



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

Decision P10-01

**OCCUPATIONAL HEALTH AND SAFETY AGENCY
FOR HEALTHCARE IN BC**

Jay Fedorak, Adjudicator

April 26, 2010

Quicklaw Cite: [2010] B.C.I.P.C.D. No. 21

CanLII Cite: 2010 BCIPC 21

Document URL: <http://www.oipc.bc.ca/PIPAOrders/2010/DecisionP10-01.pdf>

Summary: The respondent requested some of her personal information in the custody or control of the applicant organization, a non-profit healthcare agency. The applicant organization sought, but is denied, authority under s. 37(a) of PIPA to disregard the request.

Statutes Considered: *Personal Information Protection Act*, s. 37(a).

Authorities Considered: **B.C.:** Decision P05-01, [2005] B.C.I.P.C.D. No. 23; Decision F05-01, [2005] B.C.I.P.C.D. No.4; Decision F06-03, [2006] B.C.I.P.C.D. No.6.

1.0 INTRODUCTION

[1] This decision stems from an application by the Occupational Health and Safety Agency for Healthcare in BC (“OHSAH”), an organization covered by the *Personal Information Protection Act* (“PIPA”), for authority under s. 37(a) of PIPA to disregard an access request the respondent made to OHSAH. The respondent, a former employee of OHSAH, made two requests for access to her personal information. The first request was for her information relating to a particular board meeting that was contained in minutes, notes of the meeting and emails sent or received by three board members and three senior executives for the period October 2005-February 2008.

[2] Section 23(1) of PIPA reads as follows:

Access to personal information

23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:

- (a) the individual's personal information under the control of the organization;
- (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the organization;
- (c) the names of the individuals and organizations to whom the personal information referred to in paragraph (a) has been disclosed by the organization.

[3] OHSAH did not respond to the respondent's request. Instead, it wrote to the Office of the Information and Privacy Commissioner ("OIPC"), seeking authority under s. 37(a) of PIPA to disregard the request on the ground that it would unreasonably interfere in OHSAH's operations owing to its repetitious and systematic nature. Section 29(2) of PIPA suspends the time for responding to a request where the organization involved has sought relief under s. 37.

[4] During the mediation of this application, the respondent agreed to narrow her request, though there was confusion among the parties over the scope of the narrowed request. OHSAH agreed to respond to the narrowed version of the request, as it had interpreted it, and provided the respondent with 430 pages of records. The respondent disagreed with how OHSAH had interpreted her narrowed request and requested that the OIPC review the response. As a result of mediation, the respondent withdrew the review of her first request and submitted a second request to OHSAH that differed from the narrowed version of her original request.

[5] The second request was for the email records containing her personal information that just one senior executive of OHSAH sent or received, but she broadened the time frame to include all messages sent between January 2005 and October 2009, and the topic was no longer restricted solely to the board meeting that was the subject of her first request.

[6] OHSAH did not respond to the second request. Instead, it again applied to the OIPC for relief from responding to that request under s. 37(a) of PIPA, on the ground that it would unreasonably interfere in OHSAH's operations owing to its repetitious and systematic nature.

[7] Mediation failed to resolve the matter and it was referred to a written hearing under PIPA.

[8] OHSAH requests relief in the form of being authorized to disregard the respondent's second request. Instead, it proposes to respond to the respondent's first request under terms and conditions set out in a letter from an OIPC Portfolio Officer.

2.0 ISSUE

[9] The issue here is whether it is appropriate to authorize OHSAH, under s. 37(a) of PIPA, to disregard the respondent's request for access to her own personal information. Although PIPA does not assign a burden of proof in s. 37 matters, an organization seeking relief under that section would be wise to provide evidence of a basis for the relief it seeks.

