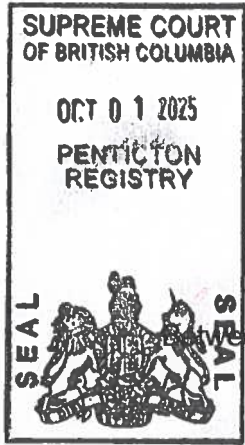


RECEIVED

OCT 01 2025

District of Summerland

No. 51447
Penticton Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

between:

BRADLEY H. BESLER

Petitioner

and

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER, CORPORATION OF THE
DISTRICT OF SUMMERLAND**

Respondents

PETITION TO THE COURT

ON NOTICE TO:

Office of the Information and Privacy Commissioner
PO Box 9038, Stn. Prov. Govt.
Victoria, BC V8W 9A4
Attn: Elizabeth Vranjkovic

AND ON NOTICE TO:

Corporation of the District of Summerland
PO Box 159
13211 Henry Ave
Summerland, BC V0H 1Z0
Attn: Graham Statt

The address of the registry is:

100 Main Street, Penticton, BC

The Petitioner estimates that the hearing of the petition will take 2 days.

This proceeding is brought for the relief set out in Part 1 below, by

The person named as Petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) File a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) Serve on the petitioner
 - i. 2 copies of the filed response to petition, and
 - ii. 2 copies of each filed affidavit on which you intend to rely on at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the Petitioner,

- (a) If you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) If you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) If you were served with the petition anywhere else, within 49 days after that service, or, and
- (d) If the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner is: 18816 Garnet Valley Road Summerland, British Columbia V0H 1Z3 Email: bbeslera@gmail.com
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CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. That Parts 1, 3 and 4 of the Remedy in OIPC Order F25-74 (the "Order"):

- 1. The District is authorized under s. 43(c)(ii) to disregard the Keyword Requests, which are requests 2023-37, 2023-38, 2023-39, 2023-40, 2023-45, 2023-46, 2023-48, and 2023-68.

2. The District is not authorized under s. 43(a) or (c) to disregard the Remaining Requests. It is required to respond to the Remaining Requests in accordance with Part 2 of FIPPA.
3. The District is authorized, for a period of two years from the date of this authorization, to disregard all access requests that the respondent submits over and above a single access request at a time. To be clear, this authorization applies with respect to access requests submitted from the date of this authorization. It does not apply to any access requests submitted before the date of this authorization.
4. The District is authorized to determine what constitutes a single access request for the purposes of the authorization granted under item 3 above.

be quashed as unreasonable.

2. Costs.
3. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

The Parties

1. The Petitioner, Bradley H. Besler is a long-time Summerland resident, owner/operator of Big Dog Fencing, and moderator of the Facebook page "The REAL Summerland."
2. The Respondent, Office of the Information and Privacy Commissioner for British Columbia (the "OIPC") is an officer of the Legislature appointed pursuant to and with the powers conferred by the *Freedom of Information and Privacy Protection Act* ("FIPPA").
3. The Respondent, District of Summerland (the "District") is the applicant to the Order under review, and is the local government in Summerland, British Columbia.

The Nature of this Petition

4. On September 25, 2025 the OIPC made Order F25-74 (the "Order"), which allowed the District to disregard eight of the Petitioner's Freedom of Information ("FOI") requests as systematic and an unreasonable interference on District operations.
5. This judicial review is asking the Court to review the Adjudicator's assessment of the eight disregarded FOI requests to determine if all eight requests are systematic, and if so, are all eight requests an unreasonable interference on District operations.
6. The Petitioner says the Order is unreasonable and ought to be quashed.

Factual Background

7. In November 2023 the District made a Section 43 application to the OIPC to disregard ten of the Petitioners' FOI requests. The District and the Petitioner made submissions to the OIPC.

8. On February 29, 2024 the OIPC made Order F24-15, which allowed the District to disregard ten of the Petitioner's FOI requests as excessively broad, systematic, and unreasonably interfering with District operations. The Petitioner filed a petition for judicial review shortly thereafter (Penticton Registry, No. 49730).
9. On October 16-17, 2024 the judicial review was heard by the Honourable Justice Hardwick in Kelowna, BC.
10. On April 9, 2025, OIPC Order F24-15 set aside as procedurally unfair by the Honourable Justice Hardwick (*Besler v. British Columbia (Information and Privacy Commissioner)*, 2025 BCSC 662). The matter was sent back to the OIPC for reconsideration based on her Reasons for Judgement.
11. During July 2025 the District and Petitioner submitted 10-page supplemental submissions to the OIPC for the reconsideration.
12. On September 25, 2025 the OIPC made Order F25-74 (the "Order"), which allowed the District to disregard eight of the Petitioner's FOI requests as systematic and an unreasonable interference on District operations, and restricted the Petitioner to only one open FOI request at a time with the District for the next two years.

Part 3: LEGAL BASIS

1. The Petitioner relies on:

- (a) *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 as amended;
- (b) *Supreme Court Civil Rules*, B.C. Reg. 168/2009, Rules 2-1(2)(b), 14-1, and 16-1;
- (c) *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 as amended;
- (d) The inherent jurisdiction of this Honourable Court.

Grounds for Review

2. FIPPA does not grant the Petitioner a right of appeal for the Order. A review of the Order must be undertaken pursuant to a judicial review brought by petition to this Court.
Judicial Review Procedure Act, R.S.B.C. 1996, c. 241, at s. 2(1)

The Statutory Provision Under Review

3. Section 43 of *FIPPA* states "If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because:
(a) the request is frivolous or vexatious, (b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source, or (c) responding to the request would unreasonably interfere with the operations of the public body because the request (i) is excessively broad, or (ii) is repetitious or systematic."

