Order F23-61

MINISTRY OF ATTORNEY GENERAL

Elizabeth Vranjkovic
Adjudicator

August 10, 2023

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Summary: The Ministry of Attorney General (Ministry) applied for authorization to disregard one outstanding access request and certain future access requests under ss. 43(a) and 43(c)(ii) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found the outstanding request was vexatious under s. 43(a). The adjudicator also found the outstanding request was systematic and responding to it would unreasonably interfere with the Ministry's operations under s. 43(c)(ii). The adjudicator authorized the Ministry to disregard the outstanding request and future requests, over and above one request at a time, for a period of five years.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 43(a) and 43(c)(ii).

INTRODUCTION

[1] This inquiry is about the Ministry of Attorney General's (Ministry) application for authorization to disregard the respondent's outstanding access request and certain future access requests under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry says that the outstanding request is vexatious (s. 43(a)).[1] The Ministry also says that responding to the outstanding request would unreasonably interfere with the Ministry's operations because the outstanding request is systematic (s. 43(c)(ii)).

Preliminary Matters

[2] Some preliminary matters arise in this case. They relate to the scope of the respondent's submissions, the *in camera* material, the Ministry's affidavit evidence and whether *res judicata* bars the s. 43 application.

[1] Whenever I refer to a section number throughout this order, I am referring to sections of FIPPA.

Issues and allegations outside the scope of the notice

[3] In his response submission, the respondent raises issues that were not included in the notice of s. 43 application (notice). For example, the respondent expresses concern about an audit of his Medical Services Plan (MSP) billings.[2] The respondent also invokes s. 74 (now s. 65(2)), which makes it an offence to, for example, wilfully mislead the Commissioner.[3]

[4] I decline to consider any new issues. The notice clearly states that the Commissioner or their delegate will consider the public body's application to disregard certain requests made by the respondent. The respondent did not seek permission to add any new issues and nothing in the materials before me indicates that he informed the Office of the Information and Privacy Commissioner (OIPC) that there were other issues to be heard. I am also not satisfied that it would be fair to add any of these new issues now. As a result, I decline to add any of the new issues raised by the respondent to this inquiry. I have focused my discussion below only on the evidence and submissions relevant to deciding the s. 43 issue.

Respondent's objection to in camera material

[5] The respondent takes issue with the OIPC's decision to allow the Ministry to provide some information *in camera* (that is, information that is seen by the Commissioner only). The respondent objects to not receiving a description of the Ministry's *in camera* materials or an opportunity to respond to the Ministry's *in camera* request. He submits that some of the information should not have been accepted *in camera* and that it was a conflict for the OIPC's Director of Adjudications (Director) to decide the *in camera* request. Additionally, the respondent says that there is no guarantee that what the OIPC approved *in camera* is the same as what was submitted *in camera*.[4]

[6] The Ministry says that there is no basis to question the OIPC's *in camera* decision or process. The Ministry also says that it confined its *in camera* material to precisely what the OIPC authorized.[5]

[7] Courts have expressly recognized the Commissioner's power under s. 56(4)(b) to accept inquiry material *in camera*.[6] The OIPC decides *in camera* requests in accordance with the principles of procedural fairness and aims to strike an appropriate balance between a public body's ability to fully argue its

[2] For example, the respondent's response submission at pages 1, 15-17 and 21.
[3] Respondent's response submission at page 35.
[4] Respondent's response submission at pages 4-8.
[5] Public body's reply submission at paras 22-23.
[6] *Greater Vancouver Mental Health Service Society v British Columbia (Information and Privacy Commissioner)*, 1999 CanLII 6922 (BC SC) at paras 90-92.

case and an opposing party's right to understand and respond to that case.[7] I can see that the Director took that approach in this case. Nothing the respondent says persuades me that the *in camera* process was unfair or that I should reconsider the *in camera* decision. I am satisfied that the Ministry's *in camera* materials are the same as what the Director authorized because the OIPC reviews inquiry submissions to ensure what is submitted *in camera* is the same as what was approved.

Affidavit evidence

[8] The respondent says that the Ministry's affidavit evidence is falsified and improper. He takes issue with the affiants' identities being *in camera* because he says their identities are relevant to assessing the credibility of the affidavits.[8]

[9] The Ministry submits that its affidavits are not defective and were properly executed. It explains that the OIPC granted permission to submit the affiants' identities *in camera*.[9]

[10] I can see that the OIPC granted the Ministry permission to submit the affiants' identities *in camera*. There is also no evidence before me to support the respondent's allegations that the affidavits are falsified or improper. I accept the Ministry's affidavit evidence.

Res judicata

[11] The respondent says that the Ministry is attempting to re-litigate the same issues as Order F22-08, contrary to the principles of estoppel and *res judicata*.[10] In Order F22-08, the adjudicator denied the Ministry's s. 43 application to disregard certain access requests made by the respondent.

