



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

Decision F09-04

MINISTRY OF HOUSING AND SOCIAL DEVELOPMENT

Celia Francis, Senior Adjudicator

June 22, 2009

Quicklaw Cite: [2009] B.C.I.P.C.D. No. 15

Document URL: <http://www.oipc.bc.ca/orders/section43/DecisionF09-04.pdf>

Summary: The Ministry requested authorization to disregard eight outstanding requests from the respondent, as well as other relief. The Ministry is authorized to disregard four of the eight requests on the grounds that they are repetitious and unreasonably interfere with the Ministry's operations. The Ministry is further authorized, for two years from the date of this decision, to disregard any future requests from the respondent in excess of one open request at a time.

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

Authorities Considered: **B.C.:** Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 37; Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26; Decision F06-03, [2006] B.C.I.P.C.D. No. 6.

1.0 INTRODUCTION

[1] The Ministry of Housing and Social Development ("Ministry") has requested authorization to disregard eight requests from the respondent (the applicant for records), on the grounds that they are repetitious and systematic and unreasonably interfere with its operations. When mediation through this Office did not resolve the matter, the Office issued a notice to the parties inviting submissions. The Ministry made its initial submission on the due date. The respondent then requested a two-month extension of the normal one-week time frame for responding to the Ministry's submission, as she said she needed more time, due to her medical conditions. The Ministry at first objected to this request. However, after the respondent provided more detail to support her reasons for asking for more time, the Ministry consented and this Office granted the respondent two more months to respond.

[2] When the two-month extension was almost due to expire, the respondent requested a further four-month extension, for much the same reasons as before. The Registrar of Inquiries for this Office denied the request, noting among other things that the respondent had had the Ministry's submission for almost three months. Further communications ensued between the respondent and this Office and, approximately three weeks after the extended due date, the respondent delivered a response which addressed the Ministry's submission and to which the Ministry replied.

[3] Further communications ensued between this Office and the parties, in part about the respondent's request for permission to make a further reply to the Ministry's reply. The Registrar of Inquiries wrote to the respondent stating that she would bring the respondent's request to the attention of the adjudicator, who would decide whether or not to invite further comment. I have not found it necessary to do so, as the submissions before me address the issues.

[4] The respondent also asked to receive records on CD-ROMs, with indexes, as well as back-up paper copies. As the Ministry correctly noted, these s. 6(1)¹ and s. 9² matters are not germane to the issue of whether the respondent's requests merit relief under s. 43 and I have not considered them here.

2.0 ISSUE

[5] The issue before me is whether I should authorize the Ministry to disregard the respondent's requests on the grounds that they are systematic or repetitious, or both, and unreasonably interfere with the Ministry's operations, for the purposes of s. 43(a). Previous decisions have shown that the public body has the burden of proof in such cases.

3.0 DISCUSSION

[6] **3.1 Background**—The Ministry administers the BC Employment and Assistance program, which provides temporary assistance, disability assistance, supplementary assistance and employment programs for British Columbians in need. This program is operated under the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*. The respondent has been a client of the Ministry for a number of years and, the Ministry said, regularly appeals decisions on her eligibility for benefits and otherwise pursues her issues "vigorously".³

¹ This section sets out the Ministry's duty to assist applicants.

² This section sets out how access will be given.

³ Paras. 2 & 22-23, initial submission.

Previous s. 43 applications

[7] The Ministry said that in 2002 it applied for relief under s. 43 with respect to the same respondent. Up to 2002, the respondent had made 48 requests comprising 200 separate sub-requests. At the time of its application, 13 requests (comprising 95 sub-requests) were outstanding. Among other things, the Ministry said it would take about 570 hours of the Ministry analyst's time to process these outstanding requests. The Commissioner granted relief under s. 43 in Auth. (s. 43) 02-01⁴ for a two-year period.⁵

[8] At the expiry of this time, in 2004, the respondent once again began making "numerous requests" to the Ministry, including sub-requests and repetitions of previous requests, prompting the Ministry to seek relief once again under s. 43 in 2005. This matter was resolved through mediation and the resulting agreement ran from September 2005 to July 2006.⁶ Since the expiry of that agreement, the Ministry said the respondent has submitted five "very large" requests and since the beginning of 2006 has, on average, submitted a new or amended request every two to three months.⁷

[9] The Ministry made the current s. 43 application in April 2008 and, in November 2008, this Office issued a notice to the Ministry and the respondent that the application would proceed to consideration by the Commissioner or an adjudicator. The Ministry's initial submission is dated November 24, 2008.