Standard of Review

4. For this Petition, the standard of review is reasonableness.

5. In order to be upheld as reasonable, the reasons underlying the statutory or administrative decision must be both rational and logical, and the decision itself must be justifiable in light of the relevant facts and the law. A decision can be unreasonable in light of the relevant factual and legal constraints that bear on it. The internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. A reviewing court must be ultimately satisfied that the decision maker's reasoning "adds up." A decision can be unreasonable on the basis that the decision maker showed that their conclusions were not based on the evidence that was actually before them.

Canada (Minister of Citizenship and Immigration) v. Vavilov,
2019 SCC 65, at paras. 99-106, 125-126

Application of Legal Principles

6. As the party applying for relief under s. 43, the District had the burden to prove that its s. 43 application should be granted (Order, para. 8).
7. Section 43 requires the OIPC to conduct an individualized analysis of each request at issue.
8. The principles of Section 43 applications are outlined in the Order at paras. 13-18:

[13] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right to access information under FIPPA. Public bodies do not have discretion to disregard access requests on their own; they must obtain permission to do so from the Commissioner.

[14] Section 43 allows the Commissioner to authorize a public body to disregard a request, including because:

(a) the request if frivolous or vexatious

... or

(c) Responding to the request would unreasonably interfere with the operations of the public body because the request

(i) Is excessively broad, or

(ii) is repetitious or systematic.

[15] Given that relief under this section curtails or eliminates a person's right to access information, s. 43 applications must be carefully considered. According to former Commissioner Flaherty, granting s. 43 applications should be the "exception" and not a mechanism for public bodies to "avoid their obligations under FIPPA."

[16] However, s. 43 serves an important purpose: to guard against abuses of the right of access. It recognizes that when an individual overburdens a public body with access requests, it interferes with the ability of others to legitimately exercise their rights under FIPPA. In this way, s. 43 is an "important remedial tool in the Commissioner's armory to curb abuse of the right of access."

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

[18] Section 43(c) has two parts, and the District must establish that both apply. First, the requests must be excessively broad, repetitious or systematic. Second, responding to the requests must unreasonably interfere with the District's operations.

The Order: "Keyword Requests" and "Remaining Requests"

9. The reconsideration of the District's s. 43 application, which resulted in the Order, included ten different FOI requests (FOIs 2023-32, 2023-33, 2023-37, 2023-38, 2023-39, 2023-40, 2023-45, 2023-46, 2023-48, 2023-68).
10. For the Order, the Adjudicator separated the requests into two categories: Keyword Requests and Remaining Requests.
11. The eight Keyword Requests were FOIs 2023-37, 2023-38, 2023-39, 2023-40, 2023-45, 2023-46, 2023-48, and 2023-68.
12. The two Remaining Requests were FOIs 2023-32 and 2023-33.
13. There are three main issues for the Court to consider for this judicial review:

Issue 1: Are the Petitioner's eight Keyword Requests "systematic" within the meaning of s. 43(c)(ii)?

Issue 2: Would responding to the Keyword Requests unreasonably interfere with the District's operations within the meaning of s. 43(c)?

Issue 3: If the answer to either or both of the first two questions is yes, what relief, if any, is appropriate?

ISSUE 1: Are the Petitioner's eight Keyword Requests "systematic" within the meaning of s. 43(c)(ii)?

14. Systematic requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles. Some characteristics of systematic requests may be:
 - A pattern of requesting more records, based on what the respondent sees in records already received;
 - Combing over records deliberately in order to identify further issues;
 - Revisiting earlier freedom of information requests;
 - Systematically raising issues with the public body about their responses to responses to freedom of information requests, and then often taking those issues to review by the 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.

Order, para. 19

15. The Adjudicator's analysis on whether the Keyword Requests and Remaining Requests are systematic is at paras. 26-36 of the Order:

[26] [...] I can see that many of the respondent's access requests are for all records, communications or emails of certain individuals over certain time periods. In my view, this is a common method of formulating access requests and is insufficient, on its own, to establish that the outstanding requests are systematic.

[27] However, I am persuaded that eight of the outstanding requests are systematic for another reason. They are requests for all communications or emails between specific individuals over certain periods of time containing a number of keywords (the Keyword Requests). Considering the respondent's explanation for using keywords, I find that the Keyword Requests are systematic because the respondent is clearly following a method of formulating requests with a number of keywords for the purpose of alleviating his concern that the District may withhold some of the responsive records.

[28] However, in the remaining two outstanding requests the respondent did not use the keyword approach. They are requests 1 and 2 described in paragraph 12 above. I will refer to these two requests as the Remaining Requests and for the reasons that follow, I find they are not systematic.

[29] [...] The Remaining Requests do not relate to the respondent's neighbour and nothing before me indicates that the Remaining Requests were prompted by the respondent asking the District for information via email, so I find they are not systematic on those grounds. However, even if the Remaining Requests were about the respondent's neighbour or were prompted by an email, the District does not adequately explain, and I do not see, how that would make them systematic.

[30] [...] Previous orders have found that requests are systematic where the access applicant has a pattern of requesting records based on what they saw in previous records already received. Therefore, I must consider whether request 2023-33 is part of a pattern of the respondent requesting more records based on what he saw in records already received.

[31] The District says there is such a pattern because request 2023-35 was based on records received in response to request 2022-37. However, there is no request 2022-37 in the table of access requests and the District does not explain anything further about how request 2023-35 was based on records received in response to that request. As a result, I am not satisfied that the respondent made request 2023-35 based on what he saw in records received in response to request 2022-37.

[32] The District also says there is such a pattern because two of the Keyword Requests, 2023-38 and 2023-40, are based on records received in response to request 2023-31. The respondent explains that those requests contained an email from councillor A's spouse to councillor A about hotels for a 2023 conference and councillor A's expenses for the same conference in 2022 were the subject of media attention.

