



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F19-25

**MINISTRY OF ADVANCED EDUCATION,
SKILLS AND TRAINING**

Celia Francis
Adjudicator

June 21, 2019

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Summary: The Ministry of Advanced Education, Skills and Training (Ministry) requested authorization to disregard the respondent's 10 outstanding requests. The adjudicator found that, while most of the outstanding requests duplicate previous requests, the Ministry need only respond by referring the respondent to the appropriate previous requests. The adjudicator found, therefore, that these requests did not merit relief under s. 43. The adjudicator found that part of one request was new and also did not meet the criteria for relief under s. 43.

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

INTRODUCTION

[1] The Ministry of Advanced Education, Skills and Training (Ministry) has requested authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard the respondent's 10 outstanding access requests. I have decided, for reasons that follow, not to grant the Ministry's request.

ISSUES

[2] The issues before me are these:

1. Are the respondent's requests repetitious or systematic and, if so, do they unreasonably interfere with the Ministry's operations under s. 43(a) of FIPPA?
2. Are the respondent's outstanding requests frivolous or vexatious for the purposes of s. 43(b)?
3. If the answer to either is yes, what relief, if any, is appropriate?

[3] Past orders and decisions on s. 43 have placed the burden of proof on the public body.¹

DISCUSSION

Background

[4] The respondent attended Rutherford College (Rutherford) and Clearmind International Institute (Clearmind) between 2005 and 2007. In 2007, the Private Career Training Institutions Agency (PCTIA) suspended and then cancelled Rutherford's registration on the basis that it had breached the *Degree Authorization Act* and the *Private Career Training Institutions Act*. The PCTIA temporarily suspended Clearmind's registration in 2007. The respondent complained to the PCTIA about Rutherford and Clearmind in 2014. The PCTIA did not accept the complaint because it was filed outside the limitation period for making a complaint.²

[5] The respondent began making FIPPA requests to the PCTIA about Rutherford and Clearmind in 2015. The PCTIA received authorization under s. 43 in 2016 to disregard some of the respondent's requests.³ The PCTIA was dissolved in 2016 and its responsibilities moved to the Ministry, along with its records. Later that same year, the respondent made a FIPPA access request to the Ministry. The Ministry disregarded that request, relying on the authority granted to the PCTIA in Order F16-24. The adjudicator found in Order F18-25⁴ that the Ministry could not rely on Order F16-24 and ordered the Ministry to process the respondent's request.⁵

¹ For example, Order F17-18, 2017 BCIPC 19 (CanLII).

² Ministry's initial submission, paras. 19-22.

³ Order F16-24, 2016 BCIPC 26 (CanLII).

⁴ Order F18-25, 2018 BCIPC 28 (CanLII).

⁵ Orders F16-24 and F18-25 provide this and other background information on the case.

[6] Between 2015 and 2018, the respondent made approximately 50 requests to the Ministry for records related to Rutherford, Clearmind, and associated topics.⁶ The material before me indicates that the Ministry has responded to all but the 10 requests for which it seeks relief.

Principles for applying s. 43(a)

[7] Section 43 of FIPPA reads as follows:

43 If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 or 29 that

- (a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or
- (b) are frivolous or vexatious.

[8] Former Commissioner Loukidelis has discussed the function and importance of s. 43 and had the following to say about its role in the scheme of access rights created under FIPPA:

... 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....⁷

[9] Relief under s. 43 is available under FIPPA for requests made under s. 5 that meet certain criteria. In order to merit relief under s. 43(a), the requests must be repetitious or systematic and responding to them must unreasonably interfere with the public body's operations. A repetitious request is one that has been made one or more times. A systematic request is characterized by a system, method or plan of acting that is organized and carried out according to a set of rules or principles.⁸

⁶ Exhibit F, Affidavit of Ministry's Manager, Business Services & Ministerial Correspondence and Research Unit.

⁷ Auth. (s. 43) 99-01 (December 22, 1999) at p. 7.