[12] The Ministry says that *res judicata* does not bar this s. 43 application because Order F22-08 and this inquiry deal with different access requests.[11]

[13] *Res judicata* is a doctrine with two branches, issue estoppel and cause of action estoppel. Issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding. Cause of action estoppel prevents a litigant from pursuing a matter that was or should have been the subject of a previous proceeding.[12]

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[7] OIPC's Instruction for Written Inquiries at page 5, available at https://www.oipc.bc.ca/guidance-documents/1744.
[8] Respondent's response submission at pages 2-4.
[9] Public body's reply submission at para 17.
[10] Respondent's response submission at page 13.
[11] Public body's reply submission at paras 29 and 31.
[12] *Erschbamer v Wallster*, 2013 BCCA 76 at para 12.

[14] This s. 43 application relates to a different access request than the access request at issue in Order F22-08. Thus, the issue before me was not decided by Order F22-08. Additionally, this s. 43 application could not or should not have been the subject of a previous proceeding because there have been no other proceedings about the outstanding request. As a result, I find neither issue estoppel nor cause of action estoppel apply to this s. 43 application.

ISSUES

[15] At this inquiry, I must decide whether to grant the Ministry relief under ss. 43(a) or (c)(ii). More specifically, I must decide:

1. Is the outstanding request vexatious (s. 43(a))?

2. Would responding to the outstanding request unreasonably interfere with the operations of the public body because the request is systematic (s. 43(c)(ii))?

3. If the answer is yes to any of the above, what relief, if any, is appropriate?

[16] The burden of proof is on the Ministry to show that s. 43(a) or s. 43(c)(ii) applies to the outstanding request.[13]

DISCUSSION

Background[14]

[17] The respondent is a medical practitioner who was enrolled with MSP. For a number of years, he has been engaged in a dispute with the Province regarding its audit of his MSP billings and a subsequent Medical Services Commission (Commission) hearing and decision (together the "MSP matter").

[18] The respondent has made numerous requests under FIPPA for records relating to the MSP matter. Specifically, since 2017, the respondent has made 110 access requests to government ministries and the Commission.

[19] In 2020, the Ministry of Health and the Commission jointly applied to the OIPC for authorization under s. 43 to disregard 16 of the respondent's access requests and some future access requests. In the resulting order, Order F21-04, the Director found that responding to the respondent's outstanding requests

[13] Auth (s. 43) 02-02, [2002] BCIPCD No 57; Order F10-09, 2010 BCIPC 14; Order F17-18, 2017 BCIPC 19.
[14] This background is from the public body's submission at paras 14-28 and the following OIPC decisions relating to the respondent: Order F21-04, 2021 BCIPC 4; Order F22-08, 2022 BCIPC 8; and Order F23-23, 2023 BCIPC 27.

would unreasonably interfere with the public bodies' operations because the requests were repetitious and systematic. The Director authorized the Ministry of Health and the Commission to disregard the respondent's outstanding requests and future access requests in excess of one access request at a time for two years from the date of that order.

[20] In 2021, the Ministry of Attorney General applied to the OIPC for authorization under s. 43 to disregard one of the respondent's access requests and some future access requests. In the resulting order, Order F22-08, the adjudicator found that the outstanding request was systematic, but was not satisfied that responding to the outstanding request would unreasonably interfere with the Ministry's operations. The adjudicator also was not satisfied that the outstanding request was vexatious.

[21] In 2022, the Ministry of Attorney General, Ministry of Finance and Ministry of Health jointly applied to the OIPC requesting the Commissioner exercise his discretion under s. 56(1) to not conduct any more of the respondent's inquiries that relate to the MSP matter. In March 2023, the Director found the respondent was abusing FIPPA's review and inquiry processes and cancelled his files that were at inquiry and at investigation and mediation (the abuse of process order).

[22] On December 15, 2022, the respondent made the outstanding request that is at issue in this inquiry. The request was for the following records from October 16, 2021 to December 15, 2022:

> All material held by the Attorney General's department and Legal Services Branch which relates to me. This should include files, notes, correspondence, email, voice communications records, and any other similar that relate to me. This should necessarily be inclusive of notes and e-mails of without prejudice discussions in any regard relating to me. This material should also be inclusive of any materials from the BC Sheriff Service and any material shared with the Special Investigations Unit of the Ministry of Health.

Section 43

[23] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right to access information under FIPPA.

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

> (a) the request is frivolous or vexatious,
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> ...
>
> (c) responding to the request would unreasonably interfere with the operations of the public body because the request

> ...
>
> (ii) is repetitious or systematic.

