



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F18-32

GLENMORE-ELLISON IMPROVEMENT DISTRICT

Erika Syrotuck
Adjudicator

August 7, 2018

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Summary: The Glenmore-Ellison Improvement District applied for authorization to disregard two of the respondent's requests for records because they are frivolous or vexatious under s. 43(b) of FIPPA. The adjudicator found the requests were not frivolous or vexatious and therefore the public body was not authorized to disregard them.

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

INTRODUCTION

[1] A former employee (the respondent in this inquiry) made 28 requests to the Glenmore-Ellison Improvement District (GEID) for access to information.¹ GEID applied to the Office of the Information and Privacy Commissioner (OIPC) for authorization under s. 43(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard two of the requests because they are frivolous or vexatious.

ISSUES

[2] The issues in this inquiry are:

¹ GEID is a "public body" under FIPPA since Schedule 1 of FIPPA defines "public body" to include a "local public body" which includes a "local government body" which includes "an improvement district as defined in the *Local Government Act*."

1. Are the respondent's requests frivolous and/or vexatious under s. 43(b) of FIPPA?
2. If so, what relief under s. 43 is appropriate?

DISCUSSION

Background

[3] GEID provides water to residents of the Glenmore Valley and Ellison areas, near Kelowna, BC. GEID and the respondent refer to the residents who pay GEID for water services as "rate payers". GEID is governed by five trustees, one of whom serves as the Chair.

[4] The respondent is a former employee of GEID. GEID terminated the respondent after less than a year of employment.

The Requests

[5] GEID seeks to disregard two of the respondent's access requests. The first is for a "copy of all email and written correspondence sent and received between each member of GEID Board of Trustees." The respondent indicated that this request was for a period of approximately nine months. The second is for a copy of all signed remuneration claims for the GEID Chair, including any changes or adjustments, for the entire duration of his role as Chair.

Section 43(b)

[6] Section 43(b) allows the commissioner to authorize a public body to disregard requests under s. 5 or 29 that are frivolous or vexatious.

[7] A frivolous or vexatious request is one that is an abuse of the rights conferred under FIPPA.² Both frivolous and vexatious requests are requests that are made for a purpose other than a genuine desire to access information.

[8] In addition to being highly dependent on the facts and circumstances of each case, determining whether an access request is either "frivolous" or "vexatious" must take into account the legislative purpose of FIPPA, particularly the principles of public accountability and openness under s. 2.³ An access to information request may be vexing or irksome to a public body because it will reveal information that a public body may prefer not to disclose, but on its own, this does not merit relief under s. 43(b).⁴ However, this does not mean s. 43

² Auth. (s. 43) 02-02 [2002] BCIPCD No. 57.

³ *Ibid* at para. 25 and *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at para. 33.

⁴ Auth. (s. 43) 02-02 [2002] BCIPCD No. 57 at para. 22.

should be interpreted restrictively; it is an important remedial tool to curb abuse of the right of access.⁵

[9] Frivolous requests include requests that are trivial or not serious.⁶ Past OIPC orders have found that a request was frivolous when the requested information was publicly available,⁷ the request was for documents that the respondent authored and sent to the public body,⁸ and because the respondent cancelled a large access request after the public body had spent significant time processing the request.⁹

[10] Vexatious requests include requests made in bad faith, such as for a malicious purpose or as a means of accomplishing something other than gaining access to the information.¹⁰ Past orders have found requests to be vexatious because:

- The purpose of the requests was to pressure the public body into changing a decision or taking an action;¹¹
- The respondent was motivated by a desire to harass the public body;¹² and
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions.¹³

[11] In Auth. (s. 43) 02-02, Commissioner Loukidelis said that the fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious.¹⁴

GEID's position

[12] GEID submits that the respondent's access requests are frivolous or vexatious because he is using his requests to retaliate against those who terminated his employment, specifically the Chair of GEID.¹⁵ GEID says it is concerned about how the respondent will use the requested information, specifically, that he will continue to harass the rate payers and GEID with allegations of impropriety. GEID submits that the respondent's ulterior motive

⁵ *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at para. 33.