[33] Request 2023-38 seeks 2023 communications from councillor A about the conference. Considering the subject matter of that request and the respondent's explanation, I find that request 2023-38 was based on what the respondent saw in records received in response to request 2023-31. Request 2023-40 relates to councillor

A and their spouse but does not relate to the conference. Because of the different subject matter of request 2023-40, I am not satisfied that the respondent made the request based on what he saw in records received in response to request 2023-31.

[34] The District does not say that any other access requests are based on what the respondent sees in records already received.

[35] Considering all of the above, I am not persuaded that there is a pattern of the respondent requesting records based on what he sees in records received in response to previous access requests. I found above that two of the respondent's access requests (2023-38 and one of the Remaining Requests) are based on what the respondent saw in records received in response to a previous access request. In my view, two instances are insufficient to establish a pattern of conduct that could be fairly called systematic. Therefore, I find that the Remaining Requests are not part of the pattern of conduct of the respondent requesting more records based on what he sees in records already received.

[36] For these reasons, I find that the Remaining Requests are not systematic. As a result, I will go on to consider whether the Remaining Requests are repetitious or excessively broad. I will not consider whether the Keyword Requests are repetitious or excessively broad because I have already found they are systematic.

16. The Adjudicator applied incoherent logic in her reasoning for why the Keyword Requests are systematic, but the Remaining Requests are not.

Reasons for Keyword Requests

17. In the Petitioner's Original Submissions dated November 30, 2023, he provided specific reasons for why each of the Keyword Requests and Remaining Requests were submitted.
18. The Petitioner also provided the OIPC with explanations, along with supporting documents, regarding the District's previous FIPPA violations with respect to the Petitioner's FOI requests. The Adjudicator was made well-aware of the District's previous attempts to withhold records, provide incomplete responses packages, and violate OIPC directions related to the Petitioner's requests.
19. The Adjudicator noted "In response to the District's submission that some of the respondent's access requests are based on records received in response to previous requests, the respondent says, "[it] is important for the OIPC to carefully review those requests and consider them in the context of Order F20-34 and [a prior OIPC investigation]" (Order, para. 24). But the Adjudicator failed to do so.
20. The Adjudicator did not properly consider the past actions of the District related to the Petitioner's FOI requests, such as withholding records and providing incomplete response packages, which provide important context for why Keyword Requests were made. It was improper for the Adjudicator to blame the Petitioner for keyword requests when the OIPC has confirmed the District has repeatedly violated FIPPA regarding his requests.
21. To alleviate concerns that District staff may withhold relevant documents like in the past, the Petitioner submitted FOI requests with specific parameters that included keywords. This approach complies with FIPPA and has proven to be the most effective way to ensure the

desired documents are produced. This is a common approach to submitting FOI requests (Order, para. 26). The Adjudicator noted the Petitioner says "he submits access requests with keywords because it is the most effective way to ensure the desired records are produced" (Order, para. 23).

22. The Petitioner explained how providing keywords within specific parameters reduces the likelihood that unwanted or unrelated records will be included in a search. This is beneficial because it reduces the number of documents District staff have to process for a request. But the Adjudicator found the Keyword Requests were systematic because of the respondent's explanation, saying the Petitioner is clearly following a method of formulating requests with a number of keywords for the purpose of alleviating his concern that the District may withhold some of the responsive records (Order, para. 27).
23. It does not make sense for the Adjudicator to say the Remaining Requests are acceptable, despite being open ended to all emails, but the Keyword Requests, which are more specific to the sought-after topic, are unacceptable and an unreasonable use of the District's resources. The Petitioner also submitted the Remaining Requests for all emails, instead of identifying a topic, because he does not trust the District.
24. The Petitioner had credible concerns about District staff's actions, and it was unreasonable for the Adjudicator to dismiss those concerns.

Issue 2: Would responding to the Keyword Requests unreasonably interfere with the District's operations within the meaning of s. 43(c) of FIPPA?

25. An essential element for successful s. 43 applications is that the public body must prove the requests unreasonably interfere with its operations. An adjudicator's findings on unreasonable interference must be based on an *objective assessment of the facts*.
26. It is not sufficient for the District to claim the Petitioner's FOI requests would interfere with operations; rather, the District must show that each request would *unreasonably* interfere with operations.
27. Because the Adjudicator found the Keyword Requests were systematic, she was required to assess if the Keyword Requests were also an unreasonable interference on District operations (Order, paras. 53 and 54).
28. The Adjudicator's analysis of unreasonable interference is at paras. 61-66 of the Order:

[61] To begin, I find some of the District's submission irrelevant where it refers to the impact of access requests generally or the impact of access requests the respondent and his family members made together. I only find the District's submission relevant where it relates to the impact of responding to the respondent's access requests.

[62] For the reasons that follow, I find that responding to the Keyword Requests would unreasonably interfere with the District's operations.

[63] First, I am satisfied from the language of the Keyword Requests that responding to them will require a considerable amount of work. These requests are not, for example, requests for a small number of discrete identifiable records. Instead, they are for all

communications or all emails sent or received by one to seven named individuals during certain time periods for four to 19 keywords. Some of the keywords are common words that might appear in numerous contexts, such as "food," "sick," and "job." As a result, I can see how these searches will likely result in a large number of records that, while technically responsive to the language of the Keyword Requests, do not relate to the actual purpose of the Keyword Requests. I understand from the respondent's submission that he has formulated the Keyword Requests in this manner because he does not trust the District will produce all responsive records. I find that requiring the District to process records which may not be responsive to the purpose of the access request, solely because the respondent does not trust the District will comply with FIPPA, would be an unreasonable use of the District's time and resources.