[25] Public bodies do not have discretion to disregard access requests on their own; they must obtain permission from the Commissioner.[15]

[26] Given that relief under this section curtails or eliminates the rights to access information, s. 43 applications must be carefully considered.[16] 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]."[17]

[27] However, s. 43 serves an important purpose. It exists to guard against the abuse of the right of access.[18] 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.[19] In this way, s. 43 is "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."[20]

[28] The Ministry submits that ss. 43(a) and 43(c)(ii) apply. I will first determine if s. 43(a) applies and then turn to s. 43(c)(ii).

Vexatious, s. 43(a)

[29] Section 43(a) allows the Commissioner to authorize a public body to disregard an access request because the request is frivolous or vexatious.

[30] FIPPA does not define vexatious, however, a vexatious request is one that is an abuse of the rights conferred under FIPPA.[21] Vexatious requests include requests made in bad faith, such as for a malicious purpose or requests made for the purpose of harassing or obstructing the public body.[22] 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;[23]

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[15] Order F18-25, 2018 BCIPC 28 at para 14.
[16] Auth (s. 43) 99-01 at page 3. Available at https://www.oipc.bc.ca/decisions/170.
[17] Auth (s. 43) (19 December 1997) at page 1. Available at https://www.oipc.bc.ca/decisions/168.
[18] Auth (s. 43) 99-01, *supra* note 16 at page 7.
[19] *Ibid.*
[20] *Crocker v British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 at para 33 [*Crocker*].
[21] Auth (s. 43) 02-02, *supra* note 13 at para 27.
[22] *Ibid.*
[23] Decision F08-10, 2008 CanLII 57362 (BC IPC) at paras 38-39; Order F13-16, 2013 BCIPC 20 at para 20.

- The respondent was motivated by a desire to harass the public body;[24]
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions;[25] or
- The requests were intended to be punitive or to cause hardship to an employee of a public body.[26]

[31] Additionally, in Auth (s. 43) 02-02, former 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.[27]

Parties' submissions, s. 43(a)

[32] The Ministry says that the outstanding request is an abuse of the respondent's FIPPA rights and was made in bad faith.[28] The Ministry points to the Director's findings in the abuse of process order, specifically that the respondent has been using FIPPA's review and inquiry processes in bad faith and with ulterior and vindictive motives and will likely continue to abuse FIPPA in the future unless prevented from doing so.[29] The Ministry says that considered in context, the outstanding request cannot be seen as anything other than part of the respondent's pattern of vexatious behaviour.[30]

[33] The Ministry submits that the following factors show the outstanding request is vexatious:

- The respondent has a pattern of turning access requests into OIPC proceedings.[31]
- The respondent's use of OIPC resources is excessive, disproportionate, unfair to others, and unreasonable in the sense that the proceedings consistently have little to no merit.[32]
- The respondent is harassing and intimidating people outside the FIPPA context, at times by using information gained through FIPPA requests.[33]
- The respondent's continued requests for records that he ought to know are subject to solicitor-client privilege show that he is vindictively and in

[24] Order F13-18, 2013 BCIPC 25 at para 36.
[25] Decision F10-11, 2010 BCIPC 51; Order F16-24, 2016 BCIPC 20 at para 40; Order F20-15, 2020 BCIPC 17 at para 22.
[26] Order F19-44, 2019 BCIPC 50 at para 33.
[27] Auth (s. 43) 02-02, *supra* note 13 at para 27.
[28] Public body's initial submission at para 45.
[29] Public body's initial submission at paras 54-56.
[30] Public body's initial submission at para 59.
[31] Public body's initial submission at para 65.
[32] Public body's initial submission at paras 70 and 74-75.
[33] Public body's initial submission at paras 68-69.

> bad faith forcing the Ministry to waste resources dealing with requests for records he clearly has no right to access.[34]

[34] The Ministry says that the respondent's response submission provides further evidence of his vexatious behaviour.[35]

[35] The Ministry also questions what genuine or legitimate interest the respondent has in the requested records, given that the MSP matter is drawing to a close.[36]

[36] The respondent says that he wishes to have his personal information and to have the public body correct misinformation about him. He says that the acquisition of personal information and its correction "are both critical to the core principles of information access."[37]

[37] The respondent disputes that his OIPC proceedings are of little to no merit and that he requests records he is obviously not entitled to access. He says the misapplication of s. 14 by public bodies has been documented "endlessly" in OIPC inquiries and that many communications with lawyers are not protected by solicitor-client privilege.[38]

[38] The respondent also says that it is necessary to consider the abuse of process order in context, specifically, that it is "currently in process for Judicial Review."[39]

Analysis and findings, s. 43(a)

[39] I find that the outstanding request is vexatious because it was made for improper purposes and is an abuse of the right of access given by FIPPA.