⁶ Auth. (s. 43) 02-02 [2002] BCIPCD No. 57 at para. 27.

⁷ Order F17-18, 2017 BCIPC 19 at para. 23.

⁸ Order F13-18, 2013 BCIPC 25 at para. 34.

⁹ Order F18-09, 2018 BCIPC 11 at para. 29.

¹⁰ Auth. (s. 43) 02-02 [2002] BCIPCD No. 57 at para. 27.

¹¹ Decision F08-10, 2008 CanLII 57362 (BC IPC) at paras. 38-39; Order F13-16, 2013 BCIPC 20 at para. 20.

¹² Order F13-18, 2013 BCIPC 25 at para. 36.

¹³ Decision F10-11, 2010 BCIPC 51; Order F16-24, 2016 BCIPC 20 at para. 40.

¹⁴ Auth. (s. 43) 02-02 [2002] BCIPCD No. 57, at para. 27.

¹⁵ GEID's initial submissions, at para. 27.

(i.e., to harass) is driving his request, not a legitimate desire to access information, and therefore the request is vexatious.¹⁶

[13] As an example of the respondent's harassing behaviour, GEID alleges the respondent is responsible for an email, letter and a website sent to rate payers suggesting GEID misleads rate payers with respect to the Chair's remuneration claims.¹⁷ GEID says the emails, website and letter contain information that is deliberately misleading. For example, the remuneration claims have been cropped to only show the total amount and signature. GEID says this selective editing makes it look like the claims have been submitted without any justification or explanation.¹⁸

[14] GEID acknowledges that it does not know who sent out the website, emails and letter but says the only people that had access to the information they contain were "specific GEID employees and the respondent."¹⁹ GEID believes that the respondent gained access to all GEID emails without the trustees' knowledge or consent and sent a number of internal documents to his personal email address.²⁰ GEID says that the information on the website and in the email references GEID internal documents, such as the GEID Chair's remuneration claims and the GEID trustee budget.²¹

[15] Additionally, GEID says that several reviews on Google allege that the Chair is engaged in improper remuneration claims. GEID suspects that the reviews were authored by the respondent because they are in language similar to that used in the website, email and letter.²²

[16] GEID says that since the respondent was terminated, it had to deal with questions about the letter, email and website from numerous concerned rate payers, including at its 2018 Annual General Meeting. GEID also posted a response on its website and in its public newsletter.²³

[17] GEID says that the respondent initiated litigation against GEID alleging that he was terminated because he discovered issues relating to public health and financial irregularities.²⁴ GEID denies that it terminated the respondent in retaliation for bringing up public safety concerns and says the reason for the termination was that the respondent failed to meet the requirements of his

¹⁶ *Ibid* at para. 31.

¹⁷ *Ibid* at para. 11.

¹⁸ *Ibid* at para. 11.

¹⁹ *Ibid* at para. 12.

²⁰ *Ibid* at paras. 7 and 8.

²¹ *Ibid* at para. 10.

²² *Ibid* at para. 13.

²³ Affidavit of GEID Administrator, at para. 17 and Exhibit G.

²⁴ GEID's initial submissions at para. 17 and Affidavit of the Administrator, exhibits L, M, N, and O.

employment, requested access to private servers and that he misappropriated GEID property for personal use.²⁵ GEID says that it will be defending the respondents' allegations through the court process.²⁶ GEID further alleges that the respondent's request are motivated by a desire to harass GEID into settling this litigation.²⁷

[18] GEID says that the circumstances in this case are similar to the facts before Adjudicator McEvoy in Decision F10-11. In that case, a former employee requested documents from his former supervisor, who he held responsible, to some extent, for his termination. Adjudicator McEvoy found that the request was vexatious because it was a means of demonstrating the respondent's displeasure with his former supervisor.²⁸

Respondent's position

[19] The respondent says his requests are very much made in good faith.²⁹ The respondent says that the information he is requesting would probably uncover serious shortcomings, including serious risks to public health and safety, financial conflicts of interest and use of public funds.³⁰ The respondent says that during his employment at GEID, a serious event related to the drinking water quality occurred, and based on this he has a serious concern about public safety.³¹

[20] The respondent also says he is concerned that there is a potential conflict of interest regarding the Chair's remuneration claims. He alleges that the Vice Chair reviewed, approved and signed the Chair's remuneration and expenses and is also the Chair's uncle.³² To support this, the respondent provided a letter he had sent to the GEID hiring manager, which is dated just over a week before he was terminated.³³ In the letter, the respondent stated, among other things, his concerns about the GEID board's remuneration and that he felt his job was at risk for raising this issue.

[21] The respondent submits that GEID knew his management responsibilities included accessing emails and GEID data.³⁴

²⁵ GEID reply submissions, para. 5.

²⁶ GEID's initial submissions, para. 27.

²⁷ GEID's reply submissions, para. 17.

²⁸ Decision F10-11, 2010 BCIPC 51 at para. 35.

²⁹ Respondents submissions, page 10.

³⁰ *Ibid* at page 6.

³¹ *Ibid* at page 3.

³² *Ibid* at page 2.

³³ *Ibid*, Exhibit 1.

³⁴ *Ibid* at page 11.

[22] The respondent denies GEID's claim that he is harassing them and he alleges GEID has acted punitively and in bad faith towards him. He says that he was terminated within days of submitting a letter to the GEID Chair.³⁵ He submits that he is legitimately pursuing GEID for wrongful dismissal, monies owing for use of his personal vehicle, wrongful hiring and unpaid overtime.³⁶ The respondent alleges GEID is deeply concerned and worried that the documents in question will reveal its failings and shortcomings.³⁷

Analysis

[23] I am not satisfied that the respondent's requests are frivolous. Nothing before me suggests that the respondent's access requests are regarding trivial matters or that the request itself is not serious. Conversely, the respondent's allegations about financial impropriety, conflicts of interest and public health are about significant matters.

[24] I am also not persuaded that the respondent's requests are vexatious. In my view, GEID has not been subjected to a level of scrutiny that constitutes harassment. GEID has alleged that the respondent used improperly obtained information for an email, letter, website and Google reviews, which in turn has encouraged rate payers to ask questions. GEID sees this as harassment. I do not have sufficient information to determine who wrote the email, letter, website or Google reviews. I note that they are written in a critical but respectful tone. The materials undoubtedly encourage rate payers to question GEID, but the fact that the rate payers have done so is not evidence of harassment. Responding to questions from individuals is an integral part of being accountable to the public. I am satisfied that the intent behind the anonymous materials is to increase accountability of GEID. Therefore, even if the respondent is responsible for them and intends to use information from the access requests in dispute for similar purposes, I am satisfied that he is doing so for the purposes of making GEID more accountable. This is consistent with the purpose of FIPPA, not an abuse of it.

[25] There is no other persuasive evidence that leads me to conclude that the respondent's access requests were for a purpose other than accessing information. In fact, the respondent's evidence is that he expressed concerns about the Chair's remuneration before the date he was terminated. In my view, the fact that the respondent brought forward this issue before he was terminated undermines GEID's position that the respondent seeks to use the information to harass it in retaliation for terminating him and strengthens the respondent's position that he has a genuine interest in the requested information. Unlike in Decision F10-11, I am not satisfied that the respondent's request is a means

³⁵ *Ibid* at page 3.

³⁶ *Ibid* at page 3.

³⁷ *Ibid* at page 5.

of demonstrating displeasure. I am not persuaded that the respondent made the requests for the purposes of harassing GEID in retaliation for his termination or to intimidate GEID into settling the respondent's claims against it.

[26] In conclusion, I am satisfied that the respondent has a genuine interest in the records that he has requested from GEID and that his requests are not frivolous or vexatious under s. 43(b).

CONCLUSION

[27] For the above reasons, GEID is not authorized to disregard the requests under s. 43(b).

August 7, 2018

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F18-74779