⁸ Auth. (s.43) 99-01, <https://www.oipc.bc.ca/decisions/170>, at p.3; Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 57, at para 16; Decision P05-01, [2005] B.C.I.P.C.D. No. 23, para. 11.

[10] The following non-exhaustive list of factors should be considered when determining whether a request is frivolous or vexatious for the purposes of s. 43(b):⁹

- A frivolous or vexatious request is one that is an abuse of the rights conferred under FIPPA.
- The determination of whether a request is frivolous or vexatious must, in each case, keep in mind FIPPA's legislative purposes and those purposes should not be frustrated by an institution's subjective view of the annoyance quotient of particular requests or that the purpose for requesting the information is not important or apparent to the public body.
- A "frivolous" request is one that is made primarily for a purpose other than gaining access to information. It will usually not be enough that a request appears on the surface to be for an ulterior purpose – other facts will usually have to exist before one can conclude that the request is made for some purpose other than gaining access to information. The class of "frivolous" requests includes those that are trivial, without merit or not serious.
- The class of "vexatious" requests includes those made in "bad faith," i.e., for a malicious or oblique motive. Such requests may be made for the purpose of harassing or obstructing the public body.
- The fact that one or more requests are repetitive may, alongside other factors, support a finding that a specific request is frivolous or vexatious.

[11] For reasons that follow, I have decided that the Ministry is not entitled to relief under s. 43 for the 10 outstanding requests.

The outstanding requests

[12] The Ministry seeks relief for these 10 requests which are principally for records related to Rutherford and Clearmind:

- AED-2018-86724
- AED-2018-86725
- AED-2018-86726
- AED-2018-86727
- AED-2018-86728
- AED-2018-86729
- AED-2018-86730
- AED-2018-86731

⁹ Auth. (s. 43) 02-02, (November 8, 2002), at pp. 4-8.

- AED-2018-87037
- AED-2018-87316

Previous requests

[13] The Ministry provided a table of the respondent's previous and outstanding requests. The previous requests also mainly concern Rutherford, Clearmind and associated topics.

Ministry's submission

[14] The Ministry submitted the following about the outstanding requests:

- They are repetitive;
- They duplicate previous requests to which the Ministry or the PCTIA has already responded; the respondent has not explained why he wants another copy of records he has already received;
- They are systematic and demonstrate thoroughness and regularity;
- The respondent combs through the records to identify further issues and requests more records based on what he sees in records he has already received;
- His behaviour suggests he does not intend to stop the flow of requests and questions, all of which relate essentially to the same records, communications and events;
- He has received all of the records the PCTIA and Ministry have on Rutherford and Clearmind;
- His requests are part of a pattern designed to force the Ministry to substantiate his 2014 complaint to PCTIA;
- His requests are made in bad faith, are an abuse of rights under FIPPA and are frivolous and vexatious.¹⁰

[15] The Ministry also said that the requests are convoluted and difficult to interpret. It said that the requests often overlap and contain "significant duplication" although, it said, this is not always obvious. The Ministry said that it has responded to duplicate requests by referring the respondent to previous requests. It added this:

The processing of such requests creates a significant burden on staff given that each request must be reviewed and compared to all of his previous requests (of which there are many) as well as the responses he was

¹⁰ Ministry's initial submission, para. 23.

provided to determine if we have already provided him the records in question.¹¹

Respondent's submission

[16] The respondent's submission did not address s. 43. He did not comment specifically on the Ministry's arguments.

Analysis and finding

[17] I agree that the respondent's requests are convoluted and difficult to interpret. They also contain much duplication. I can understand why, in general, Ministry staff have had to spend considerable time and effort over the years to process the requests. It is also clear that the respondent has engaged in extensive correspondence with Ministry program staff, over many years, about his concerns.¹²

[18] The Ministry admitted that many of the requests duplicate previous ones. It said it takes staff three to six hours to do their due diligence to determine if each request duplicates a previous one, as well as where and when the request was answered.¹³ This may well be, with some requests.