[64] I also accept the Chief Administrative Officer's evidence that the respondent's access requests have disproportionately consumed staff time allocated to FOI requests. This is consistent with the District's submission that 47% of its time and expenses spent on access requests in 2021 and 2023 was spent on the respondent's access requests. Comparing the scope and number of the respondent's access requests in 2021 and 2023 with the Keyword Requests, I am satisfied that responding to the Keyword Requests will continue to disproportionately use the District's time and resources.

[65] I am mindful that the District is a relatively small public body and the respondent is not the only access applicant requiring the District's attention. The time spent responding to the respondent's access requests negatively impacts the rights of other access applicants and diminishes the amount of public resources available to them.

[66] Considering the past amount of time and expenses spent on the respondent's access requests compared to other applicants, the limited resources of the public body, and the nature of the Keyword Requests, I conclude that responding to the Keyword Requests would unreasonably interfere with the District's operations.

29. The Adjudicator's analysis that found the Keyword Requests were an unreasonable interference on the District's operations was seriously flawed.

No Fee Estimates

30. The Petitioner's Supplemental Submissions made clear that the Adjudicator would need to carefully grapple with how CAO Graham Statt instructed District staff to stop providing the Petitioner with fee estimates for his FOI requests, starting in July 2023 (SS, paras. 49-68).
31. The Petitioner's Supplemental Submissions closed by stating "perhaps most importantly, the OIPC needs to fully grapple with the fact that the District stopped providing me with fee estimates in July 2023 and after. The fee estimates would have provided the District the relief they were seeking: a) reduced scope for requests, b) financial payments to the District, or c) both. I would not have continued to submit as many requests but for the District's decision to stop providing fee estimates. The District provided no reason for why it stopped providing fee estimates starting in July 2023" (SS, para. 76).
32. However, the Order failed to even mention how the District stopped providing the required fee estimates in July 2023, despite the District having experience providing the Petitioner with fee estimates from 2019 until then.

33. In Order F24-15, Adjudicator Celia Francis identified the following as required when a public body responds to FIPPA requests (para. 61):
- receive the request;
 - communicate with the applicant, if necessary, to clarify the request;
 - review the request to see if it overlaps with previous requests;
 - **assess any fees**;
 - search for and retrieve records that respond to the request;
 - review and organize the records to remove duplicate pages;
 - decide if any FIPPA exceptions to disclosure apply;
 - manage the external consultant, if one was hired to assist the public body with responding to requests;
 - consult with third parties and other public bodies, as necessary;
 - prepare the records for disclosure, including severing them, if applying exceptions; and
 - send the public body's decision letter and the records to the applicant.
34. The District was required to assess any fees in responding to the Keyword Requests and Remaining Requests. However, the District provided no fee estimate or estimate on the number of hours it would take to process any of the ten requests it sought to disregard in the s. 43 application.
35. The estimated time it would take to process FOI requests is found on fee estimates, which specify the number of hours expected to process particular requests. This information would allow the OIPC to *objectively* assess if the requests were an unreasonable burden on the public body.
36. The Petitioner explained that other public bodies that made s. 43 applications provided the OIPC with estimates on the number of hours it would take to process the FOI requests, which allowed the OIPC to objectively determine if the requests would unreasonably interfere with operations (Orders F22-08 at paras. 62, 76 and 77; F23-61 at para. 65; F23-98 at para. 50; F22-59 at para. 49).
37. From 2019 until early 2023, the District provided the Petitioner with fee estimates if his FOI requests were expected to take longer than 3 hours to process. The District was aware that the Petitioner had paid thousands of dollars for FOI requests. And further, the District was aware that he had reduced the search parameters of FOI requests in the past when fee estimates were too high. If the District was legitimately concerned about the financial and labour impact of his FOI requests, it defies logic that the District would stop providing fee estimates starting in July 2023 for requests that take longer than three hours to process.
38. So it is wholly unreasonable for the Adjudicator to blame the Petitioner for the Keyword Requests, but to not address the clear FIPPA violation from the District regarding no fee estimates starting in July 2023 with FOI 2023-32.
39. It is clear that if the District complied with its requirements under FIPPA and communicated with the Petitioner and provided fee estimates, that the burden on District staff would be reduced and the District would also be financially compensated for requests taking longer than three hours to process.
40. Frankly, if the Petitioner was provided fee estimates for the Keyword Requests, then he would have paid the processing fees or reduced the search parameters or both. It was the

District who stopped complying with its requirements under FIPPA, starting in July 2023, despite extensive experience in providing fee and hour estimates.

41. The Petitioner says that if the District was acting in good faith and continuing to provide fee estimates, there would have been no need for the District to submit the s. 43 application. District staff were aware that the Petitioner has reduced parameters if the fee estimate was too high in previous requests.
42. From the Petitioner's perspective, he thought that if the District needed more time to process the requests and required time-extensions, but he was not being charged fees by the District to process the requests, then that was a fair compromise. The Petitioner was acting in good faith, was very patient, and did not complain about waiting for the requests.
43. But in hindsight, it appears that the District stopped providing fee estimates in July 2023 so that it could claim that the Petitioner's FOI requests, as a cumulative total, were an unreasonable burden on the public body. The Petitioner had no clue that the District intended to submit the s. 43 application, especially since the CAO and Corporate Officer continued to tell me to submit additional requests if he wanted information. The Petitioner explained this in his submissions.
44. The Petitioner informed the OIPC that in 2023 he also submitted FOI requests to other public bodies, such as the Agricultural Land Commission ("ALC") and the Regional District of the Okanagan-Similkameen ("RDOS"), that were similarly worded and structured as the requests at issue in this s. 43 application, and yet the ALC and RDOS both provided fee estimates (which he paid) and processed the requests. As the Adjudicator noted, it is common to submit access requests for all records, communications or emails of certain individuals over certain periods of time (Order, para. 26).
45. However, the Adjudicator did not grapple with how the other public bodies provided fee estimates, as required, but the District did not.
46. The fee estimate issue was the Petitioner's central argument and the Adjudicator failed to grapple with it at all. It was a fundamental error for the Order to omit any reference to this key argument regarding no fee estimates, given its significance.

Already deduplicated

47. The District utilized software for deduplication when processing the Keyword Requests. The Petitioner's Supplemental Submissions explained that the District has already deduplicated at least eight (8) of the Keyword Requests, and attached District documents to confirm such.
48. In October 2023 the District said that all "Records have been retrieved, sorted chronologically, and initial duplicates have been removed." By the time Order F24-15 was released on February 29, 2024, 6 of the 10 requests at issue were already due to be provided. By the time the Order was released in September 2025, all outstanding requests could have been provided long ago.
49. The Petitioner explained how it would be a waste of resources to disregard the access requests that had already been deduplicated, but the Adjudicator failed to consider this, which was unreasonable.

No new requests in two years

50. Since the District made its s. 43 application in November 2023, the Petitioner has not submitted any new FOI requests to the District.
51. The Petitioner had been prevented from receiving the information in the Keyword Requests for over two years. If the District did not make the s. 43 application in November 2023, the ten requests could have been processed long ago. But the Adjudicator did not consider this, which was unreasonable.

Some Keyword Requests are less documents than the Remaining Requests

52. The Adjudicator found the Remaining Requests that contained 1661 and 2584 documents “cannot fairly be characterized as overwhelming or inordinate” (Order, para. 51).
53. By that same logic, the Keyword Requests that contain a similar or less number of documents as the Remaining Requests cannot be considered overwhelming or inordinate.
54. Keyword Requests 2023-38 and 2023-40 only contain 1412 and 1184 pages of documents each, which cannot be considered an unreasonable interference on District operations.
55. FOIs 2023-38, 2023-40 and 2023-68 are similar to the Remaining Requests, in that they are requesting information from a small number of individuals within a specific timeframe. The format for some of the Keyword Requests is very similar to the format of the Remaining Requests.
56. Although the District did not calculate the number of documents responsive to FOI 2023-68, given that it is a very limited request, it would likely contain the same or less number of documents as FOIs 2023-38 and 2023-40.
57. This shows that at least two of the Keyword Requests are smaller than the Remaining Requests, and are therefore less of a burden on District staff. In other words, because the Adjudicator determined that 2584 pages is an acceptable number for a request, it is incoherent logic to also assert that less documents, such as those in FOIs 2023-38 and 2023-40, are an unreasonable interference on operations.

District's Tables and CAO Graham Statt's Affidavit

58. The Adjudicator relied on the District's Tables from its initial submissions and CAO Graham Statt's Affidavit to find the Keyword Requests were an unreasonable interference on District operations, despite the vague and unreliable evidence in both.
59. The Adjudicator noted the Petitioner's evidence that “public bodies in previous s. 43 applications provided the OIPC with estimates of the number of hours it would take to process the relevant access requests which allowed the OIPC to objectively determine if responding would unreasonably interfere with the public body's operations. The respondent also questions the accuracy of the District's submissions about how long it took to process the respondent's past access requests” (Order, para. 60).

60. However, the Adjudicator did not properly grapple with the District's lack of specific information regarding the number of hours it would take to process the Keyword Requests. The Adjudicator's assessment was not based on an objective assessment of the facts.

District Tables

61. The Adjudicator noted "The District also provides a table of access requests submitted by the respondent and his family members from 2019-2023" (Order, para. 22).
62. The Adjudicator also noted the District does not estimate how long it would take to respond to the outstanding requests, but says that it spent 440 hours and \$55,001 processing the Petitioner's requests in 2021 and 2023 (Order, para. 56).
63. The Adjudicator relied on the District Tables to say the Petitioner's requests used 47% of the District's time and expenses spent on access requests in 2021 and 2023 (Order, para. 64).
64. The Petitioner's Supplemental Submissions described how the District's initial submissions contained a Table that says the Petitioner's FOI requests in 2023 consumed 231.5 hours. However, the District provides no details on how these numbers were determined, such as the amount of time each of the 13 processed requests in 2023 required. Further, on page 1 of those same District submissions, a different Table says the District processed and provided 7891 pages to the Petitioner in 2023.
65. But for comparison, FOI 2023-04, which was one of the 13 processed FOI requests, consisted of 1300 pages and took 6.5 hours to process. Therefore, if 1300 pages took 6.5 hours to process, then 7891 pages should take approximately 40 hours to process, not 231.5. Further, the Tables in the District's initial submissions say the Petitioner's seven requests in 2021 resulted in only 531 pages, but claim that required 208.5 hours.
66. The Petitioner's Supplemental Submissions said the District needed to provide details to justify its claims that 231.5 hours were required to process 7891 pages 2023, and how 208.5 hours were required to process 531 pages in 2021, because the numbers don't add up.
67. However, this remained unaddressed by the District and the Adjudicator.
68. Also, the Tables did not include the number of documents from other applicants. Frankly, the Table was too vague for the Adjudicator to objectively rely on to grant a s. 43 application.

Graham Statt's Affidavit

69. The Adjudicator noted the following regarding Graham Statt's Affidavit:

[57] The District also says that it is a small municipality, with three employees involved in processing, managing and responding to access requests. It says that the increase in access requests has led the Deputy Corporate Officer/Corporate Services Coordinator to spend 100% of their time on FIPPA related matters and that it has had to hire an external consultant to meet legislative timelines. [...] It also says that the Deputy Corporate Officer/Corporate Services Coordinator's capacity to facilitate the District's freedom of information process has become "extremely limited as a direct result" of the respondent's access requests.

[58] The District's Chief Administrative Officer says that the respondent's access requests have overwhelmed staff and disproportionately consumed their time allocated to processing access requests. [...].

[64] I also accept the Chief Administrative Officer's evidence that the respondent's access requests have disproportionately consumed staff time allocated to FOI requests. This is consistent with the District's submission that 47% of its time and expenses spent on access requests in 2021 and 2023 was spent on the respondent's access requests. Comparing the scope and number of the respondent's access requests in 2021 and 2023 with the Keyword Requests, I am satisfied that responding to the Keyword Requests will continue to disproportionately use the District's time and resources.

[65] I am mindful that the District is a relatively small public body and the respondent is not the only access applicant requiring the District's attention. The time spent responding to the respondent's access requests negatively impacts the rights of other access applicants and diminishes the amount of public resources available to them.

70. In September 2023 the OIPC instructed the District to "release records to the applicant in stages as its review progresses. The public body should not delay releasing records merely to permit a "bulk release" unless it is absolutely necessary for a global consideration of the disclosure package."
71. However, the Petitioner was not provided a single document from any of ten requests at issue, from July 5, 2023 to when the s. 43 application was made in November 2023, despite Graham Statt claiming the Petitioner's requests consumed 100% of an employee's time and also required a consultant's assistance.
72. The Adjudicator did not properly grapple with Petitioner's evidence when relying on Graham Statt's claim that the Petitioner's requests consumed 100% of an employee's time in 2023.
73. The number of responsive pages for FOI 2023-38 and 2023-40 are 1345 and 1142 after deduplication, respectively, which is similar to the total of 1300 in FOI 2023-04, so it is reasonable to conclude that FOIs 2023-38 and 2023-40 would take a similar amount of hours to process (6.5 hours each), which would not unreasonably interfere with the District's operations.
74. The Adjudicator also failed to properly consider that the District has a number of different departments who assist the three Corporate Services staff with compiling FOI requests. The Petitioner explained how when District staff receive an FOI request, the Corporate Officer sends the request to the relevant department(s), such as the Building Department, to compile the relevant documents.
75. The Petitioner's Supplemental Submissions stated it should not be lost on the OIPC that Graham Statt has tried "firewalling" him from obtaining information from the District since September 2022, referencing a communication Graham Statt sent the Corporate Officer. So the OIPC was made aware that Graham Statt has been attempting to prevent the Petitioner from obtaining information since 2022. However, the Adjudicator did not properly consider or address this.
76. The burden was on the District to prove that the s. 43 Order is warranted for the reconsideration, so it was unreasonable for the Adjudicator to rely on the vague information

in the Table and Graham Statt's affidavit. There simply was not enough factual information to rely on, given the exceptional nature of s. 43 applications.

77. The District did not adequately explain how the Keyword Requests would have an unreasonable interference on District operations.

'Unrelated records'

78. The Adjudicator displayed incoherent logic when she claimed the Keyword Requests that included common words like "job" "will likely result in a large number of records that, while technically responsive to the language of the Keyword Requests, do not relate to the actual purpose of the Keyword Requests. [...] I find that requiring the District to process records which may not be responsive to the purpose of the access request, solely because the respondent does not trust the District will comply with FIPPA, would be an unreasonable use of the District's time and resources" (Order, para. 63).
79. Notably, the request that contains the word "job" is Keyword Request FOI 2023-40, which only contains 1184 pages. If FOI 2023-40 did not include keywords, and instead was a request for all emails, like the Remaining Requests, it would have included significantly more pages, and a lot of those pages would presumably not be applicable to the topic the Petitioner was seeking the documents for.
80. So it does not make sense that the Adjudicator found the Keyword Requests would produce unwanted records, which she considered unreasonable, but found the Remaining Requests acceptable, because there would be more unrelated records in the Remaining Requests than the Keyword Requests since the Remaining Requests include all emails.
81. Put another way, the Keyword Requests are more specific, and therefore will produce less documents and less burden for staff to process, compared to requests like the Remaining Requests that include all emails.

Failed to consider Keyword Requests are amendable to a reduced scope

82. The Adjudicator did not properly consider how the Keyword Requests are amendable to a reduced scope, which is directly relevant to assessing if the requests would be an unreasonable interference.
83. The Keyword Requests could reduce the email accounts to be searched, the keywords to be searched, or by reducing the search timeframe.
84. The Petitioner did not know how many pages of documents would be responsive to each of the ten requests, so he could not know how the workload for processing the requests would affect District staff.
85. But it is imperative to note that at no time did District staff express any concern about workload to the Petitioner, or say the FOI requests were a burden, or ask him to reduce parameters or clarify any of the Keyword Requests. The FOI requests, including the Keyword Requests, were not intended to be punitive.

86. The Petitioner's Original Submissions explained how he previously reduced the scope of requests which were similar to the Keyword Requests. The Keyword Requests are amendable to have a reduced scope if the fee estimate is too high.
87. The Petitioner's Supplemental Submissions explained how if he knew that the FOI 2023-45 and 2023-46 responses would have over 7000 and 10,000 responsive pages respectively, he would have voluntarily removed the word "charges" and "charged" from the keywords. The Petitioner was seeking documents where Council and District staff may have discussed criminal "charges", but based on the number of responsive records, it is likely most of the documents relate to utility charges and the like. This could have easily been corrected if District staff communicated with the Petitioner and provided fee estimates for those requests, but that did not happen. But this does show how the keyword searches can be reduced in scope.
88. Another example that shows how the keyword searches can be reduced in scope is FOI 2023-37. For that request, which was at issue in the s. 43 application, the keyword "Brad" was included. The Petitioner wanted documents that referred to him, but realized after submitting the request that the response would likely include District staffer "Brad" Dollevoet's emails as well, and he did not need those. So the Petitioner voluntarily contacted the District and said that "Brad" could be removed from the keyword search.
89. So if the Keyword Requests are amendable to reduced scope, which would result in less documents and less burden on District staff, it is unreasonable to not allow the Petitioner the opportunity to amend them accordingly.

