



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Authorization (s. 43) 02-01

MINISTRY OF HUMAN RESOURCES

David Loukidelis, Information and Privacy Commissioner
September 18, 2002

Document URL: <http://www.oipc.bc.ca/orders/section43/02-01.pdf>

Office URL: <http://www.oipc.bc.ca>

ISSN 1198-6182

Summary: The Ministry has received over 200 access requests from the respondent since 1994, with approximately 95 requests having been made between September and December 2001. Because the 95 access requests are repetitious and responding to them would unreasonably interfere with the Ministry's operations, the Ministry is authorized to disregard them. The respondent is entitled to replace them with not more than two new requests before January 1, 2003, with the Ministry not being required to spend more than 7 hours responding to each such request. The Ministry is not authorized to refuse to respond to requests for one year from the date of this authorization, but between the date of this decision and September 17, 2004, it is authorized to disregard any requests in excess of one open request from the respondent at any given time and any request that seeks records already disclosed to the respondent. The Ministry is not required to spend more than 7 hours responding to each request.

Key Words: repetitious or systematic – unreasonable interference with operations – appropriate remedy.

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

Authorities Considered: B.C.: Order No. 110-1996, [1996] B.C.I.P.C.D. No. 36; Authorization (s. 43) 99-01; Order 00-19, [2000] B.C.I.P.C.D. No. 22; Order 00-20, [2000] B.C.I.P.C.D. No. 23.

Cases Considered: *Crocker v. British Columbia (Information and Privacy Commissioner)*, et al. (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.); *Mazhero v. British Columbia (Information and Privacy Commissioner)* (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

1.0 INTRODUCTION

[1] By a letter dated January 15, 2002, the Ministry of Human Resources (“Ministry”) applied for authorization, under s. 43 of the *Freedom of Information and Protection of Privacy Act* (“Act”), to disregard access requests made by the individual named in that application, to whom I will refer as the “respondent”. The Ministry’s application said that the respondent’s requests are systematic or repetitious, or both, and that they unreasonably interfere with the Ministry’s operations. Because mediation did not succeed in settling the matter, this Office issued notice of a hearing respecting the Ministry’s application on March 13, 2002.

[2] The day after the Ministry submitted its evidence and written argument, as required by the notice, the respondent wrote to this office and said that, due to her “severe disabilities”, she was unable to prepare a reply submission within the time given in the notice. She requested an extension of four to six months and submitted a doctor’s letter in support of her request for such an extension. The Ministry objected to the extension in an April 3, 2002 letter, but this Office granted the respondent a four-month extension. The respondent agreed not to make any new access requests during the s. 43 hearing process, including the extension period.

[3] Two days before the extension expired, the respondent asked for a further extension, but did not specify any length. A doctor’s letter that accompanied the respondent’s request – written by a different doctor than the one who supported the original extension request – mentioned a further three-month extension. This Office refused the further extension on August 1, 2002. Since then, the respondent has, in a variety of communications, contended that refusal of the second extension fails to accommodate her “disabilities” and infringes her “human rights”. The respondent’s material refers to a variety of medical conditions from which the respondent is said to suffer. Despite her request for yet another lengthy extension, the respondent made a submission on time, supporting it with letters from various health care professionals and from the doctor who supported the second extension request. That submission addresses the grounds the Ministry has advanced for its s. 43 application.

[4] Moreover, on August 2, 2002 – the same day the respondent’s original reply was due and filed – the respondent delivered a further reply a few hours after the noon deadline. The Ministry objected to my considering this further submission, calling it a late submission. It said that it should be given an opportunity to respond if I decided to consider the further submission. In light of the possible consequences for the respondent flowing from the Ministry’s application, I decided to consider the respondent’s further submission. In doing so, I kept in mind the respondent’s various conditions and the difficulties the respondent says they cause in responding to the Ministry’s s. 43 application. I gave the Ministry the opportunity to respond to the applicant’s late submission. It did so and I have considered that further submission.

