



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

Decision F06-03

UNIVERSITY OF BRITISH COLUMBIA

Celia Francis, Adjudicator
March 24, 2006

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Summary: UBC applied for authorization under ss. 43(a) and (b) to disregard the respondent's outstanding requests and any future requests for two years. For the purposes of s. 43(a), respondent's requests found to be systematic and unreasonably to interfere with UBC's operations. UBC is authorized to disregard respondent's outstanding requests, requests received between date of application and date of decision. UBC is further authorized for two years to disregard respondent's requests in excess of one open request at a time and is not required to spend more than 50 hours per year responding to respondent's requests in each of the two years following this decision. It is not necessary to consider s. 43(b), although respondent's requests had some trivial and purposeless aspects to them.

Key Words: systematic—unreasonably interfere.

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

Authorities Considered: B.C.: Decision F05-01, [2005] B.C.I.P.C.D. No. 4; Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57.

Cases Considered: *Crocker v. British Columbia (Information and Privacy Commissioner), et al.* (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.); *Mazhero v. British Columbia (Information and Privacy Commissioner)* (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

1.0 INTRODUCTION

[1] The University of British Columbia ("UBC") requested authority under ss. 43(a) and (b) of the *Freedom of Information and Protection of Privacy Act* ("Act") to disregard the respondent's outstanding freedom of information requests and 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] UBC has asked, under s. 43(a) or (b), or both, for the following relief:

1. Authorization to disregard the respondent's 18 outstanding access requests;
2. Authorization to disregard all subsequent requests the respondent has made since UBC's application for relief under s. 43 to the date of this decision; and
3. Authorization to disregard any requests from the respondent for two years following the date of this decision.
4. After the expiry of the above-noted two-year period, UBC also requests authorization:
 - (a) to disregard any requests from the respondent that would cause UBC to spend in excess of 50 person hours per year, in the aggregate, responding to requests from the respondent;
 - (b) to disregard any requests for records already provided; and
 - (c) not to be required to process more than one request from the respondent at a time.
5. With respect to the above, that UBC be at liberty to apply for further relief under s. 43 at any time.

[3] The notice for this s. 43 application also stated that an issue was whether I can authorize UBC to disregard requests in cases where, at the time of its application, UBC had not met its s. 7 time limits.

3.0 DISCUSSION

[4] **3.1 Preliminary Matters**—I will deal first with two preliminary issues that arose during this application.

Applicant's withdrawal of some requests

[5] The respondent stated in his letter of September 27, 2005 that he was withdrawing "all requests which are non-personal in nature". He then suggested that I dismiss UBC's s. 43 application, as there is now no basis for UBC to proceed, as "there are no requests outstanding".

[6] UBC responded that it wished the s. 43 application to proceed as, contrary to the applicant's assertion that there were no outstanding requests, there were still four requests for personal information outstanding from 2004 and five more from 2005, totalling 24 discrete outstanding requests for personal information, which it estimates would require 109 hours to process. In UBC's view, all the factors it argued regarding the full set of requests still apply

to those that remain and s. 43(a) or (b) or both still apply to them. Permitting the s. 43 application “to be derailed at this stage” would therefore still result in unreasonable interference with UBC’s operations, it says.¹ UBC pointed out that it has asked for relief from any future requests as well as outstanding ones and that, at the time it wrote to this Office, October 13, 2005, the respondent had submitted a new access request for personal information which UBC estimates would require another 5 hours to process. UBC said that the applicant should not be allowed to withdraw his requests after UBC has brought its s. 43 application, to preclude an order under s. 43 and then “once again pepper the public body with frivolous and vexatious requests”, putting UBC once more in the position of making an application under s. 43. This would render s. 43 meaningless and be an abuse of the Act and this office’s processes, UBC contends.²

[7] The respondent is free to withdraw his requests for non-personal information that pre-date his letter of September 27, 2005 and I need not therefore consider whether they warrant relief under s. 43, although I have considered them, along with the outstanding and answered requests, in my assessment below of whether the applicant’s requests are systematic or repetitious. UBC is correct in saying that the respondent’s requests for personal information remain outstanding, including, apparently, his requests for the personal information of third parties.³ Moreover, since the time UBC made its s. 43 application, on April 7, 2005, the respondent has submitted eight more requests, including seven for personal information, which UBC wishes added to its application for s. 43 relief.⁴ I will therefore consider UBC’s s. 43 application respecting the respondent’s remaining outstanding requests, for both personal and non-personal information, including those he submitted in October and December 2005 and January 2006.

Respondent’s request to make further submissions

[8] The respondent requested permission to make a further reply in January 2006. An outline of the events up to that date will be helpful in understanding my decision on the applicant’s request.

[9] This Office originally scheduled the submissions for this matter to arrive over a three-week period in June 2005. After UBC had made its initial submission on June 8, 2005, the respondent requested an extension to the deadline for his reply from June 15, 2005 to the end of September 2005, on the grounds that his disabilities made it difficult for him to respond sooner to UBC’s “large volume of documentation”. UBC took no position on the request for an extension.

¹ UBC appears to want me to consider the application of s. 43 to the requests which the respondent has withdrawn, as well as those which are remain outstanding; paras. 7, 19 & 23, further submission of October 13, 2005.

² Paras. 5-14, 17-21 & 32-35, further submission of October 13, 2005.

³ I agree with UBC that personal information requests remain from 2004; however, I count six personal information requests from 2005, not five as UBC said; UBC classified one request, N-05-74, as a request for non-personal information but, in it, the applicant requests what is clearly third-party personal information.

⁴ See UBC’s legal counsel’s letters of December 12, 2005 and January 13, 2006.

[10] Taking the respondent's disabilities into account, this Office granted the respondent a two-month extension, until mid-August 2005. On the eve of the due date for his reply, the respondent requested another extension, saying he had been unwell for the past two months and thus unable to work on his reply to UBC's application. The Office granted the respondent a further two-week extension to the end of August 2005.