[10] **3.2 Applicable Principles**—In Auth. (s. 43) 02-01, the Information and Privacy Commissioner discussed the interpretation and application of s. 43(a). I have, in considering the Ministry's request, applied the approach taken in that decision and the cases to which it refers, as well as in other previous relevant decisions.

[11] Section 43(a) 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.

⁴ [2002] B.C.I.P.C.D. No. 47.

⁵ Paras. 13-14, initial submission.

⁶ Paras. 15-18, initial submission.

⁷ Paras. 19-21, initial submission.

[12] Relief under s. 43 is available for access requests made under s. 5 of FIPPA that meet certain criteria. Section 43 does not apply to questions seeking answers or to everyday client relations. It also does not apply to requests for information or routinely-available records.⁸

[13] **3.3 Do the Outstanding Requests Merit Relief Under Section 43(a)?**—I will first describe the eight outstanding requests and then consider whether all of them meet the test under s. 43(a).

Description of the outstanding requests

[14] The Ministry said that the eight requests that are the subject of the current s. 43 application have similar characteristics to the respondent's previous requests, as follows:

- most arise out of the respondent's disputes with the Ministry over her eligibility for benefits and include requests for records on such topics as:
 - approval of requests for medical equipment
 - copies of legislation and policies
 - tribunal decisions and appeal decisions related to applications for benefits
 - her past applications for benefits
 - physicians' letters
 - her previous correspondence with the Ministry
 - communications with the Ombudsman's office
- the requests are made up of numerous sub-requests; in one case, for example, a request contained 67 separate issues (since March 2006, the respondent has submitted 10 requests comprising approximately 167 sub-requests)
- the requests are often repetitious in that they repeat previous requests for records the Ministry has already provided or have some changes such as a different time frame
- the respondent methodically requests large volumes of records except when she is the subject of a s. 43 application or agreement
- the requests are time-consuming to process as it is difficult to tell what the respondent wants
- the respondent often amends her requests verbally but then forgets she has done so

⁸ See Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26, at para. 10.

- she makes frequent, lengthy calls to the analyst about her requests (in her dealings with her field office on her benefits, the respondent has been limited to one fax a day because the time spent dealing with her calls and faxes was interfering with the functioning of that office)
- the respondent systematically targets the same types of information held in different locations or for different time frames, for example, “all records on topic X from this, that and the other office or for this, that or the other year”; in the Ministry’s view, the systematic nature of the request is evident from their face⁹
- through her tribunal and other proceedings, the respondent receives copies of her client records and general policy and legislation files; she then makes FIPPA requests for records she has already received through these other Ministry processes¹⁰

Are the requests repetitious?

[15] The Ministry provided copies of the respondent’s requests for the period 2006-2008, including the eight outstanding requests that are the subject of this s. 43 application. It also drew links among the requests to illustrate how the outstanding requests repeat earlier requests, in some cases multiple times.¹¹

[16] The respondent acknowledged that she requests records she has already requested and received. However, she said, due to her medical conditions she must store the records outside. Their containers crack, the records get water damage, stuck together and mouldy, and she has to throw them out. She also said she has storage limitations and cannot keep containers of records in her house. She added that, because of her medical conditions, she forgets and loses things, and has difficulty handling bundles of paper records. Although the Ministry has lately provided records on CD-ROMs, she said that, because of her medical conditions, it is difficult for her to view the discs on her computer and so she also needs paper copies as back-ups.¹² She argued that it does not impose a burden on the Ministry to re-issue paper records.

[17] I have carefully reviewed the eight requests that are the subject of this s. 43 application, some of which have numerous sub-requests. I agree with the Ministry that the four requests dated from March 8, 2008 to March 18, 2008 are repetitious in that they repeat earlier requests for records on the topics outlined

⁹ Paras. 22-34, initial submission; Cobby affidavit.

¹⁰ Para. 12, Cobby affidavit. The Ministry said at para. 8 of its reply that it automatically provides to the respondents copies of records related to her appeals and does not provide copies of such records under FIPPA.

¹¹ Cobby affidavit; Exhibits “A”, “F” to “R”, Cobby affidavit.

¹² Response.

above.¹³ I find that these four outstanding requests are repetitious for the purposes of s. 43(a). I therefore need not also consider whether they are also systematic.

[18] The remaining four requests date from April to August 2008. Although they post-date the Ministry's original s. 43 application, the Ministry included them in its request for s. 43 relief in its initial submission of November 2008. These four requests are for records on topics that, as far as I can tell from the material before me, the respondent has not previously requested. I therefore find that they are not repetitious for the purposes of s. 43(a).

Are the April to August 2008 requests systematic?

[19] Of the four requests from April to August 2008, one asks for a recent doctor's letter, another requests records on appointments for a two-year period and two relate to specific residential tenancy issues. There are also indications that the respondent wanted some or all of these particular records for an upcoming appeal.

[20] These four requests do not exhibit the characteristics of requests that past decisions have found to be systematic, for example, by methodically requesting records in many areas, over extensive time periods. Rather, they are focused on specific records related to a few named individuals or events. I find that the four requests from April to August 2008 are not systematic for the purposes of s. 43(a).

Unreasonable interference

[21] The Ministry provided the following arguments in support of its position that the respondent's requests unreasonably interfere with Ministry operations:

- the size and complexity of the respondent's requests are greater than other requests as staff must undertake the time-consuming and difficult tasks of trying to understand what the respondent is requesting, to determine whether a request repeats or overlaps with a previous request and to determine whether the Ministry has, in the past, responded to the request, in whole or in part
- most of the respondent's requests are broad and many are for "all records" on a particular topic; each request has many sub-requests which are confusing and difficult to read or interpret; once the Ministry receives a new request, a long succession of amendments follows by telephone or by faxes that are often illegible

¹³ The subject matter and repetitious nature of the requests from 2006-2008 bear a strong resemblance to those the Commissioner described at para. 25 of Auth (s. 43) 02-01.

- clarifying the respondent's requests is a time-consuming, convoluted, complex and vague task; each request involves one to two calls a week during processing and seven to eight calls after completion, with each call taking 30-60 minutes; the respondent is frequently angry and confrontational with the analyst
- whereas most other applicants' records comprise two to three volumes, the respondent's records consist of 27 physical volumes, each of which averages 10 cm in thickness; because the respondent's requests are vague and often without parameters such as date ranges, staff must often search all 27 volumes, in addition to electronic records
- the Ministry was overdue in responding to about 50% of its access requests in the first three months of 2008, due to the following:
 - two experienced information and privacy staff members left and three new staff were hired, meaning existing staff had to take time to train the new staff who in turn needed time to learn their new jobs
 - the time needed to process the respondent's requests
- between July and November 2008, overdue requests fell to 10%; this has since been reduced to one or two overdue requests; having the respondent's requests held in abeyance has been a significant factor in this reduction
- the Ministry information and privacy unit has six analysts and four technicians to process requests under FIPPA; the unit processes approximately 1,200 requests per year, with each analyst processing about 200 requests per year
- because of the broad, repetitious and overlapping nature of the respondent's requests, the Ministry has found it more efficient to assign her requests to one information and privacy analyst
- this analyst has been responsible for processing the respondent's requests to the Ministry for five years; she estimates that she has spent 300-400 hours processing the respondent's requests since the beginning of 2006, effectively two and a half months of one person's time, and that she spends 50% of her time on the respondent's requests, time which she says she cannot use processing other applicants' requests
- a typical request takes eight to 10 hours of processing time; the responsible analyst estimates that it would take another 480 hours (or almost 14 weeks) of an analyst's time to process the respondent's eight outstanding requests, plus another five to 10 days of program staff time to retrieve the requested records;¹⁴ the Ministry believes it would find itself in another backlog situation if it had to process the respondent's outstanding requests

¹⁴ The responsible analyst said that, when the respondent makes a general request, it takes program staff one to two days to pull responsive records; Cobby affidavit.

- since the Ministry made the current s. 43 application (which put the eight outstanding requests on hold), the respondent has been requesting records from program staff, which has imposed a significant burden on them¹⁵

[22] The responsible analyst provided additional details about the respondent's behaviours during the processing of her requests, which include:

- asking for and receiving assistance in making requests
- making many sub-requests in one request
- frequently amending requests by fax and telephone, including by adding new requests
- making multiple requests for large volumes of records (in some cases, thousands of pages per request), often for records she had previously requested and received
- frequently re-ordering the priority of her requests
- stating she had no knowledge of the mediated agreement she had signed and under which the Ministry would process one request at a time
- calling the analyst many times to inquire about the status of her requests
- requesting copies of her requests
- instructing the analyst to send records in separate packages arranged by month, each package separately wrapped in plastic
- refusing courier deliveries of requested records, calling later to ask why she had not received the records and refusing to accept the new courier deliveries
- instructing the analyst to call her when records are ready to send, not responding to telephone messages or letters telling her the records are ready and calling later to ask why she had not received the records
- asking the analyst to pull records from release packages the analyst is about to send and fax them ahead of the packages
- after receiving records, destroying some records she thought were duplicates and then asking the analyst to re-send records she has just destroyed
- asking the analyst to re-send records she has seen in release packages but cannot locate¹⁶

¹⁵ Paras. 33-47, initial submission; Cobby affidavit.

¹⁶ Cobby affidavit

[23] The Ministry argued that the respondent is placing excessive and irrational demands on it and, in overburdening it with her systematic and repetitious requests, is “effectively misusing her rights” under FIPPA. This “misuse” “threatens and diminishes the legitimate exercise of that right by other applicants, the Ministry continued, and requiring it to process the respondent’s requests, with no limit of their size or frequency, would bring FIPPA into disrepute, unreasonably interfere with its operations and unfairly affect its ability to process other applicants’ requests.¹⁷

[24] The respondent argued it is not a hardship for the Ministry to re-issue records “at various times”. In her view, the Ministry has a duty to accommodate her disabilities but is refusing to do so, for example, by indexing the records it provides on the CD-ROMs or providing paper copies of records.¹⁸

[25] I agree with the Ministry that the four March 2008 requests are broadly worded, wide-ranging (often for “all records” on a topic) and often vague. I accept the Ministry’s evidence that the requests are difficult to process because it is difficult to tell what the respondent wants and because of the need to compare new requests with old requests to see whether and how they overlap and what the applicant has already received.

[26] I also accept the Ministry’s evidence that the respondent’s practices—such as making frequent, long telephone calls before and after a request is completed, frequently changing her requests and their order of priority, demanding that the Ministry package records in certain ways and requesting copies of her own requests and additional copies of records just sent¹⁹—complicate the processing of her requests and increase the processing time needed, adding to the burden of processing the requests.²⁰

[27] The Ministry’s evidence was that processing the respondent’s outstanding requests would take an analyst approximately 480 hours (two to three months of one person’s time), plus one to two days of program staff time to search for records in response to each request for general records. The four April to August 2008, requests do not on their face appear to require extensive searches or to be otherwise burdensome to process. I therefore take the Ministry’s arguments on

¹⁷ Paras. 48-55, initial submission. The Ministry’s evidence on this issue is similar to that in Auth. (s. 43) 02-01.

¹⁸ Response.

¹⁹ In her request of March 8, 2008, for example, a request containing dozens of sub-requests, the respondent asked that the Ministry remove duplicates, provide the records in a binder with an index and separated by dividers for set of records requested, including dividers for individual letters she was requesting.

²⁰ I will however note that the Ministry need not accede to all of the respondent’s demands, however unreasonable, including those regarding the formatting, packaging, delivery and re-copying of records. As the Commissioner noted at para. 30 of Auth. (s. 43) 02-01, the fact that the Ministry complies with unreasonable demands that go beyond its s. 6(1) duty does not necessarily support an unreasonable interference argument under s. 43.

this point to pertain mainly to the four March 2008 requests. I accept that having to process these four requests would negatively affect the Ministry's ability to respond to other applicants' requests in a timely way.

[28] For all these reasons, I am satisfied that the respondent's four requests from March 2008 unreasonably interfere with the Ministry's operations for the purposes of s. 43(a).

Conclusion on s. 43(a)

[29] I find that the respondent's four March 2008 requests are repetitious and unreasonably interfere with the Ministry's operations as contemplated by s. 43(a). I find that the four requests from the April to August 2008 period do not meet the s. 43(a) test.

[30] **3.4 What is the Appropriate Relief?**—The Ministry originally requested, as part of the relief it sought, that it not be required to respond to requests for records that the respondent had previously requested and received. After reviewing the respondent's arguments as to why her medical conditions sometimes lead to her requesting records under FIPPA a second time, however, the Ministry withdrew that part of its request for relief.

[31] The Ministry now asks for the following relief:

- a. The Ministry is authorized to disregard the respondent's existing requests and any access requests that may have been made by or on behalf of the respondent between the date of the Ministry's application under s. 43 and the date of the Commissioner's decision;
- b. The Ministry is authorized from this date to and including a date two years from the date of the Commissioner's decision to disregard any access requests in excess of one open access request made by or on behalf of the respondent at any one time and the Ministry is not required to spend more than 7 hours responding to each such request;
- c. The Ministry is entitled to determine what constitutes a single access request and in light of its s. 6(1) duties to the respondent, what is a single access request for the purpose of this above authorization;
- d. For the purposes of para. (c), an "open access request" is a request for records under s. 5 of the Act to which the Ministry has not, in light of its s. 6(1) duties to the respondent, responded under s. 8;
- e. As regards the two-year time limit under para. (b), the Ministry is entitled 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.²¹

²¹ Para. 1, reply.

[32] As I noted in Decision F06-03,²² 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 her or his own personal information,²³ 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.

[33] Depending on the circumstances, s. 43 decisions have provided the following types of relief: the public body may disregard current and outstanding requests; the public body may disregard requests for records that a respondent has already received; for a period of one or two years following the date of a decision, the respondent is limited to one open request at a time; the public body may determine what a request is; the public body need not spend more than seven hours responding to each such request; the public body may apply for further relief under s. 43, if the circumstances warrant it.²⁴

[34] I have considered the following circumstances in deciding on the appropriate remedy in this case:

- The respondent has ongoing live issues with the Ministry which are likely to continue
- The respondent is often asking for access to her own personal information and other information that she needs to pursue these live issues
- The Ministry automatically discloses to the respondent copies of records relevant to her various appeals, which means she need not request them under FIPPA and the Ministry does not re-disclose them under FIPPA
- The respondent has a history of resuming her practice of making repetitious and burdensome requests to the Ministry on the expiry of a s. 43 authorization or mediated agreement
- The time Ministry staff have spent processing the respondent's requests in the two years prior to this application and the interference with the Ministry's operations that would result from having to process the four outstanding requests from March 2008
- The wide-ranging, repetitious, overlapping nature of the respondent's requests which causes confusion and unnecessary duplication of effort

²² [2006] B.C.I.P.C.D. No. 6, at para. 69.

²³ In no case has the current Commissioner or an adjudicator authorized a public body to disregard a respondent's request for access to his or her own personal information for a year or more; see para. 70, Decision F06-03.

²⁴ See para. 71, Decision F06-03.

- The respondent's medical conditions which mean she finds it difficult to remember and keep track of her requests, and to handle and store records
- I have found that the four March 2008 requests meet the s. 43(a) test but not the April to August 2008 requests

[35] Previous s. 43 decisions have provided relief for existing requests and for any requests made under s. 5 of FIPPA between the time of a public body's application under s. 43 and the resulting decision. In light of the above circumstances, I conclude that this remedy is appropriate with respect to the four March 2008 requests and any subsequent requests, except for the respondent's four April to August 2008 requests that I found do not meet the s. 43 test.

4.0 CONCLUSION

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

1. The Ministry is authorized to disregard the respondent's four outstanding requests from March 2008 and any access requests made under s. 5 of FIPPA by or on behalf of the respondent between the date of the Ministry's s. 43 application and the date of this decision, except for the request of April 18, 2008, the request of April 22, 2008 and the two requests dated August 1, 2008.
2. For a period of two calendar years from the date of this decision, that is, until June 22, 2011, the Ministry is authorized to disregard any access requests in excess of one open access request made by or on behalf of the respondent at any one time, to which the following apply:
 - a. The Ministry is not required to spend more than 7 hours responding to each request.
 - b. The Ministry is entitled to determine what a single access request constitutes and, in light of its s. 6(1) duties to the respondent, what a single access request is for the purpose of this above authorization.
 - c. An "open access request" is a request for records under s. 5 of FIPPA to which the Ministry has not, in light of its s. 6(1) duties to the respondent, responded under s. 8.

[37] As noted, this authorization does not apply to the respondent's four requests from April to August 2008 which I found above did not meet the s. 43(a) test. Thus, if the Ministry has not already provided the respondent with the requested records under FIPPA or through another avenue, and if the

respondent still wishes to have access to them, the Ministry must process the four April to August 2008 requests as they are currently worded. However, if the respondent wishes to amend these four requests and the Ministry determines that any such amended requests constitute new requests under s. 5 of FIPPA, any such new requests are subject to para. 2 of the above s. 43 authorization.

[38] Respecting the two-year time limit under para. 2, the Ministry is entitled 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.

[39] As the Ministry withdrew its request for relief regarding requests for records the respondent has already received, I have not included relief for this aspect. However, I encourage the Ministry to explore creative ways of processing the respondent's future requests in a way which accommodates the respondent's needs and medical conditions and minimizes demands on the Ministry.

June 22, 2009

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File: F08-34737