[40] First, the respondent's response submissions persuade me that the outstanding request was made for improper purposes.

[41] The respondent has repeated the same arguments in his response submissions that previous orders have consistently said are irrelevant or unsubstantiated. For example, the respondent says that s. 74 applies and objects to the Ministry's *in camera* evidence.[40] Numerous recent orders about the respondent's access requests have said these issues are irrelevant or

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[34] Public body's reply submission at para 43.
[35] Public body's reply submission at para 2.
[36] Public body's reply submission at para 48.
[37] Respondent's response submission at page 13.
[38] Respondent's response submission at pages 23-24.
[39] Respondent's response submission at page 13.
[40] For example, the respondent's response submission at pages 5-6 and 35.

unsubstantiated.[41] The fact that the respondent has raised the same arguments again here persuades me that he is using FIPPA for improper purposes, and not making these arguments because he actually believes they have any chance of success.[42]

[42] I also find that the respondent's use of his response submission to berate the lawyer who made the s. 43 application indicates that the respondent made the outstanding request in bad faith. For example, the respondent says:

- "The sheer lunacy in [the lawyer's] submission must be patently clear at different levels."[43]
- "[The lawyer's] characterization of information access requests is self-centred and bizarre."[44]
- "[The lawyer's] presentation here is truly sickening, but in keeping with his and colleagues' behaviours thus far, truly understandable."[45]
- "For [the lawyer] to make the claim that any solicitor record or communication is privileged is both obtuse and literally ignorant."[46]
- "[The lawyer's] perspective to now pit Adjudicator to Adjudicator is pure insanity."[47]
- "With such a baseless and serious allegation, [the lawyer] has the onus to provide such information and to have it seen by me. Anything less ascribes to the cowardly and disingenuous nature of [the lawyer] and his entourage."[48]
- "The argument here meets the test for wanton recklessness in the least let alone a challenge to the sobriety or other of [the lawyer] et al."[49]

[43] In my view, this language indicates that the outstanding request was made, at least in part, for the purpose of proceeding to inquiry and harassing Ministry employees.

[44] For these reasons, I find that the outstanding request is vexatious because it was made for improper purposes.

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[41] Order F21-04, *supra* note 14; Order F21-50, 2021 BCIPC 58; Order F22-08, *supra* note 14; Order F22-26, 2022 BCIPC 28; Order F22-38, 2022 BCIPC 43; and Order F22-43, 2022 BCIPC 48.
[42] For a similar finding, see Order F23-23, *supra* note 14 at para 67. In his response submission in this inquiry, the respondent made the same types of arguments that the Director was referring to in that order.
[43] Respondent's response submission at page 12.
[44] Respondent's response submission at page 13.
[45] Respondent's response submission at page 22.
[46] Respondent's response submission at page 24.
[47] Respondent's response submission at page 24.
[48] Respondent's response submission at page 26.
[49] Respondent's response submission at page 26.

[45] I also find that the outstanding request is vexatious because it is part of the respondent's ongoing abuse of FIPPA. In the abuse of process order, the Director reviewed the respondent's use of FIPPA's review and inquiry processes in relation to the MSP matter and concluded as follows:

> In my view, all of the above behaviours demonstrate that the Physician does not have a genuine interest in the FIPPA issues he raises with the OIPC or in accessing the information in dispute. His behaviour is unreasonable and indicates that he is acting in bad faith and has ulterior and vindictive motives for using the FIPPA review and inquiry processes-motives that are unrelated to the purposes for which FIPPA is intended to be used.
>
> In conclusion, I find that the Physician's use of FIPPA's review and inquiry processes regarding the MSP Matter is an abuse of process.[50]

[46] I agree with the Director that the respondent's use of FIPPA's review and inquiry processes regarding the MSP matter is an abuse of process. An access request such as the outstanding request is a necessary precondition to proceeding to FIPPA's review and inquiry processes. I can see from the references to the MSP matter throughout the respondent's response submission that the outstanding request is related to the MSP matter.[51] Thus, I find that the outstanding request is part of the respondent's abuse of FIPPA processes.

[47] For the reasons outlined above, I find the outstanding request is vexatious and s. 43(a) applies. Given that s. 43(a) applies, it is not necessary for me to consider whether s. 43(c)(ii) applies. However, for the sake of completeness, and because relief under s. 43 should be proportional to the harm and tailored to the circumstances, I will continue.[52]

Unreasonable interference with public body's operations because the request is systematic, s. 43(c)(ii)

[48] Under s. 43(c)(ii), the Commissioner may authorize a public body to disregard a request that would unreasonably interfere with the operations of the public body because the request is systematic.

[49] Section 43(c)(ii) has two parts and the Ministry must prove both. First, the request must be systematic. Second, responding to the request must unreasonably interfere with the public body's operations.[53]

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[50] Order F23-23, *supra* note 14 at paras 79-80. I acknowledge the respondent says the abuse of process order is "in the process for judicial review." However, the judicial review has not been heard or decided.
[51] For example, see the respondent's response submission at pages 1, 15-19 and 21.
[52] *Crocker*, *supra* note 20 at para 54 [*Crocker*]; Order F20-15, *supra* note 25 at para 34.
[53] Order F22-08, *supra* note 14 at para 35.

[50] I will first determine whether the outstanding request is systematic and then turn to whether responding to the outstanding request would unreasonably interfere with the Ministry's operations.

Is the request systematic?

[51] 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.[54] 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 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 or requests and questions, all of which relate to essentially the same records, communications, people and events.[55]

[52] It is necessary to consider past requests when deciding whether an access request is systematic.[56]

Parties' submissions – systematic

[53] The Ministry says that the outstanding request is clearly systematic. The Ministry notes that the OIPC has already found that the respondent's history of access requests to the Ministry are part of an overall system relating to the MSP matter.[57] The Ministry also says that the respondent is admittedly demonstrating one of the key characteristics of systematic requests under s. 43, requesting more records based on what an applicant sees in records already received.[58]

[54] The respondent says that the outstanding request "is simply a progression in a series."[59] The respondent also says that the outstanding request is specific to a particular timeframe and does not overlap with any previous access requests.[60]

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[54] Order F13-18, *supra* note 24 at para 23.
[55] Order F18-37, 2018 BCIPC 40 at para 26.
[56] Auth (s. 43) 02-01 at para 24. Available at https://www.oipc.bc.ca/decisions/171.
[57] Public body's initial submission at paras 106-107.
[58] Public body's reply submission at para 10.
[59] Respondent's response submission at page 14.
[60] Respondent's response submission at page 1.

Analysis and findings – systematic

[55] In my view, the respondent's submission and the respondent's history of access requests demonstrate some of the characteristics of systematic requests.

[56] For example, the respondent acknowledged that his knowledge of the existence of information subject to the access request "came from internal correspondence that was obtained under other information release."[61] As a result, I am satisfied that the outstanding request is part of a pattern of requesting more records based on what the respondent sees in records already received.

[57] I can also see that the respondent has made 15 requests for review or complaints to the OIPC in relation to the 16 access requests he has made to the Ministry since 2019.[62] This persuades me that the respondent is routinely raising issues with the Ministry's responses and pursuing oversight by the OIPC.

[58] I also find Order F22-08 to be relevant. That order was about the respondent's sixth access request to the Ministry for all records about himself, each for a sequential but not overlapping time period.[63] In that order, the adjudicator found that the respondent was systematically requesting records from the Ministry. I am satisfied that the outstanding request is a continuation of that system because it is the respondent's seventh access request to the Ministry for all records about him and it is for a time period beginning the day after the request that was the subject of Order F22-08. I do not see, and the respondent has not provided, any basis to depart from the findings of Order F22-08 in relation to the outstanding request.

[59] For the reasons outlined above, I find that the outstanding request is a systematic request.

[60] I turn now to whether responding to the outstanding request would unreasonably interfere with the Ministry's operations.

Unreasonable interference

[61] What constitutes unreasonable interference with a public body's operations rests on an objective assessment of the facts; it will vary depending on the size and nature of the operation.[64] In determining whether a request unreasonably interferes with the operations of the public body, past orders have

[61] Respondent's response submission at page 1.
[62] Exhibit C to the affidavit of the Resource and Justice Team employee.
[63] Order F22-08, *supra* note 14 at para 51. In that order, the adjudicator said the request at issue was the fifth request for all records about the respondent in a chronological sequence. I am satisfied from the Ministry's affidavit evidence that it was the sixth.
[64] *Crocker*, *supra* note 20 at para 37.

considered the impact of responding to the request on the rights of other access applicants.[65]

Parties' submissions, unreasonable interference

[62] The Ministry provides extensive submissions and evidence about how responding to the outstanding request would unreasonably interfere with its operations. However, some of this evidence is about the impact of the respondent's access requests on the operations of the provincial government. FIPPA is clear that each ministry of the provincial government is a separate public body under FIPPA.[66] A public body's s. 43 application should be considered in the context of the particular public body applying for a remedy.[67] As a result, I have considered the Ministry's evidence and submissions as they relate to the impact of responding on the Ministry's operations.

[63] The Ministry says responding to the outstanding request would unreasonably interfere with its operations:

1) because it would take too many hours to respond; and
2) because of the systematic nature of the request considered in context regardless of the number of hours it would take to respond.[68]

[64] The Ministry says that given the connection between the outstanding request and the respondent's systematic abuse of FIPPA, the Ministry should not have to respond.[69]

[65] The Ministry estimates that responding will take over 1,160 hours, broken down as follows:

- 395.5 hours for Legal Services Branch (LSB) employees to search for and identify responsive records, determine whether solicitor-client privilege applies, and send them to the LSB Analyst;
- 720 hours for the LSB Analyst to complete her required tasks;
- 18 hours for non-LSB Ministry employees to search for and provide responsive records to the Ministry Analyst; and
- 30 hours for the Ministry Analyst to complete her required tasks.[70]

[66] The Ministry says that the time estimate is high because the respondent had extensive involvement with the Ministry during the time period covered by

[65] Order F17-18, 2018 BCIPC 19 at para 40; Order F13-18, *supra* note 24 at para 31.
[66] Schedule 1 definition of "public body."
[67] Order F22-08, *supra* note 14 at para 75. For a similar comment see order F18-25, *supra* note 15 at para 15.
[68] Public body's initial submission at para 121.
[69] Public body's initial submission at para 124.
[70] Public body's initial submission at para 137.

the outstanding request, such as a Supreme Court hearing, two Court of Appeal hearings, and numerous FIPPA and OIPC matters.[71] The Ministry says that the respondent's access requests take more time to process and respond to than the average access request because they often involve more communication than normal.[72] The Ministry also says that requests for "all materials" take longer to process and result in more records than requests for specific records. As an example, the Ministry says that one of the respondent's prior requests for "all materials" relating to him, for a shorter timeframe than the outstanding request, resulted in over 16,200 pages of records. [73]

[67] The Ministry submits that responding to the outstanding request would have a significantly detrimental impact on the Ministry's ability to complete its other work, including providing services to other access applicants under FIPPA.[74] In particular, the Ministry says that:

- The LSB Analyst's work is manageable without having to respond to the respondent's FIPPA matters but the demands on her time become unmanageable when dealing with the respondent. She consistently has to ask other Ministry employees to set aside their daily tasks to assist her with the respondent's FIPPA matters. Responding to the outstanding request would overburden her.[75]
- It is highly likely that the Legal Document Services team (Document Services) would have to assist in responding to the outstanding request, which would overburden Document Services, create a backlog, and negatively impact other LSB work priorities.[76]
- Responding to the outstanding request would have a significantly negative impact on the ability of LSB lawyers to complete their work on important government business.[77]
- Responding to the outstanding request would have a significantly negative impact on students articling with LSB by detracting from their substantive work and diminishing the quality of their articles.[78]

[68] The respondent describes the Ministry's approach to assessing an unreasonable interference with the public body's operations as "quite bizarre" and potentially malicious.[79] The respondent also says that the Ministry falsified its

[71] Public body's initial submission at para 140.
[72] Affidavit of the Resource and Justice Team employee at paras 50-51 and exhibits E-I of that affidavit.
[73] Affidavit of the Records Administration employee at paras 11-12.
[74] Public body's initial submission at para 141.
[75] Public body's initial submission at para 145.
[76] Public body's initial submission at para 148.
[77] Public body's initial submission at para 149.
[78] Public body's initial submission at para 150.
[79] Respondent's response submission at page 25.

time estimate.[80] The respondent disputes the statistics provided by the Ministry about his historical FIPPA activities (for example, the number of access requests and OIPC proceedings).[81] He did not explain why he believes the statistics are incorrect or provide any evidence in support of this position.

Analysis and findings, unreasonable interference

[69] For the reasons that follow, I find that responding to the outstanding request would unreasonably interfere with the Ministry's operations.

[70] First, the Ministry's estimated response time of over 1,160 hours is significant. I can see how the broad scope of the request and lengthy time period captured by the request would result in a time-consuming search for records. I am satisfied that the outstanding request will likely generate more responsive records than the 16,200 pages generated in response to a prior request for all materials related to the respondent for a shorter timeframe. I am mindful that the time and resources available to respond to access requests is finite, and the respondent is not the only access applicant requiring the Ministry's attention. I am satisfied that spending over 1,160 hours responding to the outstanding request would have a negative impact on the rights of other access applicants.

[71] Second, the Ministry has provided evidence to explain how the estimated over 1,160 hours would unreasonably interfere with its operations. It has provided detailed evidence about how responding to the outstanding request would unreasonably interfere with the duties of certain employees. As a result, I accept that responding to the outstanding request would unreasonably interfere with the Ministry's operations.

What is the appropriate relief?

[72] Section 43 can be used to authorize a public body to disregard present and future FIPPA requests.[82] Any remedy under s. 43 must be proportional to the harm inflicted.[83] 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;

[80] Respondent's response submission at page 26.
[81] Respondent's response submission at page 23.
[82] *Crocker*, *supra* note 20 at paras 40-43; *Mazhero v British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 at para 15 [*Mazhero*].
[83] *Crocker*, *supra* note 20 at para 54.

- The nature of past requests; and
- Other avenues of obtaining information in the past and future available to the respondent.[84]

[73] The Ministry seeks authorization to disregard the outstanding request and certain future requests. The Ministry submits that nothing less will effectively address the respondent's prolific abuse of FIPPA and its detrimental effects.[85] In the alternative, the Ministry seeks whatever prospective s. 43 relief the OIPC deems just and appropriate in the circumstances.[86]

[74] Because I find the outstanding request is systematic and responding to it would unreasonably interfere with the Ministry's operations, I authorize the Ministry to disregard the outstanding request.

[75] I also find that it is appropriate to grant some prospective relief in these circumstances. I find it clear that the respondent feels strongly about the MSP matter. Nothing in the evidence suggests to me that the respondent will stop feeling this way. Rather, the respondent's history of access requests and the vexatious nature of the outstanding request lead me to conclude that he will likely continue to make future FIPPA requests that centre around the MSP matter and people involved in that matter. In my opinion, this weighs in favour of authorizing the Ministry to disregard certain future access requests made by or on behalf of the respondent.

[76] I will consider each type of future relief sought by the Ministry in turn below.

Authorization to disregard any further access requests for one year following this order

[77] The Ministry says this is warranted because limiting the respondent to one open access request for a specific period of time does not adequately address the harm. Relying on Order F20-39, the Ministry submits that it is not unprecedented for the OIPC to temporarily suspend an applicant's right to make access requests to a public body.[87]

[78] In Order F20-39, the respondent had the option of accessing information respecting her claims, including her personal information, through two mechanisms outside of FIPPA: a WorkSafe BC portal account, and WorkSafe BC's Disclosures Department. In deciding to temporarily suspend the respondent's access rights, the adjudicator considered that because of those

[84] Order F20-15, *supra* note 25 at para 34.
[85] Public body's initial submission at para 161.
[86] Public body's initial submission at para 167.
[87] Public body's initial submissions at paras 162-165.

mechanisms, the respondent would still be able to access information respecting her claims, including her personal information, during the period of the suspension.[88]

[79] None of the evidence before me indicates that the respondent has the same avenues available to access his personal information that were available to the respondent in Order F20-39. As a result, I am not satisfied that it is appropriate to temporarily suspend the respondent's right to make access requests to the Ministry.

Indefinite authorization to disregard all access requests in excess of one open access request at a time

[80] The Ministry says that it is not unprecedented for the OIPC to indefinitely limit an access applicant to one open request at a time to a public body.[89]

[81] I find that authorization to disregard all access requests in excess of one open access request at a time is appropriate relief. This will preserve the respondent's right to access records and his personal information, while minimizing interference in the Ministry's operations.

[82] However, I am not persuaded that indefinite relief is appropriate. I find that it would be too drastic a remedy. As Tysoe, J. found in *Mazhero*, the most appropriate remedy in respect to future requests is authorization to disregard such requests "in specified circumstances" rather than generally and indefinitely.[90]

[83] Many previous OIPC orders have granted authorization to disregard all access requests in excess of one open access request at a time for a period of two years.[91] In Order F21-04, the OIPC authorized the Ministry of Health to disregard the respondent's access requests over and above one open request at a time for a period of two years. However, the respondent continued to make access requests above and beyond one open access request at a time during that two-year period.[92] Given the respondent's long history of making these types of requests, I am satisfied that his behaviour will continue and that it is reasonable to extend the period of relief to five years.[93]

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[88] Order F20-39, 2020 BCIPC 46 at para 55.
[89] Public body's initial submission at para 164.
[90] *Mazhero*, *supra* note 82 at para 30.
[91] For example, Order F13-16, 2013 BCIPC 20; Order F16-24, *supra* note 25; Order F18-37, *supra* note 55; Order F20-15, *supra* note 25.
[92] Ministry's initial submission at paras 78-79.
[93] For a similar finding, see Order F11-03, 2011 BCIPC 82435 at para 22.

Indefinite authorization to disregard any access request requesting records relating to the MSP dispute or the respondent's FIPPA matters

[84] The Ministry submits that topic-related restrictions are appropriate because the respondent's harassment and abuse have clearly been fueled by the MSP dispute and related FIPPA matters. The Ministry notes that previous orders have imposed topic-related restrictions.[94]

[85] I am not persuaded that topic-related restrictions are appropriate in this matter. Specifically, I find that the circumstances that justified topic-related restrictions in recent previous orders are not present here. For example, in Order F19-44, the adjudicator found that any further request for records about the relevant topic would serve no purpose other than to harass the public body because there were no other responsive records about that topic.[95] Additionally, in Order F13-18, the adjudicator found that there was a high level of certainty that all possible substantive records on the relevant topic had been provided.[96]

[86] Here, there is no indication that no further responsive records exist relating to the MSP dispute or related FIPPA matters. I am also not satisfied that it is necessary to impose topic-related restrictions in light of the other relief granted in this order.

Indefinite authorization to disregard any access request that seeks "all material" relating to the respondent

[87] I accept the Ministry's evidence that requests for "all material" take more resources to process than more specific requests. However, a request for all material relating to the respondent is a request for the respondent's personal information. In *Mazhero v British Columbia (Information and Privacy Commissioner)*, Tysoe, J. cautioned against providing remedies for future access requests for personal information:

> … in my view, there will be situations where it would be appropriate for the Commissioner to authorize a public body to disregard all future requests for general information where the applicant has so abused his or her right of access to records that the Commissioner is able to conclude with reasonable certainty from the nature of the previous requests that any future request by the applicant would unreasonably interfere with the operations of the public body... But only in very exceptional circumstances would it be appropriate, in my view, for the Commissioner to authorize a public body to disregard all future requests for personal information (or a type of personal information).[97]

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[94] Public body's initial submission at para 165.
[95] Order F19-44, *supra* note 26 at paras 37-39.
[96] Order F13-18, *supra* note 24 at paras 22 and 30.
[97] *Mazhero*, *supra* note 82.

[88] I am not persuaded that "very exceptional circumstances" exist to justify interfering with the respondent's right to access his personal information by indefinitely authorizing the Ministry to disregard any access request that seeks all material relating to the respondent.

> *Indefinite authorization to disregard any access request or part of a request that requests access to records already requested by or on behalf of the respondent*

[89] The Ministry did not explain why it seeks this relief or identify any previous orders where this type of relief was authorized. I am not aware of any previous orders that granted this type of relief, nor am I persuaded that it is appropriate to do so in this case.

> *Indefinite authorization to disregard any access request or part of a request that requests access to communications sent between LSB and their client representatives*

[90] I have carefully considered the Ministry's position that the respondent is vexatiously requesting records he knows are privileged to burden the Ministry unnecessarily or vent his anger.[98] The Ministry says I should follow Decision F10-09, where Adjudicator Fedorak granted this type of relief.[99] However, I am not satisfied that the relief sought here is appropriate.

[91] The law about privilege is nuanced.[100] I am not satisfied that it is a foregone conclusion that communications sent between LSB and their client representatives are subject to solicitor-client privilege.

[92] In Decision F10-09, the adjudicator found the access requests were frivolous and vexatious and granted relief based on the circumstances of the request at issue:

> [35] … This request is the latest in a series of identical requests that have led to identical results. He has made repeated attempts to access these kinds of records and each time s. 14 of FIPPA applied to the records because they are subject to solicitor-client or litigation privilege. Nevertheless, he continues to request them. He makes the same request, with only a change of the timeframe. The result is always the same: he receives no records. Every time he has asked the OIPC to review these decisions, as the PHSA noted above, the numerous resultant orders and decisions confirm that s. 14 applies to the records. In fact, it has become so patently obvious that s. 14 applies that the OIPC has denied two of his

[98] Public body's initial submission at para 95.
[99] Public body's initial submission at paras 82-84 and 94.
[100] See Order F19-21, 2019 BCIPC 23 at paras 110-114 for a discussion on some of this law.

> requests for inquiries on the matter. Despite these results, the respondent continues to request the records, without providing any reasonable grounds to expect s. 14 will not apply to any of the records. There has been no change of circumstances in his relationship with the PHSA, and there is no other reason to expect that the results of the current request (or any more that he might make in the near future) would be any different. The respondent is aware of this but persists anyway in requesting the records to no good purpose.

[93] I am not satisfied that the circumstances here are the same as those at issue in Decision F10-09. The respondent is not repeating the same request with only a change of timeframe and receiving no records each time. I can see from the Ministry's evidence that he has received "partial disclosure" almost every time he has requested "all materials" about himself from the Ministry.[101] I also have no evidence before me about whether the respondent received communications between the Ministry and its client representatives in response to any of his past access requests. As a result, I am not persuaded that it is appropriate to grant this type of relief.

CONCLUSION

[94] For the reasons provided above, I make the following authorization under s. 43 of FIPPA:

1. The Ministry is authorized to disregard the outstanding request.

2. For a period of five years from the date of this authorization, the Ministry is authorized to disregard any access request made by, or on behalf of, the respondent over and above one open access request at a time.

3. For the purposes of this authorization, an open access request is a request for records under s. 5 of FIPPA to which the Ministry has not yet responded under s. 8 of FIPPA.

August 10, 2023

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F23-91982

[101] Exhibit C to the affidavit of the Resource and Justice Team employee.