[19] However, the wording of eight of the following listed outstanding requests duplicates the wording of eight previous requests the Ministry has already processed:

- AED-2018-86724 = AED-2017-71412
- AED-2018-86725 = AED-2017-71454
- AED-2018-86726 = AED-2017-71569
- AED-2018-86727 = AED-2017-72252
- AED-2018-86728 = AED-2017-73905
- AED-2018-86729 = AED-2017-73942
- AED-2018-86730 = AED-2018-80075
- AED-2018-86731 = AED-2018-80166

¹¹ Ministry's initial submission, paras. 27-29; Affidavit of Ministry's Manager, Business Services & Ministerial Correspondence and Research Unit, paras. 14-16. The Ministry said that staff generally had spent hundreds of hours dealing with the respondent's requests and inquiries over the last two years.

¹² Exhibits D and E, Affidavit of Ministry's Manager, Business Services & Ministerial Correspondence and Research Unit.

¹³ Ministry's initial submission, para. 30; Affidavit of Ministry's Manager, Business Services & Ministerial Correspondence and Research Unit, para. 18.

[20] It would not take long, in my view, to determine that the wording of each of these eight outstanding requests duplicates the wording of a previous one, using a key word search and textual comparison. I also see no reason why Ministry staff would need to re-visit their records searches and disclosures in these eight cases. It seems to me that verifying the duplication in the wording of these requests would suffice. The Ministry then need only send the respondent a brief response on each duplicate request, referring to the corresponding previous request.¹⁴

[21] As for the ninth and 10th requests (AED-2018-87037 and AED-2018-87316), the Ministry said that the respondent had already received the records requested in AED-2018-87037 in previous requests.¹⁵ Although the Ministry did not say which requests, in the absence of any evidence from the applicant to the contrary, I accept the Ministry's submission on this point. The Ministry also said that the records requested in the first part of AED-2018-87316 duplicate those requested in AED-2018-87037. I agree. As with the first eight outstanding requests, therefore, the Ministry need only tell the respondent that these two requests duplicate previous ones and refer him to the appropriate request numbers.

[22] Previous orders have said that relief under s. 43 is not normally needed for requests for records a respondent has already received. In such cases, these orders have said, a public body need only send a brief response indicating that the respondent has already received the records.¹⁶ This is just such a case, in my view. For reasons just discussed, therefore, the Ministry has not persuaded me that the first nine outstanding requests and the first part of request AED-2018-87316 merit relief under s. 43.

[23] The second part of request AED-2018-87316 appears to be a new request and does not appear to relate to Rutherford or Clearmind. The Ministry said it would take about three hours to search for responsive records although, it said, it was not likely to find any.¹⁷ A three-hour search does not strike me as overly burdensome. Moreover, nothing in the Ministry's submission supports a finding that this part of the request is frivolous or vexatious. The Ministry did not explain why it should be able to disregard this part of the request under s. 43(a) or (b). I find that the Ministry is also not entitled to relief under s. 43 for the second part of request AED-2018-87316. It must process this part and provide the respondent with a response under s. 8 of FIPPA.

¹⁴ The senior adjudicator made a similar comment in Order F16-24 at para. 46 regarding requests PCTIA had already processed.

¹⁵ Affidavit of Ministry's Manager, Business Services & Ministerial Correspondence and Research Unit, para. 34.

¹⁶ Order F16-24, 2016 BCIPC 26 (CanLII), Decision F10-09, 2010 BCIPC 47 (CanLII), Decision F11-04, 2011 BCIPC 40 (CanLII).

¹⁷ Affidavit of Ministry's Manager, Business Services & Ministerial Correspondence and Research Unit, para. 35.

CONCLUSION

[24] For reasons given above, I find that the Ministry has not established that the 10 outstanding requests are repetitive, systematic, frivolous or vexatious, for the purposes of ss. 43(a) and (b). I decline, therefore, to authorize the Ministry to disregard these 10 outstanding requests.

June 21, 2019

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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