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Decision F12-01

CITY OF ROSSLAND

Jay Fedorak, Adjudicator

April 18, 2012

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Summary: The City requested authorization to disregard four outstanding requests from the client, as well as other relief. The adjudicator found that the requests were not repetitious or systematic and dismissed the application of the City.

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

Authorities Considered: B.C.: Authorization (s. 43) 99-01, (unreported); 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 City of Rossland (“City”) is seeking relief from responding to requests from a former City councillor (“former councillor”) for records under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The City states that he has made more than 90 requests since 2003. The City submits that four outstanding requests are systematic and repetitious and unreasonably interfere with the City’s operations.

ISSUE

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

DISCUSSION

[3] **Applicable Principles**— 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] Auth. (s. 43) 02-01 discussed the interpretation and application of s. 43(a) of FIPPA. It is first necessary to determine whether the requests are repetitious or systematic. If they meet either of those two criteria, it is necessary to determine whether responding to the requests would unreasonably interfere in the operations of the public body.¹

[5] Repetitious requests are requests that are made two or more times. Systematic requests are those made according to a method or plan of acting that is organized and carried out according to a set of rules or principles.²

[6] I note that s. 43(a) 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

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

Description of the outstanding requests

[8] The outstanding requests read as follows:

1. A list of all the businesses, city facilities (including parks), multi-family residential buildings, public and institutional properties that did not have water meters installed as of the end of 2011;
2. Copies of the Statement of Changes in Reserve Fund Balances for 2011;

¹ [2002] B.C.I.P.C.D. No. 37, at para. 16.

² Authorization (s. 43) 99-01, (unreported).

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

3. Reconsideration for copies of all the letters, opinions, and/or reviews from the City's lawyers referred to in the memo from [an individual] to Mayor and Council dated Feb. 9, 2011; and
4. Further request for information (emails) in relation to harassment charge, dated January 17, 2012.

Are the requests repetitious?

[9] The City has not specifically addressed the issue as to why it believes any of the requests are repetitious. I have reviewed all of the former councillor's requests back to 2003. Request #1 is the first relating to the installation of water meters. Request #2 is the first regarding Reserve Fund Balances. Previous requests, while numerous, cover a wide range of disparate topics. None of the previous requests relate to the topics of Request #1 or Request #2 and, therefore, neither can be said to be repetitious.

[10] Requests #3 and 4 do not appear to be new requests. In fact, they are not even formal requests at all. They appear to be correspondence relating to how the City had responded to two of his previous formal requests. In his letter relating to #3, he asks the City to reconsider its decision to withhold all of the information on the grounds that it is subject to solicitor-client privilege. In his letter relating to #4, he acknowledges the receipt of records but insists that there should be more records than he was provided with. As a result, these do not constitute new requests that could be said to be "outstanding" requests for the purposes of s. 43, but rather complaints about how the City handled his previous requests. Therefore, I do not need to consider whether these requests are repetitious.

[11] In summary, I find that Request #1 and Request #2 are not repetitious and Request #3 and Request #4 are not requests for the purpose of FIPPA.

Are the requests systematic?

[12] The City has not specifically addressed the issue as to why it believes the requests are systematic. I have reviewed all of the former councillor's requests back to 2003. I cannot see any pattern relating to Requests #1 and #2 and the previous requests that would lead me to conclude that the requests are systematic, as previous decisions have interpreted them. As I note above, previous requests, while numerous, cover a wide range of disparate topics. I cannot see any method or plan connecting these requests.

[13] Therefore, I find that Request #1 and Request #2 are not systematic.

Unreasonable interference

[14] As the City has failed to establish that the requests are repetitious or systematic, I do not need to determine whether responding to them would unreasonably interfere with the operations of the City.

CONCLUSION

[15] In light of the foregoing, I make the following order:

1. I dismiss the application of the City for relief under s. 43 of FIPPA for responding to the requests of the former councillor.
2. I order the City to complete the processing of Request #1 and Request #2 of the former councillor, in accordance with the timelines required by s. 7 of FIPPA.

April 18, 2012

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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