2.0 ISSUE

[5] The issue in this case is whether I should, under s. 43 of the Act, authorize the Ministry to disregard access requests from the respondent on the basis that, because of their repetitious or systematic nature, they would unreasonably interfere with the Ministry's operations. Previous decisions have established that the Ministry has the burden of proof in such cases.

3.0 DISCUSSION

[6] **3.1 Applicable Principles** – Although s. 43 of the Act was amended effective April 11, 2002, I must deal with the Ministry's application under s. 43 as it read when the Ministry made its application. The Ministry agrees this is so. Section 43 read as follows at the time:

If the head of the public body asks, the commissioner may authorize the public body to disregard requests under section 5 that, because of the their repetitious or systematic nature, would unreasonably interfere with the operations of the public body.

[7] As regards the purpose and meaning of s. 43, the Ministry cites the following comments by Coultas J. in *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.), at para. 42 (B.C.J.):

... 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.

[8] The Ministry also cites *Crocker* for the proposition that s. 43 gives the commissioner the authority to make orders reaching into the future, not just orders affecting outstanding access requests. On this point, also see *Mazhero v. British Columbia (Information and Privacy Commissioner)* (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

[9] The only other authority to which the Ministry refers is my predecessor's decision in Order No. 110-1996, [1996] B.C.I.P.C.D. No. 36, notably the following passage from p. 6 as quoted by the Ministry:

I agree with the School Board in the present matter that this **applicant is not using the Act for the purposes for which it was intended** and that he is not, indeed, acting in good faith. (Reply Submission of the Vancouver School Board, pp. 1, 2) The fundamental problem is that the applicant is trying to use the Act to prove that his original report about the Carnegie Adult Learning Centre is correct and that the Vancouver School Board is engaged in at least illicit activities that the applicant wants to expose to the public.

I have several reactions to the nature of this particular inquiry. I am sympathetic to the plight of the School Board in this particular instance. I think that its efforts to help this applicant have been excessive in light of its other responsibilities to students and the taxpayers. **A statutory scheme of access to general and personal information is only going to work for innumerable public bodies and applicants if common sense and responsible behaviour prevail on both sides. This is not the first applicant whom I have to come to regard as making excessive, and indeed almost irrational, demands on a public body. The most problematic applicants are those who are using the Act as a weapon against the public body after an unrelated episode that has left them unhappy or contemplating litigation or, as in this case, preparing to arbitrate a claim of unjust dismissal. ... [Ministry's emphasis]**

[10] In Auth. (s. 43) 99-01, which the Ministry did not cite, I said the following (at p. 7) about the role of s. 43 in the scheme of access rights created under the Act:

... Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access. ...

[11] Both the *Crocker* and *Mazhero* decisions express views on what remedies are available under s. 43, so I deal further with those cases below.

[12] **3.2 Description of the Respondent's Requests** – According to the Ministry, the respondent has, since 1994, made more than 200 separate access requests under the Act. The Ministry says it has, since 1994, opened 48 separate access request files in response to the respondent's requests. The Ministry says the actual number of requests is higher because the respondent habitually combines separate and distinct access requests in one document. Of the 48 files the Ministry has opened for the respondent's access requests, 35 of them have been closed because the requests that they encompass have been responded to. The Ministry at present has 13 open request files for the respondent's outstanding access requests.

[13] The Ministry provided me with copies of the access requests encompassed in the 13 existing files, grouped by Ministry access file. Gladys Michael deposed that, although

“there may be some room for variation in the way in which the numbers of requests could be broken down”, the open files comprise 95 “distinct request for access to records” (para. 5). I have reviewed these access requests – to which I will refer as the “existing requests” – and accept Gladys Michael’s estimate of the number of separate access requests contained in the 13 files. To give only one example, a request that the Ministry received on September 21, 2001 fills three typed pages and contains some 20 separate requests. They seek records going as far back as 1992 and cover the respondent’s own personal information, third-party personal information and general Ministry records. It is fair to say that the various requests all relate, in some way, to the respondent, but they are wide-ranging and, in my view, can reasonably be regarded as separate access requests under the Act. The approximately 95 access requests were made between September 21, 2001 and December 7, 2001.

