



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

Decision F05-01

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

David Loukidelis, Information and Privacy Commissioner

February 3, 2005

Quicklaw Cite: [2005] B.C.I.P.C.D. No. 4

Document URL: <http://www.oipc.bc.ca/orders/decisionF05-01.pdf>

Office URL: <http://www.oipc.bc.ca>

ISSN 1198-6182

Summary: BC Hydro applied for relief under s. 43 on the grounds that respondent's requests were repetitious and systematic and unreasonably interfered with BC Hydro's operations, and that the requests were also frivolous and vexatious. BC Hydro entitled to relief under ss. 43(a) and (b) respecting last two requests, which are both systematic and repetitious, and unreasonably interfere with operations, and frivolous and vexatious.

Key Words: Repetitious – systematic – unreasonably interfere with operations – frivolous – vexatious.

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

Authorities Considered: B.C.: Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 47; Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57.

1.0 INTRODUCTION

[1] The British Columbia Hydro and Power Authority ("BC Hydro") requested authority under ss. 43(a) and (b) of the *Freedom of Information and Protection of Privacy Act* ("Act") to disregard the respondent's two outstanding freedom of information requests, as well as other forms of relief. Because the matter did not settle during mediation, I held an inquiry under Part 5 of the Act.

2.0 ISSUE

[2] BC Hydro has asked me, under s. 43(a) or (b), or both, to authorize it to disregard:

- (a) the respondent's two outstanding access requests, dated March 2, 2003 (BC Hydro request number 1879) and March 15, 2003 (BC Hydro request number 1883);

- (b) any access requests from the respondent for a year following the date of this decision; and,
- (c) from the date of this decision, any access requests made by or on behalf of the respondent in excess of one open request at any one time, with the following conditions:
 - (i) BC Hydro is not required to spend more than 7 hours responding to each request and
 - (ii) BC Hydro is not required to respond to any request to the extent that it requests records that have already been the subject of an access request to BC Hydro by or on behalf of the respondent.

3.0 DISCUSSION

[3] **3.1 Background** – BC Hydro said that the respondent is a former BC Hydro employee whose employment BC Hydro terminated for cause in September 2001. He was, both during and after his employment, involved in several formal employment-related disputes with BC Hydro. He grieved his termination and the arbitrator upheld BC Hydro’s decision to terminate. The respondent did not apply for judicial review of that decision. According to BC Hydro, the respondent has “exhausted all legal avenues open to him under the collective agreement between his former bargaining unit and BC Hydro”. The respondent also made three complaints to the Workers’ Compensation Board (“WCB”) about certain work-related safety issues. The WCB dismissed all three complaints, as well as the respondent’s application for a review of the complaint dismissals. As far as BC Hydro knew at the time of this inquiry, the respondent had not appealed the review decision (paras. 2.1-2.3, initial submission).

[4] BC Hydro went on to say that, since May 2000, the respondent had sent 35 letters requesting some 104 or 105 items under the Act. BC Hydro has dealt with these requests under 19 separate request files and has released approximately 1,000 pages of records. The 19 files include the requests of March 2 and 15, 2003 (BC Hydro’s request numbers 1879 and 1883) to which BC Hydro has not responded and which are the subject of its request for relief under s. 43. BC Hydro said that all of the respondent’s requests relate directly or indirectly to his employment with BC Hydro and the disputes arising from that employment (paras. 2.4-2.6, initial submission).

[5] **3.2 Applicable Principles** – In Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 47, I discussed the interpretation and application of s. 43(a), while Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, addressed s. 43(b). I have, in considering BC Hydro’s request here, applied the approach taken in those decisions and the cases to which they refer.

[6] Section 43 reads as follows:

Power to authorize a public body to disregard requests

- 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.

[7] **3.3 Description of Requests** – BC Hydro provided me with copies of the respondent's requests and its responses. Approximately half of the respondent's requests relate to specific letters between BC Hydro staff and the respondent that are apparently located in the respondent's personnel file. Another third relate to individual meetings between the respondent and named BC Hydro staff, which apparently concerned personnel issues. The remainder of the requests relate primarily to reports and emails in the respondent's personnel file.

[8] Almost all of the requests ask for all records or information related to the specified meetings or letters. After referring to a specific letter or meeting, most use the same or similar generic phrasing, of which an example follows:

All audiotape(s) or similar recordings of all descriptions, including TAS messages, all documents, meeting notes, working notes and files, archives and/or "dead" files, all electronic and/or computer files.

A documentation of the entire communications history of all types with or concerned with anyone them, or since, associated with the issue(s) iterated in this letter.

All information connected with any release of any information in any way, including 'internal' announcements.

[9] The requests that relate to letters also generally include a request for "all information" related to the distribution of the letter to named individuals who were copied on the letter. Most of the requests that relate to meetings also generally ask for

... a documentation of the entire communications history of all types with or concerned with anyone then, or since, associated with the issue(s) which arose during, or as in any way in consequence of this meeting.

[10] Other requests instead set out a series of statements or allegations made in the particular letter or meeting that is the subject of the request and then ask for policies, information or other documents related to those statements or allegations. Two requests appear to relate to an issue involving the respondent's driving record and the Insurance Corporation of British Columbia.

[11] The respondent's access requests have often arrived close together in time, for example, four arrived in January 2000, sixteen in September 2000 and six in January 2002.

[12] As regards the two access to information requests that are the subject of BC Hydro's s. 43 request, request 1879 refers to a letter of July 15, 1997 from a BC Hydro employee and sets out a series of requests for information on the creation, use and distribution of that letter. The second, request 1883, refers to an email from another individual to the respondent on a

particular topic and then makes a series of requests for information related to the collection and use of this email and its placement on the respondent's personnel file.

[13] **3.4 Is Relief Warranted Under Section 43(a)?** – BC Hydro takes the position that the respondent's requests are both systematic and repetitious and interfere unreasonably with its operations.

Repetitious

[14] BC Hydro argues that most of the respondent's requests are repetitious in that they are almost all linked to his employment dispute with BC Hydro. It argues that the requests consistently return to the same general issue, specific event or correspondence, and that the respondent has made multiple requests regarding the same event or issue. For example, several requests relate to a particular meeting, BC Hydro says, while two others relate to a particular letter. BC Hydro also says the respondent indicated in request 1879 an intention to continue making requests flowing from earlier requests, out of which he had "catalogued some 3000 or more communications information items concerning which there will most assuredly be (are) some new questions" (paras. 7.1-7.5, initial submission).

[15] The respondent claims, for his part, that the lack of indexing in the records he received early in the process made it difficult for him to connect the records to the relevant requests. This led him to make separate requests later, he says. He also suggests that BC Hydro could show some tolerance where his WCB-related requests were concerned, as the WCB matters were, in his view, legitimate bases on which to make requests. He does not explain how the WCB matters might justify allegedly repetitive requests.

[16] In addition, the respondent says, he had ongoing concerns about the collection, use and disclosure of his personal information by BC Hydro in various employment disputes. He does not elaborate on this allegation by explaining how, in his view, BC Hydro acted or might have acted inappropriately with respect to his personal information. It appears, however, that his concerns in this area have driven many of his requests, along with his suspicions about the absence of records he expected to receive—for example, records documenting steps taken by BC Hydro in the employment disputes or which he himself provided to BC Hydro (respondent's reply submission, pp. 4-10).

[17] For the most part, the access to information requests in issue here relate to individual letters or meetings involving the same four or five individuals—apparently BC Hydro managers—and thus appear to relate to discrete topics. I accept, however, that the requests, including the two which are the subject of the s. 43 application, all pertain to the respondent's employment with BC Hydro, pertain to related disputes and are sufficiently connected each to the other that they are repetitious.

[18] Request 1879 repeats request 1853, to which BC Hydro has already responded. Like request 1853, request 1879 refers to a July 15, 1997 letter and requests the same types of information on the creation, usage and distribution of that letter. On that basis, I find that request 1879 is repetitious for the purposes of s. 43(a).

Systematic

[19] BC Hydro also argues that the respondent's request-making is methodical and deliberate, and thus systematic (paras. 8.1-8.4, initial submission). BC Hydro suggests that the respondent is collecting hundreds of records from many sources, many of them the same, and cataloguing them. It also says that the respondent or his union local has, through other mechanisms such as the grievance, arbitration and WCB complaint processes, received many of the records he is requesting. It points to the respondent's statement in request 1879 regarding the 3,000 items about which he had further questions (paras. 4.4-4.5, DelRaj affidavit).

[20] BC Hydro also argues that the respondent has shown a pattern of making requests in that responses he has received have led him to make other requests for records on the same topic. It then gives examples of such requests. In BC Hydro's view:

... the Respondent is using the Act's request process to continue to prosecute employment issues that have already been concluded.

[21] The respondent rejects BC Hydro's contention that his requests are systematic. He says that the grievance and WCB processes for disclosure of documents were not available to him, a claim that BC Hydro rejects (para. 7.1, BC Hydro's reply submission). He also says that the pattern of his requests reflects the records released and in particular, he contends, the absence of documents he expected to receive.

[22] The respondent has, in my view, exhibited systematic behaviour in that, step by step, he targets individual meetings and letters or other records which are all related to the respondent's employment disputes and related issues, including his ongoing concerns over BC Hydro's handling of his personal information and with whether it complied with s. 27 of the Act. In each case, he uses much the same detailed wording to request all records related to those same letters or meetings, statements made in those letters and meetings and the distribution of the letters to specified BC Hydro employees, together with policies and other records related to those statements.

[23] Moreover, in request 1879, the respondent stated he has reviewed the releases to date and has catalogued more than 3,000 items about which he will have new questions. He went on to suggest that he would submit these questions unless BC Hydro agreed, within a week, to provide him with "a complete account including all information, details, rationale, motivations" regarding a supposed "deception" involving the July 15, 1997 letter mentioned above. This suggests the respondent has been combing over the records deliberately in order to identify further issues. Coupled with the respondent's past behaviour, this indicates he has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events. While all of the respondent's communications might not be formal requests under s. 5 of the Act, I agree with BC Hydro that the respondent's statement indicates he will continue with his systematic requests. I find that the respondent's requests are systematic within the meaning of s. 43(a).

Unreasonably interfere with operations

[24] BC Hydro said its information and privacy office is staffed with 3.5-4 people or fewer and freedom of information requests take up about 40% of that office's work. Of these, the respondent's requests comprise 11.5% of the total requests that the information and privacy office has received since May 2000. It said it had not kept a detailed record of the amount of time its information and privacy office had spent to date processing the respondent's requests but said it was "hundreds of hours – excluding time spent on the Respondent's privacy complaints and requests for review" to this Office.

[25] BC Hydro anticipated that its information and privacy staff would need to spend "many hours" processing requests 1879 and 1883. Moreover, BC Hydro said, several of its program staff have spent many hours collecting records in response to the respondent's requests, which in many cases the respondent has already received through other means BC Hydro says, such as grievance hearings and the WCB complaints. BC Hydro program staff have also spent "many hours" assisting BC Hydro information and privacy office staff in processing records under the Act.

[26] BC Hydro has provided affidavit evidence from the human resources employee involved in the respondent's employment disputes and in assisting in the responses to the requests. He deposed that he had spent many hours dealing with the respondent's requests for records. This time had far exceeded the time other human resources staff have had to devote to freedom of information requests from other BC Hydro employees. The respondent's requests have required the involvement of at least seven supervisors and managers, both for records collection and assisting the information and privacy office in understanding the records. The respondent's requests have been burdensome for BC Hydro staff compared to requests from other employees, he concluded (paras 5.1-5.4, DelRaj affidavit).

[27] BC Hydro says that, due in part to the complexity, breadth and obscure formulation of the respondent's requests, the time spent processing the requests is disproportionate to the number of records it retrieves. Not only is it difficult for staff to determine what the respondent wants, BC Hydro said, but 34 of the 35 requests are for "all available information", or similar phrasing, respecting the particular topic. Moreover, the respondent frequently mixes questions and requests for explanations with his requests for records, making it difficult to tease out requests for records under the Act. Finally, because of the overlap in requests, BC Hydro must spend time checking new requests against old ones to see if it has already provided the records and for consistency. BC Hydro cited examples of the respondent's requests to illustrate all these points (paras. 6.1-6.9, initial submission; paras. 5.1-5.2 and 6.1-6.5, McGraw affidavit; paras. 5.2-5.3, DelRaj affidavit).

[28] In BC Hydro's view, all of these factors increase the work, and costs, required to process the respondent's requests, diminishing the service its information and privacy staff can provide to other applicants without necessarily meeting the respondent's information needs, while causing a wasteful and unreasonable interference with BC Hydro's operations (paras. 6.8 and 6.106.11, initial submission).

[29] I agree with BC Hydro that the convoluted and obscure wording of the respondent's requests, and his habit of intertwining requests for records with privacy complaints, questions

and demands for explanations, make it difficult to determine what the respondent is asking for, thereby imposing greater effort for BC Hydro's information and privacy staff. The requests also overlap and repeat themselves, necessitating time-consuming comparisons with past request files to see if the respondent has already received the requested records.

[30] The evidence shows that responding to the requests under these conditions has required the expenditure of hundreds of hours by BC Hydro staff, to the extent, I am satisfied, that responding has unreasonably interfered with BC Hydro's operations, both in its program areas and within its information and privacy office. I am also satisfied that responding to the two requests that are the subject of this s. 43 decision would unreasonably interfere with BC Hydro's operations. I also note here, as an aside only, the respondent's stated intention of filing potentially thousands more requests.

[31] For the reasons given above, for the purposes of s. 43(a), I find that the respondent's requests of March 2 and 15, 2003 are systematic and repetitious and responding to them would unreasonably interfere with BC Hydro's operations.

[32] **3.5 Is Relief Warranted Under Section 43(b)?** – In BC Hydro's view, requests 1879 and 1883 also meet the test for s. 43(b) because they are frivolous and vexatious, as I have interpreted these terms in past decisions (paras. 9.1-9.9, initial submission). In support, BC Hydro pointed to what it called accusations, questions and calls for explanations in the two requests.

[33] In the case of request 1879, BC Hydro draws my attention to the repetitive request for records related to the July 15, 1997 letter as evidence of the frivolous and vexatious nature of the request and the respondent's abuse of the Act. It also refers to the respondent's stated intention in that request of filing a "volume" of further requests.

[34] Request 1883 is frivolous, BC Hydro says, as it relates to an information item which the respondent himself had earlier provided to BC Hydro in the context of a non-contentious, work-related discussion and which a BC Hydro manager had placed on the respondent's personnel file for convenience. As well as submitting the confusing mixture of requests, questions and demands for explanations referred to above, BC Hydro says, the respondent also expressed what appear to be privacy concerns over the use of the information item. BC Hydro suggests that the respondent could simply have made a privacy complaint or, as is his right under the collective agreement, asked that the information be removed. BC Hydro also regards as trivial the entire incident surrounding the placement of the information on the respondent's personnel file, given that the respondent gave the item to BC Hydro and it does not contain any sensitive personal information.

[35] In addition, BC Hydro says, it has dealt with the respondent in good faith by providing over 1,000 pages of records in response to his previous requests, interpreting his requests as best it could and providing guidance on the formulation of his requests. The respondent has, however, ignored this guidance, BC Hydro says, by continuing to confuse questions with repetitive, wasteful and broadly-worded requests for records he has already received in the course of his employment disputes and WCB complaints, processes that in BC Hydro's view are better-suited to dealing with his questions. In any case, BC Hydro points out, the respondent no longer has a live employment issue with BC Hydro, as he has exhausted the

processes associated with his termination and WCB complaints. If the respondent still needs more records, BC Hydro suggests that the relief it has proposed in this proceeding would provide him with reasonable access (paras. 10.1-10.5, initial submission).

[36] The respondent's statements about the purposes of his requests (which I discussed above) appeared to be directed at BC Hydro's arguments on this aspect of the matter. He also said he wants to correct his personal information and cannot do so until he has complete records (p. 7, reply submissions). It is clear that the respondent has had concerns with BC Hydro's actions over a period of years and that he does not trust BC Hydro. He also appears, for reasons which are not clear, to continue to believe that BC Hydro has not handled his personal information in accordance with Part 3 of the Act and has not properly documented its dealings with him respecting the various employment and WCB matters.

[37] However, aside from the fact that the respondent apparently did not care for the response he received to request 1853, the respondent has advanced no reason for re-submitting virtually the same request for records related to the July 1997 letter, in the form of request 1879. The applicant's purposes, as discussed above, do not, in my view, justify re-submitting this request.

[38] As for request 1883, even though he provided BC Hydro with a copy of the record which is the subject of this request, the respondent now appears to be saying he does not know how BC Hydro obtained it. Moreover, he alleges that BC Hydro collected it improperly and he is therefore inquiring into the circumstances of its supposed "collection" and subsequent use.

[39] The respondent has no live issue with BC Hydro and there are likely no new records related to his employment disputes. In response to earlier requests, BC Hydro frequently said it had "no such records" and this is likely to apply with future requests as well. I see no legitimate purpose in the respondent dissecting BC Hydro's actions through minute new requests and questions on the same employment-related issues, requiring approaches to the same BC Hydro employees for records over and over again.

[40] In this regard, I again note, as an aside, the respondent's stated intention of making 3,000 new requests based on earlier requests, with the concurrent threat of making the requests unless BC Hydro "comes clean" about a supposed "deception" he believes BC Hydro has carried out. In Auth. (s. 43) 02-02, I considered the respondent's threats of making many more requests and said that the respondent's requests in that case were designed to harass ICBC employees.

[41] For the reasons given above, I find that the respondent's requests of March 2 and 15, 2003 are frivolous and vexatious for the purposes of s. 43(b).

[42] **3.6 What is the Appropriate Remedy?** – BC Hydro does not believe that the respondent's requests warrant the extreme relief of an authorization to disregard all future requests. It does, however, believe that the respondent's access rights should be limited. It argues that the remedy it proposes is balanced, in that it will still allow the respondent sufficient access while also enabling the Act's purposes to be achieved without unreasonable

interference with BC Hydro's operations. It therefore seeks relief as described at the beginning of this decision.

[43] I am satisfied that BC Hydro is entitled to the relief it seeks, which is structured to address the repetitive and systematic aspects of the respondent's requests, while allowing him access in a fashion that does not unreasonably interfere with BC Hydro's operations. In arriving at this conclusion, I have, among other things, kept in mind that the respondent is to some extent seeking access to his own personal information.

4.0 CONCLUSION

[44] In the circumstances, including the fact that the respondent's right of access to his own personal information is in some degree implicated here, I make the following authorization under s. 43, with a minor variation from BC Hydro's request in light of the time that has passed since its s. 43 application:

1. BC Hydro is authorized to disregard the respondent's access requests of March 2 and 15, 2003 (BC Hydro requests 1879 and 1883) and any access requests that may have been made by or on behalf of the respondent between the date of BC Hydro's application under s. 43 and the date of this decision; and
2. From the date of this decision, BC Hydro is authorized to disregard any access requests made by or on behalf of the respondent in excess of one open request at any one time, and the following conditions apply respecting each open request:
 - (a) BC Hydro is not required to spend more than 7 hours responding to each access request; and
 - (b) BC Hydro is not required to respond to any request to the extent that it requests records that have already been the subject of an access request to BC Hydro by or on behalf of the respondent.
3. The following apply respecting the above paragraphs:
 - (a) BC Hydro is to determine, in light of its s. 6(1) duties to the respondent, what is a single access request for the purpose of this authorization; and
 - (b) for the purposes of paragraph 2, an "open access request" is a request for records under s. 5 of the Act to which BC Hydro has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of the Act.

February 3, 2005

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia