A.

⁹⁵ Affidavit of Executive Director, Exhibit A.

with OAG's operations while preserving the Respondent's access to information rights under FIPPA.⁹⁶

[71] Finally, I note that the OAG submits that it is concerned that if it obtains the Commissioner's authorization to disregard the Respondent's requests, Respondent 2 may make the same requests in his place. It is seeking an authorization to limit her future requests on that basis. Respondent 2 says that the OAG's claim that she will do this is unsupported by any evidence. I agree. I am not persuaded that Respondent 2's right to make future access requests should be restricted on the basis of such assertions unsupported by persuasive evidence, and I decline to grant that authorization.

CONCLUSION

[72] For the reasons provided above, I authorize the following under s. 43 of FIPPA:

1. The OAG is authorized to disregard all 22 of the Respondent's Outstanding Requests.
2. The OAG is authorized, for a period of two years from the date of this order, to disregard all access requests made by, or on behalf of, the Respondent over and above one open access request at a time.
3. For the purposes of the above, an "open access request" is a request for records under s. 5 of the FIPPA to which the OAG has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of FIPPA.
4. The OAG may determine what is "one" access request for the purposes of this authorization.

August 27, 2018

ORIGINAL SIGNED BY

Meganne Cameron, Adjudicator

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⁹⁶ See: *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para. 60.