[14] The Ministry also provided me with copies of the respondent’s past requests, again grouped by Ministry access file. Many of the access requests that the respondent submitted in the past do, in fact, contain “a number of separate access requests, although they are grouped in one form.” In other cases, a single Ministry request file contains numerous access request letters, covering different records. I will refer to the respondent’s earlier, now closed, requests as the “previous requests”.

[15] In Order 00-19, [2000] B.C.I.P.C.D. No. 22 and Order 00-20, [2000] B.C.I.P.C.D. No. 23, I accepted that, for the purposes of fees under s. 75, a public body may, in certain circumstances, be entitled to combine closely-related access requests, made contemporaneously, for the purposes of estimating fees under s. 75. In Order 00-19, at p. 10, I alluded to the fact that a respondent may make “discrete, and unrelated, access requests in a single piece of correspondence to a public body.” For the purposes of this case, I accept that many of the respondent’s previous access requests are separate access requests, even though they may have been made in a single document. I therefore accept Gladys Michael’s evidence that the respondent has made over 200 access requests to the Ministry since 1994.

[16] **3.3 Repetitious or Systematic Requests** – The remedial authority under s. 43, as it reads for the purposes of this decision, can be exercised if the Ministry establishes that:

1. requests have been made to the Ministry that are of a repetitious or systematic nature; and
2. responding to those requests would unreasonably interfere with the Ministry’s operations.

[17] In Authorization (s. 43) 99-01, I said the following, at p. 3, about the meaning of the words “repetitious” and “systematic”:

The public body first must establish that an applicant has made requests of a “repetitious” or “systematic” nature. 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. The plain meaning of the word “systematic” in s. 43 is something that is characterized by a ‘system’. In turn, a ‘system’ is a method or plan of acting that is organized and carried out according to a set of rules or principles.

[18] The Ministry’s submissions on the issue of whether the respondent’s requests are repetitious or systematic are as follows:

2.08 In her target subject areas ...[the respondent’s] requests are methodical. For example, ...[the respondent] systematically targets the same types of information held in different locations in the Public Body and/or created in different time frames (for example: all records on topic X from this office, that office, and the other office, and/or all records on topic X created in this year, that year, or the other year). The public body submits that the systematic nature of ...[the respondent’s] requests is apparent on the face of the requests.

*Affidavit of Michael
Exhibits “A” and “B”*

2.09 ...[The respondent’s] requests are repetitious, in that they repeat, in whole or in part, requests ...[the respondent] has made previously. [The respondent]... may word the requests somewhat differently but the information sought is the same. The Public Body submits that the repetitive nature of ...[the respondent’s] requests is apparent on the face of the requests

*Affidavit of Michael
Exhibits “A” and “B”*

2.10 Section 43 requires that requests be either systematic or repetitious. For the foregoing reasons, the Public Body submits that ...[the respondent’s] requests are both systematic *and* repetitious, or in the alternative systematic *or* repetitious.

[19] Gladys Michael’s affidavit tracks these submissions almost word by word. Her affidavit also gives examples to support the Ministry’s contention that the existing requests are repetitious. The Ministry has not, however, elaborated on its assertion that the existing requests are systematic.

[20] The respondent’s submissions include an offer to withdraw the existing requests:

I am willing to withdraw my current requests and replace them with only requests for records showing

Records related to my Health care requests, their processing and answers – during specific periods

My Requests for investigation about ministry ignoring my needs or other problems and how handled – during specific periods

Financial records to prove that the Ministry owes me money

My requests for certain information on certain topics and the ministries [*sic*] response.

Records showing conversations with ombudsman and agreements made

Records of requests for meetings and responses.

Due to my disability and fire problems I lost records of what requests had been made. I asked MHR to let me know what was on file so requests would not be too much work, or duplications but they refused to cooperate. If the ministry had responded, such voluminous [*sic*] requests would not have been made.

[21] It is not clear from the above passage how this would improve matters, since the above-described topics are dealt with in existing requests, as well as previous requests. I note here that the Ministry denies that it has been unhelpful. It says that it provided the respondent with copies of all of the existing requests, to assist the respondent in keeping track of the various requests.