[11] The respondent submitted a five-page reply on August 31, 2005 in the form of an attachment to an email.⁵ A hard copy of the respondent's reply (dated September 7, 2005) arrived on September 12, 2005. In mid-September 2005, UBC requested an extension to its response deadline from September 21 to October 28, 2005 for three reasons: the respondent had been granted a lengthy extension and UBC should therefore also "be granted the same latitude"; UBC's head under the Act was out of the country until October; UBC required more time to contact a number of individuals whose comments on the respondent's submissions were required, during September, UBC's busiest month for many faculty members.

[12] The respondent objected to this extension request, saying, among other things, that UBC had enough resources to prepare its reply in time for the original due date.⁶ This Office granted UBC an extension to October 21, 2005 on which date it submitted its reply. Despite being told that no further reply was needed, on October 24, 2005 the respondent faxed an "affidavit" in response to UBC's reply. He also sent emails on October 18 and 26, 2005 saying he had not been given enough time, asking that he be allowed to add further issues to this application and inquiring if the Ombudsman could examine some of the issues. The Office returned the "affidavit" to the respondent and reminded him that the only issue under consideration was UBC's s. 43 application.

[13] On January 7, 2006 the respondent wrote to say that he had been unable earlier, due to his medical limitations, "to pursue an adequate rebuttal". He said he was now sending "new medical information which was previously unavailable" so that this Office would be aware of "the restrictions" he faces and that, since receiving treatment, he is "now medically capable of providing a response in short order" and requested "the ability to do so". He included extracts from three doctors' letters (which he apparently obtained in the course of pursuing his human rights complaint) and also provided copies of the letters themselves, which are dated June 1, 2005, November 8, 2005 and December 21, 2005. He said he did not want to proceed to judicial review on this matter and would "be seeking legal advice regarding whether a court order is possible to allow for additional submissions in light of the foregoing, if applicable".

[14] Among other things, the doctors' letters recommend that, given the respondent's medical condition, he needs extra time to do tasks,⁷ that he has been unable to attend to

⁵ UBC objected to this, saying this office's procedures do not allow for submissions by email. This Office told UBC that it was providing UBC with a copy of the emailed attachment on a preliminary basis and, upon receiving the hard copy from the respondent, provided a copy of this version, telling UBC that it had until September 21, 2005 to make its reply.

⁶ In two one-page emails, both of September 19, 2005, and one four-page email of September 21, 2005; the respondent also requested and was denied permission to add to the s. 43 application another issue, that is, his complaint that UBC refused to provide materials in an alternate format. He also asked if he could submit a reply to UBC's reply and was informed that the procedures for s. 43 submissions do not provide for the respondent to make a further reply.

⁷ Letter of June 1, 2005.

anything other than his treatment until recently and has not therefore been able to pay attention to his human rights complaint.⁸ They also say that, although the respondent had had medical problems of various kinds that impaired his concentration and energy and adversely affected his ability to plan and organize and prepare for his human rights complaint, he had made significant progress over the last few months and was now better prepared to proceed with the human rights process.⁹

[15] I have decided not to grant the respondent's request for permission to make further submissions. First, the medical information he submitted is not all "new". One letter is dated June 2005, although the respondent did not provide a copy of that letter to this Office until early this year. Moreover, this letter does not say that the respondent was unable to perform tasks but rather recommends that he be given extra time to do them. Taking the respondent's disabilities into account, this Office granted the respondent a two and a half month extension to prepare his reply.¹⁰ On the extended due date, the respondent faxed a five-page response addressing UBC's initial submission, followed a few days later by a hard copy of the response, which was accompanied by a two-page covering letter and a 2 centimetre thick sheaf of documentation related to his human rights complaint. In addition, during that time, the respondent sent this Office numerous detailed pieces of correspondence in which the respondent, among other things, attempted to circumvent this Office's procedures, objected to UBC's request for an extension and argued at some length why unrelated matters should be included in this application and why the Ombudsman should review his issues. He also continued to send access requests to UBC for records related to his various complaints and appeals throughout this period. I am therefore not persuaded that the respondent was medically unable to respond to UBC's initial submission during the extended time he was allotted last year.

[16] **3.2 Background**—The respondent is a former UBC student "who has had involvement with a number of parts of UBC". The respondent first became a student with UBC in 1998 and was granted an undergraduate degree in 2003. A few months before receiving his degree, the respondent sought accommodation for two disabilities. He approached the UBC Disability Resource Centre ("DRC") in this regard and has dealt with the DRC over a number of years. UBC says that the respondent has "a communication style" of engaging several staff members on the same issues, often copying several staff on his emails. (One staff member deposed that the respondent had sent him several hundred emails from the fall of 2002 to June 2005.) The respondent's file at the DRC is thus over 20 centimetres thick. UBC says much of the respondent's correspondence is detailed and complex, involving a number of issues.¹¹

[17] In addition, the respondent applied for and was accepted into the Diploma in Accounting Program ("DAP") but, because he did not complete certain courses, did not complete the program. He is thus not in good academic standing. The respondent has also made several unsuccessful attempts to be admitted to the Faculty of Law. The respondent has also complained about the appointment of the Faculty Disability Liaison and has filed three

⁸ Statement of December 21, 2005.

⁹ Letter of December 21, 2005.

¹⁰ The normal response time is one week.