3.0 DISCUSSION

[10] **3.1 Background**—The respondent is a former employee of OHSAH whom the organization terminated. As an academic researcher, she maintained a professional relationship with OHSAH after her termination, but that relationship was strained. Almost a year after having terminated the respondent as an employee, the Board of Directors met to discuss ceasing all collaboration with her.¹ The Board of Directors passed a motion to this effect two months later. OHSAH and the respondent blame each other for the breakdown in their relationship and their current adversarial situation. The respondent indicates that the motive behind her requests for her personal information is her belief that OHSAH has information about her that is incorrect and that it has disclosed this information outside of the organization.² She states that her concern is to protect her professional reputation. OHSAH takes the position that the actions of the respondent against its members and staff constitute a form of harassment and fears that there is no prospect that it will end.³

[11] **3.2 Applicable Principles**—Section 37, which is identical in all material respects to s. 43 of FIPPA, reads as follows:

Power to authorize organization to disregard requests

- 37 If asked by an organization, the commissioner may authorize the organization to disregard requests under section 23 or 24 that
- (a) would unreasonably interfere
 - (b) with the operations of the organization because of the repetitious or systematic nature of the requests, or
 - (b) are frivolous or vexatious.

¹ OHSAH's initial submission, paras. 1-6.

² Respondent's submission, p. 22.

³ OHSAH's initial submission, paras. 51-52; Affidavit of P.P. Exhibit B, para. 22.

[12] **3.3 Do the Outstanding Requests Merit Relief Under Section 37(a)?**—In order to merit relief under s. 37(a), the requests must be repetitious or systematic and responding to the second request must unreasonably interfere with the operations of the organization.

[13] I will turn first to determining whether the requests are repetitious or systematic. In the event that I determine that they are not, there will be no need to determine whether responding to the second request would unreasonably interfere in OHSAA's operations.

[14] I also note that, while the parties made voluminous submissions in this matter, most of the material focussed on the nature of the ongoing dispute between them and who was to blame, rather than on the extent to which the respondent's requests were repetitious or systematic. As a result, much of the material was not relevant to this hearing.

Description of the outstanding request

[15] The respondent's second request was for email records containing her personal information sent or received by only one particular senior executive of OHSAA between January 2005 and October 2009. Based on the submissions before me, it appears that OHSAA already provided the respondent with emails concerning a particular board meeting that were sent or received by this individual between October 2007 and February 2008. I do not know for certain, however, because the records themselves are not before me. In the event that OHSAA has provided all of the records for that date range, the records at issue in the respondent's current request would be any sent or received by that senior executive between January 2005 and October 2007 and between February 2008 and October 2009. They would also include any records sent or received between October 2007 and February 2008 that did not relate to the board meeting, if any such records exist.

Are the requests repetitious?

[16] OHSAA has failed to demonstrate that the respondent's second request is repetitious. As OHSAA notes, Commissioner Loukidelis has defined "repetitious" as "to repeat an act ... one or more times".⁴ The respondent has made only two requests. It is relevant to note that OHSAA's initial reaction to the first request was to request relief under s. 37, before it had even given the applicant any records, on the grounds that the first request alone was systematic or repetitious. In the end, as the respondent submits, OHSAA did not respond completely to the original request.⁵

⁴ Auth. (s.43) 99-01; OHSAA's initial submission, para. 28.

⁵ Respondent's submission, p. 13.

[17] The second request is not a repetition of the narrowed version of the first request, and it does not appear to cover the same records that OHSAH has already provided to the respondent, although there could be some overlap.⁶ As a result of the first request, the respondent might have received copies of emails sent or received by a particular individual between the period October 2007 to February 2008. The second request covers records sent and received by the same individual for the period January 2005 to October 2009. Therefore, the second request includes records for the period January 2005-September 2007 and February 2008 to October 2009 that were not covered in the first request.

[18] OHSAH, citing Commissioner Loukidelis in Decision P05-01⁷ that s. 37 of PIPA and s. 43 of FIPPA are “identical in material respects”, submits that previous decisions under s. 43 of FIPPA provide appropriate guidance for interpreting s. 37 of PIPA.⁸ I agree.

[19] OHSAH cites Decision F05-01⁹ and Decision F06-03¹⁰ under s. 43 of FIPPA as being comparable to the present case, as they involved a former employee of one public body, and a former student of another public body, making requests for their own personal information. In both cases, the public bodies received the relief requested. It is worth noting, however, that the respondents in both cases had each made more than 30 requests, and it was clear that, to a large extent, most of the open requests covered records that the respondents had already received.

[20] Except in extraordinary circumstances, it would not in my view be appropriate to characterize an individual making only one or two requests as “repetitious”. I do not see that the current case presents such extraordinary circumstances because part of the second request is a subset of the topic of the first, but with a different date range. Moreover, the remainder of the request concerns different topics

[21] I find that the two requests at issue here do not meet the standard of “repetitious”.

Are the requests systematic?

[22] OHSAH’s argument is largely to attempt to draw parallels between the present case and the cases in Decision F05-01 and Decision F06-03. In Decision F05-01, Commissioner Loukidelis found that the requests were systematic because the respondent was collecting thousands of pages of records from various sources and cataloguing them. He was using the records received

⁶ For descriptions of the two requests see paras.1 and 5 above.

⁷ Decision P05-01,[2005] B.C.I.P.C.D. No. 23, para. 11.

⁸ OHSAH’s initial submission, para. 27.

⁹ Decision F05-01, [2005] B.C.I.P.C.D. No.4.

¹⁰ Decision F06-03, [2006] B.C.I.P.C.D. No.6.

from each request as a basis for making new requests, systematically expanding the scope of records. In Decision F06-03, the respondent was systematically requesting records from every department of the public body with which he had had any contact. He was even making requests for the public bodies' administrative files that documented the processing of his access requests.

[23] OHSAH states that, as in the case of Decision F05-01, the respondent is requesting records relating to meetings and is seeking to correct personal information about her that is incorrect. These qualities, in and of themselves, do not, however, indicate a systemic nature to the request. The case in Decision F05-01 was considered to involve systematic requests, not because the subject of the request included meetings, but because the respondent had made many requests on related subjects and had clearly established a pattern whereby the information received in response to one request was used for formulating further requests.

[24] The respondent in the present case has not yet displayed the same kind of systematic approaches to her two requests. In fact, she asserts that she only made the second request because she was dissatisfied with OHSAH's response to her first request, in which she received only a portion of the records originally requested. Moreover, her second request is, on balance, of a reduced rather than expanded scope. She submits that the reason she narrowed the first request and initiated the second was to "better focus" the original request.¹¹ The first request covered the correspondence of six individuals. The second concerns only one of them. It does expand the time frame of the request and potentially the subject matter of the correspondence. To the extent that there is any overlap between the two requests, OHSAH can resolve this by excluding copies of any emails already disclosed to the respondent.

[25] I have considered whether the conclusions in Decision F05-01 and Decision F06-03 are applicable in this case. I conclude that there is a considerable gulf in terms of the number of requests, the scope of the records involved and the sophistication of the application strategy between them and the present case, to the point at which I find that they are not comparable.

[26] Therefore, I find that the two requests in the present case do not qualify as systematic.

Unreasonable interference

[27] As I have determined that the requests are not repetitious or systematic, I do not need to review whether responding to the second request would unreasonably interfere with the operations of OHSAH.

¹¹ Respondent's submission, p. 10.

[28] Nevertheless, even had I found that the requests were systematic or repetitious, I would not have been able to determine the extent to which they interfered with the operations of OHSAH. This is because OHSAH provided me with an estimate of the total time and resources that it has expended dealing with issues relating to the respondent. This included communicating with the respondent with respect to their ongoing dispute relating to her termination and its repercussions, as well as with respect to the access request. It did not breakdown the time and resources expended with respect only to the access request, which is the information that I would have required.

Conclusion on s. 37(a) of PIPA

[29] As the applicant has failed to establish that the respondent's second request was repetitious or systematic, I find that s. 37(a) of PIPA does not apply. I therefore decline to grant OHSAH the relief it requests.

4.0 CONCLUSION

[30] For the reasons given above, OHSAH's request for authorization under s. 37 of PIPA is denied.

April 26, 2010

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

OIPC File: P09-40326