[22] The respondent's submissions elaborate on the contention that a series of fires, and the respondent's medical conditions, have together caused the respondent to lose track of the existing requests. The respondent says the circumstances require the Ministry to do more than it has done to assist the respondent and means the Ministry should not get relief under s. 43. The respondent also makes a number of very serious allegations against the Ministry, mostly connected with its handling of the respondent's various claims, appeals, complaints and reconsideration requests.

[23] The respondent also alleges that Ministry access and privacy employees have deliberately failed to disclose records, have not been cooperative and have failed to accommodate the respondent's medical needs. The respondent has not provided details to support these allegations. The respondent also makes a number of offers or demands, regarding the Ministry's processing of the existing requests, that would, the respondent says, address the confusion and volume of the requests. The respondent's submissions do not address the central questions in this case, *i.e.*, whether the requests are repetitious or systematic and would unreasonably interfere with the Ministry's operations.

[24] In considering whether the requests are repetitious or systematic, I have assessed the character of the existing requests and the previous requests. This was appropriate because the Ministry's submissions clearly rely on the allegedly repetitious or systematic nature of the previous requests. This is the correct approach. Section 43 contemplates an authorization to "disregard requests under section 5". While this refers to disregarding existing requests, one cannot ignore past requests in deciding whether existing requests are repetitive or systematic. For example, if Jane Doe makes the same request for the same records once each month, it must be open to the commissioner to consider the repetitive nature of the requests even if the immediately preceding monthly request has been closed.

[25] My review of the requests leads me to conclude that they are repetitious within the meaning of s. 43. I offer the following examples of how this is so:

- The respondent has on several occasions asked for her entire Ministry file, sometimes explicitly as an update of an earlier request, but on most occasions by simply requesting her entire file with the Ministry. The respondent has also sometimes asked for a specific aspect of her entire file, *e.g.*, by asking for copies of letters from specified doctors.
- A number of the respondent's requests deal with her claims for travel expense reimbursement and there are a number of requests that repeat earlier requests for records relating to this subject.
- A number of requests deal with various complaints the respondent has made to the Ministry about its handling of the respondent's case. Some of the requests are broad requests for copies of all complaints the respondent has made to the Ministry, while others deal with only certain kinds of complaints or specific complaints.
- A number of the requests repeatedly ask for records relating to entitlement to physiotherapy expenses and reimbursement for such expenses.
- Other requests repeatedly seek the same information respecting Ministry policies on medications and reimbursement for medication expenses.
- A number of requests repeatedly ask for records about Ministry policies on payment for, and about reimbursement to the respondent for, specialized equipment, as well as for special food and nutrition requirements.
- A number of the requests repeatedly ask for records relating to various reconsideration applications the respondent has made to the Ministry and the Ministry's responses to those applications.
- Some of those requests repeatedly ask for copies of Ministry policies, procedures and rules respecting the same or closely related matters.
- A number of the respondent's requests have to do with the respondent's status as an 'administered' Ministry client and with Ministry policies and procedures associated with 'administered' clients. In its reply submission, the Ministry says an 'administered' client is a client for whom an intermediate agency has been appointed to represent the Ministry in dealing with the client, in order to avoid Ministry staff being in direct contact with the client. The Ministry says only clients who have been verbally or physically abusive to Ministry staff are designated as 'administered' clients.

[26] Because I have concluded that the respondent's access requests are repetitious, I need not make any finding as to whether they are also systematic. Section 43 does not, again, require a public body to show that requests are both repetitious and systematic.

