



Order F24-38

**SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY  
(TRANSLINK)**

Jay Fedorak  
Adjudicator

May 7, 2024

CanLII Cite: 2024 BCIPC 46  
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 46

**Summary:** TransLink requested authorization to disregard 252 outstanding access requests from the respondent under ss. 43(a) (frivolous or vexatious) and (c) (systematic or repetitious) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that TransLink had established that the requests were vexatious under s. 43(a). The adjudicator provided TransLink with authorization to disregard the outstanding requests and to limit future requests to one at a time.

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

**INTRODUCTION**

[1] The South Coast British Columbia Transportation Authority (TransLink) has requested from the Office of the Information and Privacy Commissioner (OIPC) authorization to disregard 252 access requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The requests were from an individual (the respondent) for video recordings of himself captured by TransLink's closed-circuit television (CCTV) system and audio recordings, as well as for other information. TransLink submits that the requests are frivolous or vexatious within the meaning of s. 43(a) of FIPPA. It also asserts that the requests would unreasonably interfere with its operations because they are repetitious or systematic within the meaning of s. 43(c)(ii). It has asked for permission to disregard all outstanding requests and any future access requests beyond one request at a time and to cap processing time for each request at three hours.

## ISSUES

[2] The issues to be decided in this inquiry are:

1. Whether the respondent's 252 outstanding requests are frivolous or vexatious, for the purposes of s. 43(a);
2. Whether the respondent's 252 outstanding requests are repetitious or systematic and, if so, would they unreasonably interfere with TransLink's operations, for the purposes of s. 43(c)(ii);
3. If the answer to either 1 or 2 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.<sup>1</sup> TransLink states that it accepts this burden.

## DISCUSSION

[4] **Background** –The respondent has requested access to records of video images of himself that the TransLink CCTV system has captured during travel on buses and SkyTrain, as well as waiting on a SkyTrain platform or at a bus stop. The 252 outstanding requests for which TransLink requests relief involve CCTV and audio recordings of the respondent, as well as other information.

[5] TransLink made two similar s. 43 applications regarding the same respondent that were subject to Order F17-36 and Order F23-37, in which the adjudicators denied the requests for relief.<sup>2</sup>

## SECTION 43

[6] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right to access information under FIPPA by authorizing a public body to disregard requests. The relevant provision reads as follows:

**43** If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because

(a) the request is frivolous or vexatious,

(b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source, or

---

<sup>1</sup> For example, Order F17-18, 2017 BCIPC 19 (CanLII).

<sup>2</sup> Order F17-36, 2017 BCIPC 40 (CanLII); Order F23-37, 2023 BCIPC 44 (CanLII).

- (c) responding to the request would unreasonably interfere with the operations of the public body because the request
- (i) is excessively broad, or
  - (ii) is repetitious or systematic.

[7] As such relief restricts an individual's right to access information, the Commissioner grants relief under s. 43 applications only after careful consideration and in exceptional cases.<sup>3</sup>

[8] As noted above, TransLink has requested relief from responding to 252 requests that it has received and to disregard any future access requests beyond one at a time, and to cap the processing time for each request at three hours.<sup>4</sup>

### ***Section 43(a) – frivolous or vexatious***

[9] Requests that are frivolous or vexatious are an abuse of the right to access information under FIPPA. Both frivolous and vexatious requests are made for a purpose other than a genuine desire to access information.

#### *Are the requests frivolous or vexatious?*

[10] Frivolous requests include requests that are trivial or not serious. Past OIPC orders have found that a request was frivolous when the requested information was publicly available, the request was for documents that the respondent authored and sent to the public body, and because the respondent cancelled a large access request after the public body had spent significant time processing the request.<sup>5</sup>

[11] 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.<sup>6</sup> 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;
- The respondent was motivated by a desire to harass the public body;
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions; and
- The request was intended to be punitive and to cause hardship to an

---

<sup>3</sup> Order F22-08, 2022 BCIPC 8 (CanLII) para. 29.

<sup>4</sup> TransLink's initial submission, p. 55.

<sup>5</sup> Order F22-08, *supra*, para. 82; Auth (s. 43) 02-02, 2002 BCIPC 57 (CanLII), para. 27; Order F17-18, 2017 BCIPC 19 (CanLII), para. 23; Order F13-18, 2013 BCIPC 25 (CanLII), para. 34; Order F18-09, 2018 BCIPC 11 (CanLII), para. 29.

<sup>6</sup> Order F22-08, *supra*, para. 83.

employee of a public body.<sup>7</sup>

[12] The above share the characteristic that the respondent had an ulterior motive unrelated to any genuine interest in access to the information and that this motive was a central factor in finding that the requests were vexatious.

[13] TransLink submits that the requests at issue are frivolous and vexatious within the meaning of s. 43(a) because they constitute an abuse of the right of access. TransLink notes that previous orders have found that a frivolous request is one that is made for a purpose other than that of obtaining the information and that a vexatious request is one made in bad faith aimed at harassing or obstructing. It submits that these considerations apply in this case. It characterizes the applicant's purposes in making the requests as to harass its employees through requests with the primary purpose of highlighting perceived injustices for the attention of TransLink and other agencies he copies on his requests.<sup>8</sup>

[14] TransLink adds that the wording of the requests frequently includes lengthy criticisms about TransLink, its employees and others, suggesting that they deliberately engage in behaviours that form a part of a conspiracy against him. TransLink asserts that these comments demonstrate that the primary purpose of his requests are not to obtain information but to harass TransLink.<sup>9</sup>

[15] TransLink notes that the applicant has made 252 requests during a period of less than fifteen months. Over the course of 2023, the applicant's requests represented 26.5% of all requests that TransLink received.<sup>10</sup>

[16] The applicant does not make submissions on the subject of whether his requests are frivolous. His submissions contain extensive references to his perceived injustices and a desire for TransLink to change the behaviour of its employees.<sup>11</sup>

### *Analysis*

[17] I have reviewed the wording of the 252 requests at issue along with the submissions of the parties. A large portion of the requests include detailed commentary, analysis and conclusions that the applicant offers based on his recollection of the events that occurred when he was under video surveillance.

---

<sup>7</sup> Auth (s. 43) 02-02 supra, para. 27; Decision F08-10, 2008 BCIPC 57362 (CanLII), paras. 38-39; Order F13-16, 2013 BCIPC 20, para. 20; Order F13-18, 2013 BCIPC 25 (CanLII), para. 36; Decision F10-11, 2010 BCIPC 51 (CanLII); Order F16-24, 2016 BCIPC 20 (CanLII), para. 40; Order F20-15, 2020 BCIPC 17 (CanLII), para. 33; Order F19-44, 2019 BCIPC 50 (CanLII), para. 33.

<sup>8</sup> TransLink's initial submission, paras. 92-94.

<sup>9</sup> TransLink's initial submission, paras. 95-97.

<sup>10</sup> TransLink's initial submission, paras. 1, 37.

<sup>11</sup> Applicant's response submission, pages unnumbered.

The requests for information other than his video images relate to the concerns that he expresses about the behaviour of TransLink employees. There is sufficient evidence to establish that the applicant desires significant changes at TransLink with respect to its practices and personnel and that many of his requests explicitly criticize TransLink and its employees. Most of his voluminous requests appear directed to this end.

[18] For example, one of his requests includes the following:

This type of discrimination, abuse, entrapment, violation of Human Rights, etc. has no place anywhere in BC or Canada – no human should be subjected to it, or forced to cope with it, as if “mentally slow” ... by my counts, these are multiple class action lawsuits – but what I do not understand is in an entity which even the bus drivers have outlined Human Rights in their union contracts, who is monitoring the drivers’ squeezing in their abuses, and what are they waiting for to act and stop such actions?<sup>12</sup>

[19] Another request includes the following:

This is an obvious need for a visual form of communication to relay this information - the most simple form that I can think of is a strip of led lights around the front door that can switch from red to green, and a flashing one on the side of the ramp edges, a universal code of colo[u]r that everyone can understand. ... As well, a signal button on the stop sign post to indicate to the driver to deploy the ramp would be best. Finally, a requirement that the driver must deploy the ramp for any stroller, walker, handcart, etc. ... why there is a culture of denial in effect from both TransLink as an entity and from the drivers themselves needs to be answered and addressed.<sup>13</sup>

[20] It has become evident from the volume and subject matter of the requests, as well as the accompanying commentary from the applicant, that his primary concern is for TransLink to ensure that its drivers treat him better. He wants the drivers to show him courtesy and respect, which he asserts that they are not doing. Particularly, he wants them to deploy the ramp on the bus to make it easier for him to board and for them to do so promptly without any resistance or complaint. A large proportion of his requests relates to video recordings of his interactions with drivers about the deployment of the ramp, as well as records of his complaints to TransLink about those drivers.

[21] This leads me to conclude that his access requests form part of a campaign to persuade TransLink to force its drivers to change their behaviour to meet his expectations. Comparing this with the criteria for determining whether requests are vexatious, I note that two of these criteria apply. The first is a clear

---

<sup>12</sup> TransLink’s initial submission, Exhibit G, request of November 14, 2022.

<sup>13</sup> TransLink’s initial submission, Exhibit G, request of June 20, 2023.

attempt to press TransLink to take certain actions. The second is that the requests explicitly express displeasure with the public body and criticize its actions.

[22] It is not absolutely clear that the applicant has an explicit desire to harass TransLink or its employees or that he intends to be punitive and deliberately cause hardship. Nevertheless, it is evident that the volume and nature of these requests are causing hardship to TransLink, and its employees are feeling as if they are being harassed.

[23] I note that the previous two cases involving an application by TransLink to disregard the applicant's requests, the adjudicators were not persuaded that the requests were vexatious. In the first case, only four requests were at issue. In the second only eighteen. In this case there are 252 requests. The volume has increased considerably, as has the evidence of a vexatious purpose.

[24] Therefore, I find that that the requests at issue meet the definition of vexatious, in accordance with s. 43(a), as previous orders have interpreted the term. This is consistent with the decision in Decision F08-10, where the adjudicator found that an applicant was abusing her rights under FIPPA to harass the public body to undertake actions, as opposed to having a good faith desire to access the records.<sup>14</sup>

[25] As I have found that the requests are vexatious, I do not need to determine whether they are frivolous, and I decline to do so. In addition, I do not need to determine whether they are systematic or repetitious, or whether they unreasonably interfere with the operations of the public body, and I decline to do so.

### ***What is the appropriate remedy?***

[26] TransLink has requested permission to disregard all outstanding requests. It has also requested permission to disregard future requests from the applicant beyond one at a time and to cap processing time for each request at three hours.

[27] I find it appropriate in this case to grant TransLink permission to disregard the 252 outstanding requests, as well as any outstanding requests from this applicant that it has received up to the date of this authorization.

[28] I also find it appropriate to grant TransLink permission to disregard the future requests from the applicant beyond a single request at a time and to give TransLink the discretion to determine what constitutes a single request.

---

<sup>14</sup> Decision F08-10, 2008 BCIPC 33 (CanLII), para. 39.

[29] With respect to TransLink's request to limit processing time to three hours, I note that TransLink submits that the processing time for a single request for a video recording, usually takes between two and half to eight hours.<sup>15</sup> Capping processing time at three hours would, therefore, mean that the applicant would not receive a fulsome and meaningful response from TransLink in most cases.

[30] I note that the time required to process the video recordings is a result of operational choices that TransLink made with respect to the selection and implementation of its video surveillance system. These choices were beyond the control of the applicant. I do not find it to be administratively fair to permit the operational choices of TransLink to deprive the applicant of a meaningful response to any future requests he may make for access to video recordings of himself.

[31] Therefore, I find it reasonable to provide TransLink with relief from responding to all outstanding requests and to limit future requests to a single request at a time for a period of two years, without the need to impose a cap on processing time.

## **CONCLUSION**

[32] I make the following authorizations under s. 43:

1. TransLink is authorized to disregard all of the respondent's outstanding access requests that it received up to the date of this authorization.
2. TransLink is authorized, for a period of two years from the date of this authorization, to disregard all access requests that the respondent submits, or that are made on his behalf, over and above a single access request at a time.
3. TransLink is authorized to determine, in light of its s. 6(1) duties to the respondent, what is a single access request for the purposes of the authorization.

---

<sup>15</sup> TransLink's initial submission, para. 39.

---

[33] For clarity, TransLink is entitled to apply for further relief under s. 43 after the time period set out above in paragraph 32, item 2, if it considers that such relief is warranted in light of TransLink's experience with the respondent.

May 7, 2024

**ORIGINAL SIGNED BY**

---

Jay Fedorak, Adjudicator

OIPC File No.: F23-95220