Issue 3: If the answer to either or both of the first two questions is yes, what relief, if any, is appropriate?

90. The Adjudicator discussed the Remedy for the Order at paras. 90 and 93-96:

[90] Section 43 can be used to authorize a public body to disregard present and future FIPPA requests. Any remedy under s. 43 must be proportional to the harm inflicted. Previous orders have tailored remedies to the circumstances of each case and have considered factors such as:

- A respondent's right to her own personal information;
- Whether there are live issues between the public body and the respondent;
- Whether there are likely to be any new responsive records;
- The respondent's stated intentions;
- The nature of past requests; and
- Other avenues of obtaining information in the past and future available to the respondent.

[93] In order to prevent an unreasonable interference with the District's operations, I find it appropriate to authorize the District to disregard the Keyword Requests.

[94] I also conclude that some future relief is appropriate in these circumstances. The s. 43 objective in any future relief that I authorize must be to prevent systematic requests

that would result in an unreasonable interference with the District's operations. Therefore, I find it appropriate to authorize the District to disregard all access requests made by the respondent over and above a single access request at a time, for a period of two years from the date of this authorization. This approach addresses the excessive consumption of the District's resources while preserving the respondent's ability to reasonably exercise his access rights.

[95] This remedy should not be circumvented by the respondent including multiple categories of requested records in a single request because doing so is, in substance, making multiple access requests at the same time. Therefore, I find that it is also appropriate to give the District the discretion to determine what constitutes a single access request.

[96] It is important to recognize that other members of the public have an equal right to a share of the public resources allocated to respond to access requests. When an individual overburdens the FIPPA system, it has a negative impact on others who want to legitimately exercise their FIPPA rights. In my view, the respondent's behaviour reveals a failure on his part to recognize that the right of access to information under FIPPA comes with the responsibility to not abuse that right. Although the District was not entirely successful in this s. 43 application, this is largely because I found that the District did not meet the burden of proving that s. 43 applies to the Remaining Requests, not because of lack of concern about the respondent's conduct. Nothing in this authorization precludes the District from applying under s. 43 to disregard a future request from the respondent.

One open access request for next two years

91. The Remedy, which restricts the Petitioner to one open access request at a time with the District for a period of two years, is unreasonable.
92. For future requests, there is insufficient evidence to establish that the Petitioner would abuse FIPPA for an improper purpose. The Petitioner has a years-long history of paying thousands of dollars to the District in fees for other FOI requests. Further, the Petitioner has always been patient with the District when extension requests for larger responses were needed.
93. The Adjudicator did not consider how it has already been nearly two years since the Petitioner has submitted a new FOI request to the District, which shows he is not abusing FIPPA. Rather, the Adjudicator is unduly punishing the Petitioner because the Adjudicator failed to grapple with the Petitioner's key arguments.
94. One open access request at a time is very problematic because if the District provides an incomplete response package, which it has done in the past, and the Petitioner files an "inadequate records" complaint to the OIPC, that process can take well over one year to complete. This will unduly prevent the Plaintiff from obtaining any other information from the District without reasonable justification. This Remedy could potentially limit the Petitioner to only one access request total over the next two years, which does not comply with s. 2 of FIPPA.
95. Further, the Adjudicator did not properly consider the legal live issues between the Petitioner and the District when placing such a restrictive Remedy on the Petitioner.

96. There is no valid reason why the District cannot process two or more of the Petitioner's access requests at the same time moving forward.

Improperly blaming the Petitioner

97. The Adjudicator failed to grapple with the evidence that showed Graham Statt instructed District staff to stop providing the Petitioner with fee estimates, starting in July 2023 with FOI 2023-32.
98. Instead, the Adjudicator improperly stated "the respondent's behaviour reveals a failure on his part to recognize that the right of access to information under FIPPA comes with the responsibility to not abuse that right" (Order, para. 96).
99. The Adjudicator completely failed to address that the District was required to provide fee estimates, which is the core issue with the unreasonableness of the Order. It does not "add up" why the Adjudicator would not address the fee estimate issue, when the Adjudicator was aware of it and aware that it was the cause of additional requests. The Adjudicator was unreasonable by failing to address the FIPPA violation by the District, and specifically by CAO Graham Statt, related to no fee estimates.
100. And further, the Adjudicator did not grapple with the fact that the District's CAO and Corporate Officer both told the Petitioner to continue submitting FOI requests as late as October 2023. At no time in 2023, prior to submitting the s. 43 application, did any District staff indicate to the Petitioner that his requests were causing a burden on the District's operations.
101. Nor did the Adjudicator properly grapple with the fact that Corporate Services staff were organizing a major Referendum in the same timeframe as the requests at issue in the District's s. 43 application, from August to November 2023. With the Referendum completed in November 2023, and the Petitioner not submitting any requests since that time, the District has had adequate time to provide the Keyword Requests.

Failed to properly consider news source

102. The Adjudicator noted "the respondent is a resident of the District who runs a social media page on which he posts about local news and issues. He has on several occasions posted information obtained through access requests on his social media page with commentary about that information" (Order, para. 9).
103. But when considering the Remedy, the Adjudicator did not properly grapple with the fact that the Petitioner is a modern-day local reporter.
104. The Petitioner noted how he started the Facebook page 'The REAL Summerland' to be an information source for the community, including on matters related to Municipal Hall, and showed the OIPC how the Facebook page is followed by many Summerland residents, Council and District staff. For example, Deputy Mayor Erin Trainer is a member of the page, and Councillor Richard Barkwill follows 'The REAL Summerland' to stay informed on news in the community.
105. The Petitioner has submitted FOI requests to the District for a wide variety of topics that he is interested in, along with requests that are matters of public interest in general. In

reporting on Municipal Hall and informing the public about issues and concerns in the community, the Petitioner has been motivated to find the truth. Many Summerland residents have personally thanked him for keeping the community informed.

106. The Petitioner's Original Submissions also informed the OIPC that he "has received private messages from Summerland residents offering to help submit FOI requests, to lessen the workload on the [Petitioner]. But it is more efficient for the [Petitioner] to submit the requests himself in case the District attempts to violate FIPPA, because the [Petitioner] has extensive experience in making submissions to the OIPC" (OS, para. 106).

107. As noted in Order F22-61 at para. 55, it is expected and not uncommon for journalists to utilize FIPPA to pursue potential news stories or investigate possible wrongdoing or issues of public interest. So it was unreasonable for the Adjudicator to not properly grapple with this argument.

Respectful Communications with District staff

108. The Adjudicator noted "The [Petitioner] also says he has been respectful in communications with District staff regarding access requests and has accommodated the District's time extensions to process requests" (Order, para. 81).

109. The District has provided no evidence of rude or unprofessional communications from the Petitioner to District staff regarding the FOI requests at issue. In fact, any communications would show that the Petitioner was very polite with District staff regarding his FOI requests and patiently waited for the requests to be processed.

110. The Adjudicator did not properly grapple with this when crafting the Remedy.

Reasons to quash Parts 1, 3 and 4 of the Order without reconsideration

111. If the Court determines that Parts 1, 3 and 4 of the Order should be quashed, the Petitioner says it should not be sent back to the OIPC for another reconsideration because the Adjudicator's assessment that the Remaining Requests were not repetitious, excessively broad, or frivolous or vexatious, applies to the Keyword Requests as well.

Are Remaining Requests repetitious?

112. The Adjudicator addressed whether the Remaining Requests are repetitious at paras. 40-42 of the Order.

113. None of the information sought in the Keyword Requests has been requested before, so they are not repetitious.

Are the Remaining Requests excessively broad?

114. The Adjudicator addressed whether the Remaining Requests are excessively broad at paras. 43 and 47-53 of the Order.

115. The Keyword Requests are tailored to specific topics, which is a narrower scope than the Remaining Requests. By including keywords, the Petitioner has reduced the number of

records District staff need to review and process, showing how if the Remaining Requests are not considered excessively broad, then the narrower scope of the Keyword Requests could not be considered excessively broad either.

Are the Remaining Requests frivolous or vexatious?

116. The Adjudicator addressed whether the Remaining Requests are frivolous or vexatious at paras. 68-70, 76-79, and 83-89 of the Order.

117. The same logic that found the Remaining Requests were not frivolous or vexatious applies to the Keyword Requests as well.

In Closing

118. This was not an appropriate case for the OIPC to grant a s. 43 application.

119. As explained in this Petition, the Adjudicator's logic was incoherent when comparing the Keyword Requests and Remaining Requests. Also, the Keyword Requests were not systematic, given the context, nor would responding to the Keyword Requests unreasonably interfere with the District's operations.

120. The District's motivation for its s. 43 application was not cost related, nor was it related to unreasonable interference with District operations. The District's true motivation for its s. 43 application appears to be to withhold documents that would reveal misconduct or unprofessional behaviour from District staff or Council. The Petitioner has already discovered misconduct and policy violations at Municipal Hall through his FOI requests.

121. The Petitioner was successful in Order F20-34, Order F23-81, and set aside Order F24-15, with all being against the District. He has credibility and made the Keyword Requests in good faith and for genuine reasons.

122. The Adjudicator was unreasonable to rely on the District's Tables from its initial submissions, especially after the Petitioner's Supplemental Submissions explained how the numbers did not "add up".

123. The Adjudicator did not apply the same principles to the Keyword Requests as the Remaining Requests, which is unreasonable.

124. The Adjudicator's reasons have serious shortcomings and flaws that are central to her ultimate decision, with the most significant being her failure to address the District's FIPPA violation regarding fee estimates. In failing to meaningfully grapple with the key evidence and submissions of the Petitioner in this context, the Adjudicator rendered an unreasonable decision.

125. The Petitioner is being severely, and unjustly, punished because the District violated its FIPPA obligations related to fee estimates. The Petitioner unequivocally denies abusing FIPPA, and can assure the Court that he will not abuse FIPPA if the Order is quashed.

126. The Order directly contradicts the primary purpose of *FIPPA*, which is to hold public bodies accountable to the public. If the Order is allowed to stand, it will set a very dangerous precedent.

127. As such, the Petitioner respectfully requests that the Order be quashed, without a rehearing.

Part 4: MATERIALS TO BE RELIED ON

1. Petitioner Brad Besler's Affidavit #1, to be filed.
2. The complete record of Order F25-74, including the materials included for Order 24-15.
3. Such further and other material as the Petitioner may advise and this Honourable Court may allow.

Date: October 1, 2025


Bradley H. Besler
Petitioner

To be completed by the court only:

Order made

- ☐ In the terms requested in paragraphs ____ of Part 1 of this petition
- ☐ With the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

No.
Penticton Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

BRADLEY H. BESLER

Petitioner

and

**OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER, CORPORATION OF THE
DISTRICT OF SUMMERLAND**

Respondents

PETITION

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