[27] **3.4 Unreasonable Interference with the Ministry's Operations** – The next question is whether the Ministry has established that responding to the existing requests

would unreasonably interfere with its operations. Section 43 gives no explicit guidance as to what is meant by the “operations” of a public body. I consider that the impact on a public body’s “operations” can be gauged in relation to the access and privacy operations of the public body. This approach is supported by the remedial nature of s. 43, my predecessor’s s. 43 decisions and by *Crocker*. In finding that my predecessor took the proper approach to interpreting and applying s. 43, Coultas J. said the following in *Crocker*, at para. 46 (B.C.J.), about the issue of unreasonable interference with operations:

... the determination of what constitutes an unreasonable interference in the operation of a public body rests on an objective assessment of the facts. What constitutes an unreasonable interference will vary depending on the size and nature of the operation. *A public body should not be able to defeat the public access objectives of the Act by providing insufficient resources to its freedom of information officers.* However, it is the Commissioner, with his specialized knowledge, who is best able to make an objective assessment of what is unreasonable interference. In this instance, the Commissioner had sufficient evidence to make an informed assessment of the negative impact of the Petitioners’ requests on BC Transit. [emphasis added]

[28] The Ministry’s evidence establishes that answering the respondent’s existing requests would unreasonably interfere with the Ministry’s operations. As the Ministry points out, 95 access requests from one individual over a four-month span is a high number in such a short period. The Ministry says the respondent’s access requests are time-consuming because they are often complex and incorporate not only requests for access to records, but raise questions for which the respondent seeks answers. This complicates the Ministry’s task in assessing the requests before responding. The requests are also time-consuming because the respondent’s handwriting – and habit of adding and annotating requests by writing sideways, in the margins and on both sides of lined paper – make it difficult to decipher what the respondent is asking for.

[29] The Ministry also says many of the respondent’s requests are “very broad”. Gladys Michael’s evidence is that approximately 35% of the respondent’s requests are for “all records” on various topics. In addition, the overlapping and repetitive nature of the respondent’s requests requires Ministry staff to continuously check requests against previous responses, to see whether the request has already been answered.

[30] According to Gladys Michael, the respondent insists that every request be processed individually and refuses to allow the Ministry to “save time by disclosing records in bulk fashion.” The respondent also insists that the Ministry disclose records in stapled bundles, with cover pages that identify what parts of each request are covered by the bundle. If the respondent’s requests are indeed separate requests, it is not clear how this is necessarily an unreasonable request. I will note here, however, that, although the Ministry has a duty to make every reasonable effort to assist the respondent under s. 6(1) of the Act, it is not required to accede to each and every demand, however unreasonable, that an applicant makes. The fact that the Ministry complies with unreasonable demands that go

beyond what s. 6(1) requires does not necessarily support an unreasonable interference argument under s. 43.

[31] Gladys Michael deposed that Ministry staff spend time answering the respondent's apparently numerous telephone calls about the status of access requests. In addition, because the respondent has told the Ministry the respondent cannot remember what access requests have already been made, the Ministry has complied with the respondent's request to provide copies of all of the existing requests.

[32] Gladys Michael also deposed as follows about the effort required in responding to the respondent's access requests:

16. The Public Body [the Ministry] does not have detailed records of the time staff have spent in responding to ...[the respondent's] requests. I estimate that it takes the Information, Privacy and Records Services Staff approximately 80% longer on average to process a request from ... [the respondent] than it does to process a request from most applicants. The time it takes to process each request from ... [the respondent] includes such things as: attempting to understand what is being requested; determining whether the request has previously been received, in whole or in part (i.e., whether it repeats or overlaps a previous request); determining whether it has been responded to in whole or in part; searching for records; consulting the affected program area(s) on the proposed response; making a response recommendation to the Director, Information, Privacy and Records Services; and providing a response. I have not included in this time estimate the time spent by program area(s) staff in dealing with ... [the respondent's] requests (for example, in searching for responsive records and sending them to Privacy, Information and Records Services Branch for processing).

17. Given that ... [the respondent] is requesting that the Public Body process individually each of the items requested in the requests in the Open Files [the existing requests], I estimate that it would take 570 work hours of Privacy, Information and Records Services Branch staff time to respond to all of those requests. I have not included in this estimate that time that would have to be spent by program areas (for example, in searching for records and forwarding them to Privacy, Information and Records Services).