¹¹ Paras. 26-28, initial submission; Bemmels affidavit; Aucoin affidavit; Mee affidavit.

human rights complaints (one of which has been settled and two of which were outstanding at the time UBC prepared its reply submission¹²). He has also filed an appeal under UBC's Policy # 73 (upheld at review and not appealed), a notice of intention to appeal under the same policy (not pursued), an appeal under UBC's Policy # 72 (dismissed and not subject to further appeal) and two academic appeals to UBC's Senate Committees regarding four grade assignments (one of which was still active at the time UBC made its s. 43 application but which has since been dealt with¹³). The respondent also requested clarification of his eligibility for the DAP and for the Diploma in Urban Land Economics Program ("DULEP") and was told that he was not eligible to register in the DULEP. The respondent is not an active student at UBC.¹⁴

[18] **3.3 Applicable Principles**—In Auth. (s. 43) 02-01,¹⁵ and Decision F05-01,¹⁶ the Information and Privacy Commissioner discussed the interpretation and application of s. 43(a), while Auth. (s. 43) 02-02¹⁷ addressed s. 43(b). I have, in considering UBC's request here, applied the approach taken in those decisions and the cases to which they refer.

[19] 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.

[20] **3.4 Description of Requests**—UBC discusses the respondent's previous and outstanding requests in some detail in its submission.¹⁸ It argues that the respondent's previous history in making requests, and the amount of time UBC staff have spent on them, are relevant to a determination of whether UBC is entitled to relief under s. 43 respecting the outstanding and any future requests.¹⁹

Previous requests

[21] UBC says that, following his academic difficulties with the DAP, the respondent made a number of access requests. Similarly, following his unsuccessful applications for admission

¹² See para. 4, second Beck affidavit; UBC says that the human rights proceeding includes a right of discovery and disclosure of documents—see para. 39, initial submission.

¹³ Paras. 35-36, initial submission; para. 4, second Beck affidavit.

¹⁴ Paras. 27-39, initial submission; first Beck affidavit; McIntosh affidavit; Aucoin affidavit; Young affidavit.

¹⁵ [2002] B.C.I.P.C.D. No. 47.

¹⁶ [2005] B.C.I.P.C.D. No. 4.

¹⁷ [2002] B.C.I.P.C.D. No. 57.

¹⁸ Since UBC made its application for s. 43 relief, it has provided copies of eight further requests from the respondent which it wishes added to the s. 43 application, in addition to the 18 for which it originally sought authorization to disregard.

¹⁹ Para. 40, initial submission.

to the Faculty of Law, UBC says, the respondent has made a number of access requests.²⁰ The discussions below of UBC's arguments on the systematic and frivolous and vexatious aspects of the respondent's requests include more details on the respondent's previous requests.

[22] UBC says that the tone and nature of the respondent's requests have deteriorated over the years. His early requests came by letter but most of his subsequent ones have arrived by email and have become more complicated, "often multi-layered and overlapping", including "derogatory comments about various UBC faculty members and staff". UBC says that the respondent often referred to earlier requests without specifying the requests he was referring to.²¹ UBC provides affidavit evidence on the respondent's previous requests from its information and privacy co-ordinator, Christina Ulveteg, who is the only full time employee at UBC responsible for access requests. She describes the requests, the "numerous" areas within UBC involved in the various searches, the number of pages of records retrieved and the amount of time staff have spent to date processing the respondent's requests. In some cases, UBC issued fee estimates to the respondent and denied his requests for fee waivers.²² UBC also provides affidavit evidence from staff in other UBC departments on the amount of time they have spent dealing with the respondent's requests.²³

[23] UBC says it has responded to 30 requests²⁴ from the applicant from 2001 to the date of its submission (April-June 2005), disclosing a total of almost 2,700 pages of records, with an additional 1,240 pages due to be released shortly. It says that the respondent's requests in 2004 comprised 10% of its total number of requests for that year and that staff spent 523 hours in 2004 searching for and providing records. It says the respondent's 2005 requests comprised 18% of UBC's total access requests to the date of its s. 43 submission and that staff had spent 390 hours²⁵ on the respondent's requests in 2005, up to the date of its submission. UBC says that 35 staff in various departments of UBC were involved in searching for records in response to the respondent's requests in 2004 and 2005.²⁶

Outstanding requests

[24] UBC says that it now finds itself faced with another 20 requests²⁷ from the respondent, the ones that are the subject of its s. 43 application, which it says actually comprise 32 discrete access requests, totalling 18% of its requests from January 1 to April 20,

²⁰ Paras. 29 & 30, initial submission; McIntosh affidavit; Young affidavit.

²¹ Para. 42, initial submission; para. 46, Ulveteg affidavit.

²² Paras. 6-63, Ulveteg affidavit; UBC does not say in all these cases whether the respondent paid the fee and received the records or whether he chose not to pay and abandoned these requests.

²³ Bemmels, Shaw, Ulveteg, Young, Aucoin, McIntosh, Mee affidavits.

²⁴ UBC says that the 30 requests contain numerous unrelated requests and that he has actually made 105 requests to date. I agree with UBC that the most of the requests contain a number of individual requests.

²⁵ In the table of hours spent processing the respondent's requests at para. 90 of the Ulveteg affidavit, the column of figures for 2005 adds up to 195 hours, not 390, but it is possible that, through an oversight, UBC did not add some information. In any case, I acknowledge that even 195 hours over four months is still a significant amount of time.

²⁶ Paras. 43-45, initial submission; paras. 87-90, Ulveteg affidavit.

²⁷ The 18 which were the subject of the s. 43 application of April 7, 2005, plus two more the respondent submitted in April 2005.

2005. UBC said that it would take approximately 155 hours of staff time to complete the outstanding requests.²⁸ As noted, the respondent has since submitted six more requests²⁹, for a total of 26 as of January 2006.

[25] The requests that are the subject of the s. 43 application include the following topics: academic accommodation UBC offers to students; the respondent's complaint about sharing information related to his student loan; information about the respondent in various DRC files; various types of information about the DRC co-ordinator; the respondent's senate appeal; copies of an email a UBC employee sent; information related to the respondent's law school application; and information about UBC's s. 43 application. With the withdrawal of the requests for non-personal information, UBC says that the time estimate drops to 114 hours for the personal information requests dated October 2005 and earlier.³⁰

[26] UBC did not provide an estimate for the time needed to process the requests it wants added to its s. 43 application in December 2005 and January 2006, which include requests for the following: the respondent's personal information in the UBC equity office; information on the respondent's policy complaints; and information related to the denial of the respondent's attempted admission to the DULEP.

[27] **3.5 Is Section 43 Relief Available for Overdue Requests?**—One of the issues in this application is whether I can authorize UBC to disregard requests in cases where UBC had not complied with its s. 7 timelines. UBC did not, however, address this issue in its submissions. The applicant also said nothing about it.

[28] In its letter of April 7, 2005 UBC asked for authorization to disregard 18 outstanding requests from the respondent. Of these 18, the first six listed in the table accompanying its letter were past their 30-day deadlines for a response,³¹ while the remaining twelve were still within their 30-day timelines.

[29] At the time of UBC's s. 43 application, UBC had 42 active access requests—in addition to the respondent's outstanding requests—and was in a backlog in responding to its requests. Of the 42 active requests, nine were overdue, with six of the nine involving large amounts records (over 500 pages) requiring up to four months to complete.³² UBC's freedom of information co-ordinator, Christina Ulveteg, further illustrates the burden UBC was under in an email of March 11, 2005 to the respondent:

Thank you for your e-mails of March 3, 5, 8, and 10, regarding the status of your requests for records.

There currently is a high volume of requests, which has caused a backlog and delay in responding to applicants. I am aware that I am beyond the legislated time frame set out

²⁸ Paras. 47-48, 50 & 52, initial submission,

²⁹ One in October 2005 and five more in December 2005 and January 2006,

³⁰ Paras. 11 & 13, submission of October 13, 2005,

³¹ With dates of receipt ranging from October 8, 2004 to January 5, 2005 and due dates ranging from November 23, 2004 to February 14, 2005; UBC estimates that it would take about 40 hours to respond to these six requests (see paras. 64-70, Ulveteg affidavit),

³² Para. 94, Ulveteg affidavit,

in the *Freedom of Information and Protection of Privacy Act* in responding to some of the requests.

Since November 2004 you have submitted at least 20 requests for records. Please know that I am working on your requests, however, some of the requests take longer to prepare than anticipated due to the number of units that need to search for records and due to the volume of records. Responses to your requests will be forthcoming.

I apologize for not following up with you earlier and thank you for your patience.³³

[30] There is no indication in UBC's submissions that it deliberately neglected these requests and then used its s. 43 application to excuse or overlook its breach of the s. 7 timelines for responding to them. Rather, UBC was struggling to deal with a large volume of requests in the period leading up to its s. 43 application, evidently unable to keep up, and perhaps also not in a position to take extensions (although this is what a public body should do, rather than allow the legislated response time to pass). I also note UBC's evidence that it would require an estimated 30 hours to process the remaining overdue requests for personal information. In the circumstances of this case, I consider it appropriate to include the overdue requests in my consideration of UBC's application for relief under s. 43.³⁴

[31] **3.6 Is Relief Warranted Under Section 43(a)?**—UBC takes the position that the respondent's requests are both systematic and repetitious and interfere unreasonably with its operations.

Repetitious

[32] UBC argues that it is clear the respondent's requests are repetitious in that he has made numerous requests for the same related issues and has also requested the same information over and over in different ways. The respondent has, for example, asked twice in short succession for records related to an academic appeal. UBC also says that, on two other occasions, it has told the respondent that he has already received the information he is requesting.³⁵

[33] I agree that a handful of the respondent's requests repeat earlier requests. In some cases, however, the repetitive request followed the first request by some months or years or included the clarification that the request was only for records that had come into existence since the last request. With others, UBC informed the respondent that he had already requested the information.³⁶ For the most part, however, the requests were for different types of information and, on preliminary review, UBC has not in my view established that the respondent's requests are repetitive for the purposes of s. 43(a). I do not in any case need to consider this issue, as I find below that UBC has shown that the respondent's requests are systematic as contemplated by s. 43(a).

³³ Exhibit "YY", Ulveteg affidavit.

³⁴ After subtracting the requests for non-personal information pre-dating September 2005 (which the respondent withdrew), this leaves by my count a total of 13 requests for personal information and one request for non-personal information as of January 2006.

³⁵ Paras. 54-55 & 74, initial submission; para. 93, Ulveteg affidavit.

³⁶ Exhibits "AAA" and "BBB", Ulveteg affidavit.

Systematic

[34] UBC further argues that the respondent's requests are systematic, in that the respondent has a system in which he will ask for his entire file and then make specific requests for information related to, for example, an academic appeal, his parking records, medical records, a paper copy of his student record, his LSAT test and accommodation records, his appeal for accommodation under Policy #73, his complaint regarding UBC's alleged failure to accommodate him, records in the DAP office, all his records kept on file at the UBC financial assistance and awards office, a complaint the respondent made about summer courses he had failed, his appeal under Policy #72, his complaint about sharing student loan details and how UBC records the respondent's residence. UBC says that the respondent has also systematically made repeated requests for information related to student financial aid and his bursary status, accommodation and his learning disability, and disability liaison positions in training in UBC.³⁷

[35] UBC also says that the respondent systematically makes requests as to how his personal information is being handled, requests that certain people not be advised that he has made access requests and makes inquiries as to whether UBC is properly following privacy practices under s. 27 of the Act. For example, the respondent sought in one case a copy of an email a UBC employee had sent him which she had copied to a number of other individuals on the UBC campus, with the result being that staff had to search through each of the receiver's email boxes to see what they had done with the email and whether they had exchanged any further emails as a result of the email.³⁸

[36] UBC argues that the respondent also systematically approaches any issue he has with UBC, for example, by making access requests with respect to the s. 43 application itself and the files UBC has collected respecting his Senate appeals and policy appeals. He routinely requests information respecting any conversations, emails or letters that UBC personnel might have shared about him, UBC says, and tries to track the distribution of that information within UBC. The executive co-ordinator of the Office of the Vice President Students deposes that the respondent's informal requests for information took over 600 hours of staff time to deal with over the 40 weeks prior to early June 2005 and that the respondent then made access requests for the correspondence generated in dealing with his informal requests.³⁹

[37] UBC says that the respondent has made repeated requests for information, noting that he is only requesting new information since the last request, without specifying the file number or date of the last request to distinguish it from the many other requests he has made. UBC submits that step-by-step the respondent targets its departments and areas where he has concerns over his academic status, his accommodation, his access to financial assistance and requests any and all records even remotely related to that status, including the distribution of information about individuals within UBC and policy directives relating to that information. In UBC's view, this fact pattern is "directly on all fours with the facts" in previous decisions

³⁷ Paras. 78-79, initial submission.

³⁸ Paras. 74-77, initial submission.

³⁹ Aucoin affidavit.

in which the commissioner found the respondents' behaviour to be systematic and repetitious. UBC also says that it is clear from the respondent's past behaviour any escalating volume of requests that the respondent has no intention of stopping the flow of requests. UBC cites specific requests in these respects.⁴⁰

Unreasonably interfere with operations

[38] In UBC's view, the respondent's requests have also interfered with its operations and responding to the respondent's outstanding requests would continue to interfere unreasonably with its operations. UBC points to the evidence it has provided regarding the amount of time spent by staff to date in numerous UBC departments processing the respondent's requests—523 hours in 2004 and 390 in 2005.⁴¹ UBC says that the Office of the University Counsel alone spent 300 hours on the respondent's requests in 2004 and 50 in 2005. The Associate Dean, Academic Affairs, Faculty of Law, deposes that she and two associates spent 80 hours in 2004 and 85 hours in the first few months of 2005 dealing with the respondent's requests.⁴² UBC also points to the estimated time required to process the outstanding requests—originally 155 hours but now, with the abandonment of the non-personal information requests, 114 hours for the requests dated October 2005 and earlier,⁴³ not to mention the December 2005 and January 2006 requests.

[39] UBC says that for each request, it must determine what the request is about, whether UBC has already provided the information previously and whether the request relates to another access request that is ongoing. It then has to inform the relevant departments, search for and collate the records, sever them and obtain instructions from UBC legal counsel as to their disclosure.

[40] Because of the respondent's overlapping requests and comments in his emails, UBC says it must spend additional time sorting through each new request to understand what the respondent has requested and whether UBC has provided the information to him previously. The nature of the respondent's communications with numerous UBC employees on various issues means that there are voluminous records to review.⁴⁴ UBC says that, out of a total of 42 access requests currently active, it currently has a backlog of nine requests which are overdue. Six of the nine involve more than 500 pages of records each. This backlog is, UBC says, primarily due to the need to handle the respondent's requests, which has hindered the information and privacy co-ordinator's ability to deal with other requests. The respondent's requests have also disrupted the work of other staff and their ability to serve other students, and have taken valuable time away from their other tasks to search for records responsive to the respondent's requests, UBC says.⁴⁵

⁴⁰ Paras. 80-82, initial submission.

⁴¹ Bemmels, Shaw, Young, Aucoin, McIntosh and Mee affidavits.

⁴² Young affidavit.

⁴³ Paras. 4-6, second Ulveteg affidavit.

⁴⁴ Para. 83, initial submission; paras. 90-92, first Ulveteg affidavit. Processing any request often involves the steps UBC outlines. I take UBC's point however that in the respondent's case, due to the voluminous and overlapping nature of his requests and the number of areas involved in the searches, the steps UBC took processing the respondent's requests were more onerous than for other people's requests.

⁴⁵ Paras. 83-93, initial submission; Bemmels, Ulveteg, McIntosh, Aucoin, Shaw, Young & Mee affidavits.

Respondent's response and UBC's reply

[41] The respondent makes a series of arguments aimed at UBC's submissions as a whole. He begins his reply submission as follows:

... I unequivocally disagree with the university's submission and suggest the university's efforts in limiting my access rights are a part of a complex, scheming, bureaucracy determined to deny justice to activists who may expose university failures. This is what this application is about – the university unwilling to release details which may expose vulnerabilities.

[42] The respondent rejects UBC's arguments that his requests have caused UBC any hardship, given its vast resources, and says his requests have been focused on obtaining records he needs for his various appeals. UBC ignored him when he asked informally for these records, he says, and he thus had no choice but to make formal access requests. In fact, he says, some UBC officials told him to make formal requests. He says he distrusts UBC officials, given his difficult experience at UBC because of his disabilities. As a result, he has filed numerous appeals to seek remedies and also numerous requests for records. His disability issues are complex, he says, and require an integrated response – hence his practice of copying many officials with his correspondence. He says the affidavit evidence that UBC provided is variously erroneous, disingenuous, troubling and without basis. He also says he has tried to co-operate with UBC's information and privacy co-ordinator in focussing his requests.⁴⁶

[43] The respondent does not accept UBC's argument that it should be limited to one request at a time and a maximum of 50 hours per year and says he fully intends to pursue his rights. He says he still has many issues of a complex nature to pursue with UBC, including appeals. Many of his issues have yet to be pursued at the university level, he says, and his ability to have access to records through appeals is not relevant. He says he needs access to information to pursue his appeals. He says, given the complex nature of his relationship with UBC, he will continue to have numerous interactions with UBC officials and there will therefore be a continuing need for access to records which may require more than 50 hours to process. Similarly, being limited to one request at a time may prejudice his ability to file appeals.⁴⁷

[44] UBC replies that the respondent has only two live human rights complaints, through which processes the respondent has a right of discovery. There is no complex relationship between the respondent and UBC, it says, and the respondent has no outstanding issues with it.⁴⁸ UBC also denies that its information and privacy co-ordinator refused to co-operate with the respondent. It says that, initially, she attempted to deal with the respondent over the

⁴⁶ Pages 1-4, respondent's reply of August 31, 2005.

⁴⁷ Pages 4-5, respondent's reply of August 31, 2005.

⁴⁸ Para. 21, UBC's reply submission. At the time of UBC's June 2005 initial submission, the respondent had one human rights complaint and one outstanding academic appeal; as of October 2005, he had filed another human rights complaint but his academic appeal had since been disposed of; thus, as of October 2005, the respondent had two outstanding human rights complaints against UBC and no outstanding academic appeals; see para. 4, second Beck affidavit of October 2005.

telephone but that he “would engage Ms. Ulveteg in extremely lengthy, but fruitless conversations. Further, the Respondent would follow up the conversations with emails which fundamentally mischaracterized the content of their conversation.” As a result, Ms Ulveteg was ultimately instructed not to engage in any further telephone conversations with the respondent.⁴⁹

Discussion

[45] In Decision F05-01, the Information and Privacy Commissioner considered a case where the public body argued that the respondent’s requests were methodical and deliberate, and therefore systematic. The respondent had already collected hundreds of records through the other processes, such as grievances and arbitrations, and had a pattern of requesting more records, based on what he saw in records already received. The respondent also had no live issue with the public body and there were no new records associated with past issues. Among other things, the respondent said in reply that the other processes were not available to him and that he was compiling further requests.

[46] The Commissioner said the following about the systematic nature of the respondent’s requests in that case:

[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).

[47] In this case, the respondent’s requests display virtually all of the traits of systematic requests discussed above. First, he has filed a series of requests which are aimed at systematically uncovering all of his personal information that is related to his various dealings, issues or disputes with UBC, starting with the requests that UBC has already

⁴⁹ Para. 29, UBC’s reply of October 21, 2005; paras. 3-5, second Ulveteg affidavit.

answered and continuing with those which remain in issue in this s. 43 application. UBC has in my view accurately described many of the respondent's requests in this regard, as outlined above.

[48] Other examples include:

- Request P-05-92, in which, after receiving an email from a UBC employee noting that a courier had been arranged to pick up a library book without disturbing him or his family, the respondent asked for all records showing UBC's information regarding whom he lived with and how UBC had obtained this information, whether through searches, assumption, site visits, a contractor hired to check on him or other means.
- Request P-04-288, in which the respondent requested a "print screen" of an employee's email folders with his name on them, to view the folders and their contents in person and to receive copies.
- Request P-05-88, in which, on April 13, 2005, a few days after UBC filed its s. 43 application, the respondent requested copies of all records that UBC had generated for that application that were not part of the application itself.

[49] He has also methodically and deliberately requested third-party personal information of a number of UBC faculty and staff with whom he has had dealings, for example:

- regarding the Disability Liaison Co-ordinator, the respondent has requested records such as: memberships that UBC has paid for on this individual's behalf; his cell phone number and statements for any cell phone that UBC has paid for; any vehicle lease and expenses that UBC has paid for; his postings and ranks and their effective dates; his years and dates of service; his salary, benefits and contract details; details of his pension plan; details of any complaint against or discipline imposed on him; and details of and reasons for his absence on a given date; and the individual's curriculum vitae and publications record;
- regarding the business school director, the respondent has asked for: his education information; his job description; his general employment history; and his salary and benefits.

[50] The respondent has also systematically probed into aspects of various programs with which he has been involved, to which he has applied or about which he has complained or appealed. To name only a few examples, the respondent has made requests for the following: the financial statements of the Sauder School of Business and the DAP; records related to the appointment of and the responsibilities of the disability liaison co-ordinator; records showing what deans refer to when handling appeals; procedures for textbook reimbursements and medical withdrawals; LSAT contracts; arrangements for LSAT exams, and seating plans, special sittings and accommodation for LSAT exams; fees paid to the law firm representing UBC for the last five years, the contract with that firm and summaries of the cases on which it

worked for UBC;⁵⁰ contracts with construction companies and information on whether they are expected to comply with UBC's policies and whether their recruitment practices comply with UBC's policies on harassment and disability accommodation; records showing how UBC calculates bursaries; DRC medical documentation requirements and other DRC procedural matters; records on auditing a Law Faculty course; training courses that DRC staff took or which were available to them and details of a conference they attended; details on use of UBC's shower facilities; statistical and other information on DAP courses; evidence of UBC's authority to set a 45-day time limit to file a particular appeal; and a complete list of academic accommodation available to UBC students.

[51] The respondent's requests have also increased in frequency over the years. He began by submitting a request every six months or so from 2000 to 2001 and in 2003. He made no requests at all in 2002. The requests increased to 29 in 2004, many of them containing several separate and detailed requests each (including 10 requests on May 25, 2004 alone and 17 in the second half of 2004), with the respondent acknowledging in at least one case (P-04-213) that he might already have requested the information. There were a further 18 in the first four months of 2005, many of them again containing several separate and detailed requests each,

[52] Moreover, despite the fact that, as UBC's evidence indicates, the respondent has only two live issues, for at least one of which he has already received relevant records,⁵¹ the respondent has made new requests and has indicated that he will continue to make requests in future regarding the various "complex issues" and interactions he claims he has and will have with UBC.

[53] I find that the respondent's requests are systematic for the purposes of s. 43(a).

[54] In light of the evidence on the hundreds of hours that UBC staff have spent and would need to spend dealing with the respondent's access requests, and the number of staff involved, not to mention the complex and detailed wording of the requests themselves, as well as their increased frequency, I am also satisfied that the respondent's requests have unreasonably interfered with UBC's operations and have hindered its ability to carry out other tasks and responsibilities.⁵²

[55] For the reasons given above, I find that, for the purposes of s. 43(a), the respondent's requests are systematic and that responding to them would unreasonably interfere with UBC's operations.

[56] **3.7 Is Relief Warranted Under Section 43(b)?**—In UBC's view, the respondent's requests are frivolous or vexatious or both, fitting the definition of frivolous and vexatious that previous decisions have accepted, that is, "of being without merit and with

⁵⁰ UBC says this is the firm representing it in the respondent's human rights complaints (para. 58, UBC's initial submission, and para. 7, first Beck affidavit).

⁵¹ UBC does not say whether the respondent has received all records relevant to his other human rights complaint, served on UBC in July 2005—see its reply submission of October 21, 2005 and the second Beck affidavit.

⁵² Based on similar evidence, the commissioner made similar findings in Auth. (s. 43) 02-01 and Decision F05-01.

intent to annoy, harass, embarrass, or cause discomfort. The Respondent has engaged in a pattern of conduct that amounts to an abuse of his rights under the Act”.⁵³

[57] UBC says that the requests are detailed in scope and incorporate multiple specific requests, they are repetitive and many are submitted for their nuisance value. UBC also says that, in some cases, the respondent’s intent is not to seek records related to a particular process he has engaged (*e.g.*, appeal or complaint) but to intimidate UBC into providing the remedies he seeks. UBC refers me to specific requests in support of its argument on these points. For example, he has requested records on legal fees paid for the previous five years to the firm representing UBC in his human rights complaints. UBC argues that he also attempts to intimidate UBC staff by complaining about their conduct, UBC argues. Following its s. 43 application, for example, the respondent complained about UBC’s lawyers to the Law Society of British Columbia and made allegations to the Law Society about conflict of interest on the part of the external legal counsel representing UBC in the s. 43 application.⁵⁴

[58] UBC also says that it is clear that the respondent’s requests or appeals increase after he has received a failing grade, has not been accepted into the various faculties to which he has applied for admittance or is unhappy with the accommodation afforded to him. For example, respecting his unsuccessful application at UBC Law School, the respondent made several access requests for information, including the names of members of an admission committee, internal policy guidelines given to members of the committee, details on the waiting list option, details on how individuals are selected to the admissions committee and general details of successful admission summaries. UBC argues that this pattern is evidence of conduct amounting to an abuse of access rights.⁵⁵

[59] UBC also says that the respondent’s intent is clearly to harass individuals by targeting specific individuals in his requests. For example, the respondent requested that the Disability Liaison Co-ordinator be removed from his position, following the rejection of which the respondent made the requests described above. The respondent has also requested the job descriptions of other employees, including the one responsible for handling his access requests, and has asked for information regarding whether UBC staff have communicated internally with the information and privacy office at UBC.⁵⁶

[60] UBC also says that there has been a pattern of increasing frequency of the respondent’s requests and says that the respondent is clearly aware of the volume and requests he has made as he has apologized on occasion for the number of requests he has made (see requests N-04-121 and P-05-85).⁵⁷ UBC says that the live issues that the respondent currently has with it are two human rights complaints and that his Senate appeal involving his grades for two 2004 summer courses has since been resolved, as noted elsewhere in this decision.

⁵³ Para. 49, initial submission.

⁵⁴ Paras. 56-58, initial submission; paras. 6-9, Lai affidavit.

⁵⁵ Paras. 59-60 & 66, initial submission.

⁵⁶ Paras. 61-65, initial submission paras. 84-88, Ulveteg affidavit.

⁵⁷ Paras. 64-65, initial submission.

[61] UBC says that the respondent has already received access to records relating to his human rights complaint and has also had full access to the civil rights of discovery and disclosure in the Human Rights Tribunal process. He has also made requests for and received access to records relating to his academic appeal. Moreover, UBC said, the academic appeal process also provided for pre-hearing disclosure of documents. In its view, therefore there is no live issue with UBC that requires further access through freedom of information requests and there are in any event likely no new records relating to his various disputes.⁵⁸

[62] UBC says that the respondent has been making requests in bad faith. UBC says for its part it has dealt with the respondent in good faith by providing thousands of pages of records and assisting the respondent by telling him where he has already made requests and by combining requests that were related to the same issue. UBC argues that the remedy it is seeking balances the respondent's legitimate interests in seeking access to information and UBC's burden in having to process the respondent's frivolous and vexatious access requests. UBC believes it should therefore be granted relief under s. 43(b) of the Act.⁵⁹

[63] I have already set out the respondent's response to UBC's initial submission on ss. 43(a) and (b), in which he said generally that he needs records for his appeals—including any future ones—and that he has and will have many issues and a complex relationship with UBC.

[64] As also discussed above, UBC takes issue, given that only two human rights proceedings are under way involving the respondent, with the respondent's remarks that he needs records for his outstanding appeals and other issues. Again, UBC rejects the respondent's contention that he has a "complex relationship" with UBC and says the respondent has not refuted any of the arguments UBC raised in its initial submission regarding the nature of his requests. UBC says "[t]here are no outstanding formal processes in progress between the Respondent and UBC".⁶⁰

[65] I acknowledge that there are trivial aspects to the respondent's often detailed requests and that some appear to have been submitted for no purpose, such as the request for records related to a supposed ghost on the UBC campus and the request for information on his living arrangements. The respondent has also devoted considerable attention to, among other things, certain individuals by requesting detailed information related to their employment with UBC and exploring the minutiae of his various dealings with UBC.⁶¹

[66] However, while the respondent evidently feels aggrieved by UBC's treatment of him and is mistrustful of UBC as a result, I do not consider that, through his requests, he has demonstrated an intent to behave maliciously or in a harassing or obstructing manner, or otherwise to act in bad faith. I also do not believe the respondent has submitted the requests in the knowledge that they are unimportant or without purpose. Rather, he appears genuinely, if mistakenly, to believe that he requires these records to pursue past, current and future issues

⁵⁸ Para. 67, initial submission.

⁵⁹ Paras. 70-72, initial submission.

⁶⁰ Paras. 21-23, UBC's reply of October 21, 2005; paras. 3-5, second Beck affidavit.

⁶¹ Many of these requests, such as those for policies and procedures of various kinds or job descriptions and salary and benefits, could in my view have been handled information, outside the Act.

with UBC. Moreover, many of his requests are for his own personal information and are genuinely related to his various complaints, appeals and other personal issues.⁶² Ultimately, however, given my finding above on s. 43(a), I do not need to consider whether the respondent's requests meet the test of s. 43(b).

[67] **3.8 What is the Appropriate Remedy?**—Apart from the relief it requests (set out at the beginning of this decision) and a brief remark that this proposed relief is an appropriate balance between the respondent's needs and UBC's burden,⁶³ UBC does not address the issue of what an appropriate remedy is in this case and why the remedy it is seeking is appropriate in these circumstances.

[68] The respondent, as noted earlier, does not accept UBC's argument that he should be limited to one request at a time and a maximum of 50 hours processing time per year. He says he still has many issues of a complex nature to pursue with UBC, including appeals. He says he will continue to have numerous interactions with UBC officials and there will therefore be a continuing need for access to records which may require more than 50 hours to process. Similarly, being limited to one request at a time may prejudice his ability to file appeals.⁶⁴

[69] Previous decisions on s. 43 have tailored any remedy to the circumstances of each case and have taken into account such factors as a respondent's rights to his own personal information, whether there are any live issues between the public body and the respondent, whether there are likely to be any new responsive records, the respondent's stated intentions, the nature of past requests and other avenues of obtaining information in the past and future available to the respondent.

[70] In no case has the Commissioner authorized a public body to disregard all requests for two years, or even one year, following the date of his s. 43 decision, particularly where the respondent's own personal information is at stake. In rejecting the public body's request for a one-year ban in Auth. (s. 43) 02-01, the Commissioner said that such a ban on access to one's personal information was excessive and referred to *Crocker v. British Columbia (Information and Privacy Commissioner), et al.*,⁶⁵ and *Mazhero v. British Columbia (Information and Privacy Commissioner)*⁶⁶. He also noted that the public body had not established why such a ban was appropriate in the circumstances of that case.

[71] The Commissioner has, however, for a period of one or two years following the date of his decision, limited respondents to one open request at a time, leaving it up to the public body to determine what a request is, and has set a limit of seven hours a public body may spend responding to each request. He has also authorized public bodies to disregard current and outstanding requests and requests for records that a respondent has already received. He has also stated that, following the one or two year limit, a public body may apply for further relief under s. 43, if the circumstances warrant it.

⁶² See my comments on similar arguments in Auth. (s. 43) 04-01.

⁶³ Para. 72, initial submission.

⁶⁴ Pages 4-5, respondent's reply of August 31, 2005.

⁶⁵ (1997), 155 D.L.R. (4th) 220, [1997] B.C.J. No. 2691 (S.C.).

⁶⁶ (1998), 56 B.C.L.R. (3d) 333, [1998] B.C.J. No. 1539 (S.C.).

[72] In this case, I have considered the following:

- The respondent has had access to his personal information in a large number of areas within UBC through the disclosure of thousands of pages of records, most of them, as the evidence shows, generated as a result of the respondent's own correspondence, inquiries, appeals and complaints
- The respondent has obtained a variety of non-personal information on policies, procedures and other aspects of his various appeals, complaints and other issues
- The respondent has at present only two live issues involving UBC, that is, his outstanding human rights complaints
- The respondent has other avenues of obtaining personal information related to his various complaints and appeals
- There are likely no new records associated with his past and current issues with UBC
- The respondent has voiced an intention to pursue other issues with UBC, about which he says he will continue to make requests that might require more than 50 hours per year to process
- UBC staff have already spent hundreds of hours to date on the applicant's requests, which have as a consequence imposed a significant burden on UBC staff, to the detriment of their other work

[73] UBC has not shown why a two-year ban on responding to access requests from the respondent is appropriate in this case and, in any case, nothing before me supports such a long restriction. Given the circumstances of this case and the factors listed above, however, I do consider that it is appropriate to set some limits on the respondent's requests.

4.0 CONCLUSION

[74] In light of the foregoing, I make the following authorizations under s. 43 of the Act:

1. UBC is authorized to disregard the respondent's access requests which were outstanding at April 7, 2005, the date of its s. 43 application.
2. UBC is authorized to disregard the respondent's access requests from April 7, 2005, the date of its application for authorization under s. 43, to the date of this decision.
3. For a period of two calendar years from the date of this decision, UBC is authorized to disregard any access requests from the respondent in excess of one open access request made by or on behalf of the respondent at any given time, to which the following apply:
 - (a) UBC is not required to spend more than 50 hours in the aggregate responding to requests made by or on behalf of the respondent for the period beginning on

March 24, 2006 and ending on March 24, 2007 and is not required to spend more than 50 hours in the aggregate responding to requests made by or on behalf of the respondent for the period beginning on March 24, 2007 and ending on March 24, 2008; and

- (b) UBC is not required to respond to any request for access to records that have already been the subject of any access requests from or on behalf of the respondent.

4. The following apply respecting the above paragraphs:

- (a) I leave it to UBC to determine, in light of its s. 6(1) duties, what an access request is; and
- (b) for the purposes of para. 3, an “open access request” is a request for records under s. 5 of the Act to which UBC has not, in light of its s. 6(1) duties to the respondent, responded under s. 8 of the Act.

[75] Further, with respect to the two-year limit under para. 3, UBC is free to apply for further relief under s. 43 after that time if it considers that it is warranted in light of its experience with the respondent at that time or thereafter. I also note that, although fees should not be a barrier to access, the Act allows UBC to charge the respondent fees for access in accordance with the Act’s terms.

March 24, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator