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Decision F11-03

MINISTRY OF SOCIAL DEVELOPMENT

Jay Fedorak, Adjudicator

November 17, 2011

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Summary: The Ministry requested authorization to disregard two outstanding requests from the client, as well as other relief. The Ministry is authorized to disregard the requests on the grounds that they are repetitious and unreasonably interfere with the Ministry's operations. The Ministry is further authorized, for five years from the date of this decision, to disregard any future requests from the client 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; Decision F09-04, [2009] B.C.I.P.C.D. No. 15.

INTRODUCTION

[1] The Ministry of Social Development ("Ministry") is seeking relief from responding to multiple requests for records from an individual, who has been a client ("client") since 1994, and has made a large number of requests relating to her numerous applications for benefits. In previous decisions, the Office of the Information and Privacy Commissioner ("OIPC") has provided relief to the Ministry after finding that requests from the client were repetitious and systematic and unreasonably interfered with the Ministry's operations.

ISSUE

[2] The issue before me is whether I should authorize the Ministry to disregard the client's requests on the grounds that they are repetitious and unreasonably interfere with the Ministry's operations, for the purposes of s. 43(a).

DISCUSSION

[3] **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 client 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”.

Previous s. 43 applications

[4] The Ministry has applied for relief under s. 43 with respect to the same client on three previous occasions. Up to 2002, the client had made 48 requests comprising 200 separate sub-requests. At the time of that application, 13 requests (comprising 95 sub-requests) were outstanding. Former Commissioner Loukidelis granted relief under s. 43 in Auth[orization] (s. 43) 02-01¹ for a two-year period.

[5] At the expiry of this term in 2004, the client made “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. On that single occasion, the matter was resolved through mediation, and the resulting agreement ran from September 2005 to July 2006. The Ministry made another s. 43 application in April 2008. In June 2009, in Decision F09-04,² Adjudicator Francis granted relief, similar to that granted in 2002, for a two-year period. The circumstances of that case are almost identical to the present case.

[6] **Applicable Principles**—Auth. (s. 43) 02-01 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.

¹ [2002] B.C.I.P.C.D. No. 47.

² [2009] B.C.I.P.C.D. No. 15.

[7] 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.

[8] Relief under s. 43 is available for access requests made under s. 5 of FIPPA that meet certain criteria. FIPPA does not apply to questions posed by individuals seeking answers or to everyday client relations. It also does not apply to requests for information or routinely-available records.³ There is no need for relief under s. 43 when FIPPA does not apply.

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

Characteristics of the outstanding requests

[10] The client's most recent requests arise out of the client's disputes with the Ministry over her eligibility for benefits. These requests:

- are made up of numerous sub-requests;
- repeat previous requests for records the Ministry has already provided;
- involve large volumes of records; and
- are often unclear.

[11] The client also makes frequent, lengthy calls to the analyst about her requests.

[12] These characteristics are similar to the ones outlined in Decision F09-04.

Are the requests repetitious?

[13] The Ministry provided copies of the client's requests for the period 2009-2011, including the two outstanding requests that are the subject of this s. 43 application. The requests are similar in nature to many of her previous

³ See Auth. (s. 43) 04-01, [2004] B.C.I.P.C.D. No. 26, at para. 10.

requests and cover records that she has received in the past. I find that the requests are repetitious.

Unreasonable interference

[14] The Ministry makes the following arguments in support of its application for relief in the present case:

- the size and complexity of the client's requests impair the ability of the Ministry to respond to other requests; and
- clarifying the client's requests is a time-consuming, convoluted, complex and vague task.

[15] The responsible analyst in this case provided additional details about the client's interaction with the Ministry during the processing of her requests, which include:

- asking for and receiving assistance in making requests;
- making many sub-requests in one request;
- amending requests by fax and telephone frequently, including by adding new requests;
- re-ordering the priority of her requests frequently;
- calling the analyst many times to inquire about the status of her requests; and
- instructing the analyst to send records in separate packages arranged by time period.

[16] These arguments are similar to those the Ministry made in previous applications.

[17] I agree with the Ministry that the client's requests are broadly worded, wide-ranging and often vague. I accept the Ministry's evidence that the requests are difficult to process because it is difficult to tell what the client wants and it is necessary to compare new requests with old requests, to see whether and how they overlap and what the applicant has already received. I also accept the Ministry's evidence that the client continues to:

- make frequent, long telephone calls before and after a request is completed,

- change her requests and their order of priority,
- demand that the Ministry package records in certain ways; and
- request copies of her own requests and additional copies of records just sent.

[18] The results are to complicate the processing of her requests and increase the processing time needed, adding to the burden of processing the requests. Decision F09-04 found that these circumstances constituted an unreasonable interference in the operations of the Ministry.⁴

[19] For all these reasons, I am satisfied that, in this case, the client's requests unreasonably interfere with the Ministry's operations for the purposes of s. 43(a).

[20] **What is the Appropriate Relief?**—The Ministry asks for the following relief, similar to what it requested in Decision F09-04:

- The Ministry is authorized to disregard the client's existing requests and any access requests that may have been made by or on behalf of the client between the date of the Ministry's application under s. 43 and the date of the Commissioner's decision;
- The Ministry is authorized from this date to and including a date five 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 client at any one time;
- The Ministry is not required to spend more than 7 hours responding to each such request;
- The Ministry is entitled to determine what constitutes a single access request and in light of its s. 6(1) duties to the client, what is a single access request for the purpose of this above authorization; and
- For the purposes of the above, 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 client, responded under s. 8.

[21] As Adjudicator Francis noted in Decision F06-03,⁵ previous decisions on s. 43 have tailored any remedy to the circumstances of each case and have taken into account such factors as:

- a client's rights to her or his own personal information;
- whether there are any live issues between the public body and the client;
- whether there are likely to be any new responsive records;

⁴ Decision F09-04, paras. 25-28.

⁵ [2006] B.C.I.P.C.D. No. 6, at para. 69.

- the client's stated intentions;
- the nature of past requests; and
- other avenues of obtaining information in the past and future available to the client.

[22] The circumstances considered in Decision F06-03 are much the same here. In fact, it appears that little has changed since the Ministry received its first relief under s. 43 in 2002. The relationship between the client and the Ministry is unchanged. The nature of her requests and her behaviour remains the same. Given how long this process has been continuing, and the fact that there is no reason to expect that it will change in the future, it is reasonable to extend the period of relief to five years on this occasion, as the Ministry has requested.

[23] The Ministry has, however, requested that some new conditions be placed on the client. They can be summarized as follows:

- The client must specify exact records, where she expects them to be found and any other information that may assist in locating the records;
- The Ministry is not required to respond to any communication from the client, other than a properly filed request or a direct response to a communication from the Ministry seeking clarification and the client is prevented from contacting the Ministry for any other purpose; and
- If the client does not respond to a request for clarification within a reasonable time, the Ministry may close the file.

[24] I find that it would not be appropriate to grant this additional relief, as it is not necessary. This is because the Ministry already has the authority to take these, or equivalent, approaches without formal authorization from the OIPC under s. 43. There is already a requirement in s. 5 of FIPPA for applicants to provide sufficient detail for the public body to locate the records. I do not think it reasonable to expect the client to "specify exact records" in all cases. However, the Ministry does not have to conduct a search unless the client provides enough information for the Ministry to be able to locate the records without wasting time and resources. In cases where the client fails to provide the necessary clarification, I see nothing to prevent the Ministry from closing the file. In addition, there is no requirement in FIPPA for public bodies to respond to communications from applicants, other than as necessary for processing a formal request for records under s. 5 or a request for correction of personal information under s. 29.

CONCLUSION

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

1. The Ministry is authorized to disregard the client's two outstanding requests from June 2009 and any access requests by or on behalf of the client, between the date of the Ministry's s. 43 application and the date of this decision.
2. For a period of five calendar years from the date of this decision, that is, until November 17, 2016, the Ministry is authorized to disregard any access requests in excess of one open access request made by, or on behalf of, the client 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 client, what a single access request is for the purpose of the 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 client, responded under s. 8.

[26] Respecting the five-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 client.

November 17, 2011

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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