18. The Public Body is currently responding to requests for access to records under the Act within the legislated timeframe in the majority of cases. However, if the Public Body is mandated to respond to ... [the respondent's] requests in the Open Files, it would greatly impact the Public Body's ability to respond in a timely fashion to requests for access to records under the Act from other persons.

[33] She also deposed, at para. 19, that the repetitive nature of the respondent's telephone calls drove her to refuse to speak with the respondent on the telephone. She also deposed, at para. 20, that the Ministry has disclosed approximately 6,000 pages of records to the respondent in replying to the previous requests. She deposed that this figure does not include the "large volume of records which are routinely releasable and which have been provided directly to" the respondent by various Ministry program areas.

[34] The Ministry says it has only five staff in its privacy, information and records services operations. They process all access requests made to the Ministry. The Ministry last year received 1,131 access requests under the Act and, so far this year, has received 50% more requests than it had at the same time last year. It says the resources it devoted to dealing with the respondent's requests in 1994-1996 had a great impact on its ability to respond in a timely fashion to access requests from other applicants. In light of the Ministry's evidence that it would likely take 570 hours to respond to the existing requests, the Ministry says that, if it is required to respond to them, there will be a great impact on its ability to respond in a timely fashion to other applicants' requests.

[35] I have reviewed the requests and agree with the Ministry that they are wide-ranging, are often complex and are often difficult to decipher and understand. I accept the Ministry's estimate of the time it would take to respond to the existing requests. I note in passing that, using last year's figure of 1,131 requests to the Ministry for illustration purposes only, the roughly 95 existing requests would mean the respondent is alone responsible for something like 8.4% of the requests made to the Ministry. Regardless of whether that figure is accurate, I am satisfied on other grounds that responding to the existing requests would unreasonably interfere with the Ministry's operations (and would, I note in passing only, detrimentally affect the rights of other applicants).

[36] **3.5 The Appropriate Remedy** – In its March 27, 2002 submission, the Ministry sought the following relief:

1. Authorization for the Ministry to disregard all requests from the respondent that were outstanding at March 27, 2002;
2. Authorization to disregard any requests that might be received by the Ministry from the respondent between March 27, 2002 and the date of this decision;
3. Authorization to disregard all requests to the Ministry from the respondent for a period of one year from the date of this decision; and
4. After the expiry of the one-year period just described, authorization to disregard all requests to the Ministry from the respondent in excess of one open request at any given time.

[37] I have already mentioned that the Ministry cites *Crocker* only for Coultas J.'s comments about the nature and intent of s. 43. *Crocker* goes much further than that, however, as does *Mazhero*. In *Crocker*, Coultas J. was very clear, at para. 54 (B.C.J.), that the commissioner's "discretion" under s. 43 is "not completely unfettered". He went on to say the following at paras. 54 and 55:

[54] ... The remedy must redress the harm to the public body seeking the authorization. If the remedy is wholly disproportionate to the harm inflicted, it may be set aside. In my respectful opinion, the authorization to BC Transit to disregard all requests for information by these Petitioners for one year was wholly

disproportionate and clearly wrong. That authorization prevents the Petitioners themselves from accessing personal information. The Act contemplates that individuals will have free and full access to their own personal information, subject only to the express limitation in s. 19 of the Act.

[55] That said, I can conceive of circumstances where requests for information, including personal information, should be prevented by invoking s. 43, because the requests are made habitually, persistently and in bad faith, or are clearly frivolous and vexatious. The Commissioner has not so characterized these Petitioners' requests. He has done so, however, in other cases in which he has invoked s. 43.

[38] Coultas J. held that, if the one-year ban my predecessor had imposed in that case had not expired by the time of his decision, he would have remitted it for reconsideration.

[39] As Tysoe J. noted in *Mazhero*, the reference in *Crocker* to requests that are made habitually, persistently and in bad faith, or are clearly frivolous and vexatious, was not an attempt to supplement the language of s. 43 with further pre-conditions to the exercise of the s. 43 remedial authority. He said that Coultas J. was merely giving examples of circumstances where an authorization to disregard future requests, as opposed to existing requests, might be warranted. Tysoe J. went on to express the view that, in authorizing a public body to disregard future access requests, the commissioner "must bear in mind the objective of s. 43, which is to avoid requests that constitute an unreasonable interference with the operations of the public body" (at para. 27 (B.C.J.)). He acknowledged, at para. 28, that there may be cases in which the commissioner can conclude, with reasonable certainty, that the nature of previous requests is such that any future request would unreasonably interfere with the public body's operations. But he added that "only in very exceptional circumstances would it be appropriate" to authorize a public body to disregard all future requests. Tysoe J. then went on to say the following, at paras. 29 and 30 of *Mazhero*:

[29] As a general rule, even though the Commissioner has determined that the repetitive or systematic nature of past and pending requests represents an unreasonable interference with the operations of the public body, he should not generally authorize a public body to disregard all future requests for records (or a type of records) without regard to whether any such requests will unreasonably interfere with the operations of the public body. As stated by Coultas J. in *Crocker*, the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body. This is especially so when the requests relate to personal information for two reasons. First, personal information is more restricted by its nature and it is less likely that a request for personal information will unreasonably interfere with the operations of the public body. Second, the applicant has a stronger claim to have access to records of a personal nature than to general records.

[30] An appropriate remedy in respect of future requests would be to authorize the public body to disregard such requests in specified circumstances. An example of such a remedy is the one which Coultas J. found acceptable in

Crocker; namely, that the public body was required to deal with only one request at a time. Another example would be to authorize the public body to disregard a request for records if it would take the staff of the public body more than a specified number of hours to comply with the request. I have no doubt that there are other ways to describe circumstances that would allow the public body to disregard future requests which would be likely to unreasonably interfere with its operations. It should also be borne in mind that if the authorization is not adequate in describing circumstances which would permit the public body to disregard a future request which it believes will unreasonably interfere with its operations, the public body may again apply under s. 43 for an authorization to disregard that request.

[40] These cases govern my decision as to the appropriate remedy under s. 43 in the circumstances of this case.

Factors affecting the choice of remedy here

[41] Again, the Ministry has not addressed *Mazhero* or *Crocker* on the issue of remedy. I have already found that the respondent's requests are repetitious and that responding to them would unreasonably interfere with the Ministry's operations. Gladys Michael also deposed that the respondent's requests are motivated by a desire to harass the Ministry, allegedly because the respondent has been unsuccessful in many of the respondent's attempts to get money and other benefits from the Ministry. At paras. 2.29-2.31 of its initial submission, the Ministry says, citing Order No. 110-1996, that the respondent is not "using the Act for the purpose for which it was intended", that the respondent is not exercising the respondent's rights "responsibly" and that the respondent's requests are "an abuse of process" being used "as a weapon against" the Ministry.

[42] I have considered these arguments carefully, but have decided there is not a sufficient basis – bearing in mind *Mazhero* and *Crocker* – to conclude that the Ministry is entitled to all of the relief it seeks. In considering the appropriate remedy in this case, I have considered all of the circumstances of this case, including the following factors (some of which overlap to varying degrees):

- the degree of the interference with the Ministry's operations that would result from its having to answer all of the existing requests;
- the fact that a number of the existing requests repeat other existing requests, as well as some of the previous requests, thus creating unnecessary duplication of effort and confusion for all involved (including, I note, the respondent);
- the fact that the respondent finds it difficult to keep track of the existing requests because of various medical conditions, and associated prescribed medications, which affect the respondent's memory and ability to keep organized, and lead to the respondent losing records relating to the requests;

- the respondent's statement, through one of her health care professionals and directly, that the respondent is prepared to withdraw those of the existing requests that do not relate to the meeting of specific needs mentioned in the professional's letter, thus implying a recognition that restraint may be in order (although the respondent elsewhere says the entire file is too large to read given the respondent's medical conditions and that to do so would affect the respondent's health);
- the respondent's further (direct) submission that, among other things, the respondent is prepared to withdraw or "prioritize" the existing requests "to make a little less confusion in the process" or to reduce the voluminous nature of the existing requests;
- the fact that much of the information covered by the existing requests is the respondent's own personal information and relates to the respondent's attempt to obtain benefits and resources from the Ministry;
- the fact that, despite the respondent's allegation that the Ministry refused to assist with the existing requests by providing a chart of the existing requests, the Ministry has provided the respondent with copies of those requests;
- the fact that the respondent has, in the past, made numerous repetitive requests that, taken together, impose a significant burden on the Ministry's access to information resources, thus supporting the conclusion that future requests similar in number and scope would unreasonably interfere with the Ministry's operations; and
- the respondent's medical conditions and stated need for some personal information for the purpose of dealing with the Ministry.

[43] I will now deal with the Ministry's specific requests for relief.

No authorization to disregard requests for one year

[44] I decline to grant the requested one-year ban on access requests. Tysoe J. was very clear, in *Mazhero*, that a one-year ban on access requests was in almost all cases an excessive remedy where the right of access to one's own personal information is in issue. In light of *Mazhero* and *Crocker* – and the fact that the Ministry has not said why an authorization to disregard all access requests for one year is nonetheless appropriate in the circumstances of this case – I find that the Ministry has not established that such a remedy is appropriate at this time.

Authorization to disregard existing requests

[45] The Ministry asks me to authorize it to disregard all of the existing requests and any access requests the respondent might have made between the date of the s. 43 application and the date of this decision. Subject to what is said below, I have decided that this authorization is warranted in the circumstances of this case. This is because, as I have already indicated, many of the 95-odd existing requests overlap each other and many of them repeat previous requests to which the Ministry has responded.

[46] If the Ministry were required to respond to the existing requests, it would expend scarce resources responding to repetitious, overlapping, confused and confusing requests. The Ministry would have to take resources away from other applicants' requests to respond to requests to which it has, in many cases, responded in the past. The authorization for the Ministry to disregard the existing requests, and any made between the date of the Ministry's application and this decision, avoids waste of public resources and interference with the needs and rights of others. In light of the respondent's medical conditions and stated need for personal information in order to deal with other parts of the Ministry, however, I have decided that the respondent should, as set out below, be given the opportunity to replace the existing requests with a small number of new requests, which will be subject to the restrictions noted below.

Ongoing limit on access requests from the respondent

[47] The Ministry has also asked me to authorize it to disregard, after the requested one-year ban expires, any access requests by the respondent in excess of one open request at a time. In all of the circumstances, I consider this to be an appropriate remedy in this case, starting at once and continuing for two years from the date of this decision. This authorization is also subject to restrictions set out below.

4.0 CONCLUSION

[48] For the above reasons, I make the following authorization under s. 43 of the Act:

1. The Ministry is authorized to disregard the existing requests and any access requests that may have been made by or on behalf of the respondent between the date of the Ministry's application under s. 43 and the date of this decision;
2. The Ministry is authorized from this date to and including September 17, 2004 to disregard any access requests in excess of one open access request made by or on behalf of the respondent at any one time and the following apply:
 1. (a) the Ministry is not required to spend more than 7 hours responding to each such request; and
 - (b) the Ministry is not required to respond to any request to the extent that it requests records that have already been the subject of an access request to the Ministry by or on behalf of the applicant;
3. Despite para. 2, a total of not more than two new access requests may be made to the Ministry by or on behalf of the respondent before January 1, 2003 (with, for clarity, the date on which the Ministry receives a request being the date on which it is made), but the Ministry is not required to spend more than 7 hours responding to each such request.

4. 4. The following apply respecting the above paragraphs:
- (a) I leave it to the Ministry to determine, in light of what I said above about what constitutes a single access request and in light of its s. 6(1) duties to the respondent, what is a single access request for the purpose of this above authorization; and
 - (b) for the purposes of para. 3, an “open access request” is a request for records under s. 5 of the Act to which the Ministry has not, in light of its s. 6(1) duties to the respondent, responded under s. 8.

[49] For clarity, as regards the two-year time limit under para. 3, the Ministry is entitled to apply for further relief under s. 43 after that time if it considers that it is warranted in light of its experience with the respondent.

September 18, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia