



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

Order F17-18

CITY OF WHITE ROCK

Elizabeth Barker
Senior Adjudicator

April 12, 2017

CanLII Cite: 2017 BCIPC 19
Quicklaw Cite: [2017] B.C.I.P.C.D. No. 19

Summary: The City applied for authorization to disregard certain of the respondent's requests for records under s. 43(a) and (b) of FIPPA. The adjudicator found that 14 of the 20 outstanding requests were systematic or repetitious and responding to them would unreasonably interfere with the City's operations, so the City was authorized to disregard them under s. 43(a). The adjudicator found that another two requests were frivolous and they could be disregarded under s. 43(b). The City was also authorized to disregard the respondents' future access requests, in excess of one open access request at a time, for a period of two years.

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

Authorities Considered: B.C.: Auth. (s. 43) 99-01 (December 22, 1999); Auth. (s. 43) 02-01 (September 18, 2002); Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Order F10-09, 2010 BCIPC 14 (CanLII); Decision P05-01, (May 27, 2005). All decisions can be found on the OIPC's website at <https://www.oipc.bc.ca/decisions>.

INTRODUCTION

[1] This inquiry is about the City of White Rock's application for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to disregard the respondent's outstanding access requests and any of his future access requests. In the alternative, the City requests that the Commissioner authorize it to disregard all but one of the respondent's access

requests at a time and to authorize it to spend no more than three hours responding to each request.

[2] At the time the City made its s. 43 application,¹ there were 17 outstanding access requests. However, before the Notice of Inquiry was issued, the respondent made another three requests. Therefore, I am considering 20 outstanding requests.

ISSUES

[3] The issues in this case are whether:

1. The respondent's outstanding requests are repetitious or systematic, and if so, do they unreasonably interfere with the City's operations under s. 43(a) of FIPPA?
2. The respondent's requests are frivolous or vexatious under s. 43(b) of FIPPA?
3. If the answer to either question above is "yes", what relief is appropriate?

[4] Previous decisions have established that the applicant public body has the burden of proof under s. 43.²

DISCUSSION

Applicable Principles

[5] Section 43 of FIPPA states:

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

[6] The function and importance of s. 43 were discussed by former Commissioner Loukidelis who said the following about its role in the scheme of access rights created under the FIPPA:

¹ The application is dated October 4, 2016.

² See: Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57 and Order F10-09, 2010 BCIPC 14 (CanLII).

... Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act. Section 43³ exists, of course, to guard against abuse of the right of access....³

[7] In order to merit relief under s. 43(a), the requests must be repetitious or systematic and responding to them must unreasonably interfere with the public body's operations. A repetitious request is one that is made over again.⁴ A systematic request is characterized by a system, which is a method or plan of acting that is organized and carried out according to a set of rules or principles.⁵

[8] As regards s. 43(b), the following non-exhaustive list of factors should be considered when determining whether a request is frivolous or vexatious.⁶

- A frivolous or vexatious request is one that is an abuse of the rights conferred under the Act.
- The determination of whether a request is frivolous or vexatious must, in each case, keep in mind the legislative purposes of the Act, and those purposes should not be frustrated by an institution's subjective view of the annoyance quotient of particular requests.
- A "frivolous" request is one that is made primarily for a purpose other than gaining access to information. It will usually not be enough that a request appears on the surface to be for an ulterior purpose – other facts will usually have to exist before one can conclude that the request is made for some purpose other than gaining access to information.
- The class of "frivolous" requests includes those that are trivial or not serious.
- The class of "vexatious" requests includes those made in "bad faith", *i.e.*, for a malicious or oblique motive. Such requests may be made for the purpose of harassing or obstructing the public body.
- The fact that one or more requests are repetitive may, alongside other factors, support a finding that a specific request is frivolous or vexatious.

³ Auth. (s. 43) 99-01 (December 22, 1999) at p. 7.

⁴ *Ibid* at p. 3.

⁵ Auth. (s.43) 99-01, *supra* note 2, at p.3; Auth. (s. 43) 02-01 (September 18, 2002), at para 16; Decision P05-01, (May 27, 2005), at para. 11.

⁶ Auth. (s. 43) 02-02, (November 8, 2002), at pp. 4-8.

[9] I will apply the above principles in my analysis of the facts of this case.

Parties' submissions

[10] The City submits that the respondent's access requests unreasonably interfere with its operations due to their repetitious and systematic nature. It also says that they are frivolous and vexatious.

[11] The City seeks authorization to disregard 20 access requests and any access requests that the respondent may make in the future. In the alternative, the City asks for authorization to limit the respondent to one open access request at a time and to refuse to spend more than three hours responding to any one access request.

[12] The respondent says that the City's application is without merit and is frivolous, vexatious and intended solely as a means of improperly exempting itself from providing records whose subject matter is of a substantial public interest. He disputes that responding to his requests has interfered with the City carrying out its operations or impeded staff conducting their duties.

[13] He says that at no time prior to this s. 43 application did the City speak to him about what they believed to be his problem causing behaviour in order to informally resolve their concerns. He says that no one told him that copying multiple people on his requests was problematic. He explains that he wanted to give those individuals advance notice so they could promptly get to work searching for records. That way he would not have to wait for the City's Freedom of Information Clerk to get around to communicating his request to them. He also disputes that his requests are "hard to discern and contain commentary unrelated to his access requests" as the City alleges. He points out the City does not provide copies of his outstanding requests to back up what it says about them.

[14] He indicates that any past difficulty in processing his requests was not due to him but was due to the City's Freedom of Information Department being substantially understaffed and under resourced in 2015 and 2016. He says that many of his requests in 2015 and 2016 were ignored or neglected. He also says that any increase in access requests to the City was due to the elimination of public question period at council meetings. He says that this means that citizens like himself must make access requests to obtain information.

Nature of the requests

[15] The City provides a chart summarizing 36 access requests made by the respondent between January 1 and October 13, 2016. The City indicates that 20 of those 36 requests are still outstanding. The outstanding requests are dated June 18, 2016 and later. The chart contains the date, file number and a summary of the request, and whether it is concluded or still outstanding. The requests all

relate to municipal business, such as water testing, employee satisfaction surveys, road signs, bus shelters, policy and budgetary matters. The City provides a copy of only two of the 20 outstanding access requests.⁷

[16] It is apparent to me that the chart does not include all of the access requests the respondent made in 2016 because the City provides copies of past requests that are not listed in the chart.⁸ The respondent also notes that the chart does not list all of his access requests. However, the respondent does not dispute that it correctly summarizes those that it does list.

Past access requests

[17] Before turning to the outstanding requests, I will say a bit about the respondent's concluded access requests, many of which the City provides in the City Clerk's affidavit evidence. I have not been asked to decide if the concluded access requests were frivolous, vexatious, repetitious or systematic. However, the evidence about the nature of the past requests provides important context for understanding the respondent's outstanding requests. Further, I must consider past requests when deciding whether the outstanding requests are repetitive or systematic.⁹

[18] Most of the respondent's requests to the City are difficult to understand because they are lengthy, complex and contain incomplete sentences, ellipses, asides and what seem to be unattributed quotes. In general, his communications incorporate his earlier email strings as well as digressions and links to the internet. He references what he said in previous emails and PowerPoint presentations before City Council. In most of the respondent's requests, it is very difficult to figure out if there even is a request for records and, then, what it is.

[19] The evidence the City provides satisfies me that in many of his past requests, the respondent was following a method or systematic approach. I can see that he made high volume access requests in quick succession, in essence barraging the City with his requests. The respondent demonstrates no apparent regard for the impact on the City of those serial requests. For instance, within a three hour period on March 22, 2016, he made five separate access requests related to the budget.¹⁰ One May 2016 weekend he sent seven multipart access requests related to a specific topic, and two weekends later he sent nine multipart access requests about another matter.¹¹ In each of these series of requests, the records relate to the same events and his practice is to break the requests up into a number of parts. Also, in several emails, the respondent

⁷ City files: 2016-84 and 86.

⁸ For example, the City Clerk's affidavit, exhibit N. The dates of some of the records provided do not match those listed in the chart.

⁹ Auth. (s. 43) 02-01, *supra* note 4, at para. 24.

¹⁰ City Clerk's affidavit, exhibit B.

¹¹ City Clerk's affidavit, exhibits C and D.

protests the City's attempt to consolidate a series of 15 access requests he sent during a two week period.¹² In my view, many of those requests are repetitious and differ only slightly so could easily have been combined with a savings in effort and time for the City staff. In another email, when the City quotes him a fee for processing a large request for a staff member's emails, he tells the City that he has decided to break the request into two smaller requests.¹³

[20] In my view, the way the respondent structures his past requests and the language he uses follow a discernible and repeated method or pattern. He writes at length, expressing his opinions and rebuking the City for what he sees as its failures regarding funding and various programs and activities. He incorporates multiple questions, includes and repeats his previous emails, provides commentary and challenges the City's decisions. His request for records is often difficult to discern in the midst of all of this.

[21] Many of the concluded requests also suggest that the respondent is not really seeking records but rather is challenging the City. For instance, after criticizing the City for failing to designate money for certain matters, he asks for records proving that money has been designated to pay for such matters.¹⁴ It seems to me that this request is made to hammer home his point that there was no designation of funds. In another series of emails, he does the same about public education regarding water quality.¹⁵ In effect, he is asking in a rhetorical way for records he knows do not exist in order to prove his point that the City has not done what he thinks it should have done.

Frivolous requests, s. 43(b)

[22] I will begin first with the only two outstanding requests that the City provides for me to review (*i.e.*, 2016-84 and 86). For the reasons that follow, I am persuaded that these two requests are frivolous, and I authorize the City to disregard them under s. 43(b).

[23] In one, the respondent asks for a copy of a video of a City council meeting posted two years earlier. Apparently, the video was available on the City's website, but as the link to the video was broken on the day that respondent looked, he made an access request. The website link was fixed the next day. The City told the respondent that the computer company retained to handle such matters said that there were technical issues the day he tried to use the link. The City's materials do not say if the respondent still wants access to a copy of the video now that the website link has been repaired. However, given that the City is seeking relief under s. 43 for this request, I assume that the respondent has

¹² City Clerk's affidavit, exhibit N.

¹³ City Clerk's affidavit, exhibit O.

¹⁴ Requests 2016-35 and 36.

¹⁵ Request 2016-38.

not withdrawn this request. I find that this request for a video that is accessible on the City's public website is frivolous.

[24] The second outstanding access request that the City provides for my review is one the respondent made the day after his request for the video. He asks for all communications between the City and the software company that relate to the broken link to the video. From the context of the request and what is said in the related communications, it seems to me that the respondent makes the request to show that he does not believe what the City staff say about the broken link. I am satisfied that this request is made for a purpose other than a good faith and genuine desire to access information and that it is also frivolous.

Repetitious or systematic requests, s. 43(a)

[25] I am also persuaded that 14 of the outstanding requests are repetitious or systematic. Even without those actual outstanding requests before me, there is sufficient information in the City's chart for me to make a decision in that regard. As previously stated, the respondent does not dispute that the chart correctly summarizes those that it does list. Therefore, I am satisfied that the chart properly describes the requests.

[26] Some of the requests are part of a series made in quick succession for similar and sometimes overlapping information. They have only minor differences, so that no two are identical. They are as follows:

- On July 29, the respondent makes two separate access requests for water test results for arsenic and manganese for different date ranges.¹⁶
- On August 2, he repeats this request but asks for all such records without a date range.¹⁷ On October 11, he makes two requests for the same information again but for different date ranges.¹⁸
- On July 29, he makes two, four-part requests, each for records related to water chlorination testing.¹⁹
- On August 24 and 25 he sends three requests for various records related to a May 15, 2016 fire event.²⁰ On October 13, he again requests records about that event.²¹

[27] I find that these requests are systematic because the respondent is clearly following a method of making a series of requests within a short time frame for records about the same event, but intentionally breaking his requests into parts. While the City speculates that he does that to reduce fees, I have insufficient

¹⁶ Requests 2016-103 and 104.

¹⁷ Requests 2016-109.

¹⁸ Requests 2016-131 and 132.

¹⁹ Requests 2016-105 and 106.

²⁰ Requests 2016-120,121 and 122.

²¹ Request 2016-134.

information to determine his reasons for following this method. Not knowing his motive, however, does not detract from my determination that the requests reveal a pattern or systematic approach. I also consider that the frequency and volume of these requests reveal a method of barraging the City with access requests on a particular topic. This frequency and volume of requests is an approach that is also seen in the respondent's concluded requests. In conclusion, I find that requests 2016-103, 104, 105, 106, 109, 120, 121, 122, 131, 132 and 134 are systematic in nature.

[28] Further, I find that several of the outstanding requests are repetitious. They are as follows:

- On July 29, the respondent asks for copies of federal grant applications for arsenic and manganese removal plants.²² On August 2, he repeats this request.²³
- In a one month period between July and August, he makes two requests²⁴ for records, which were already part of an earlier concluded request.²⁵ All three requests are for records that he complains were missing from the City's response to another individual's access request.

[29] These are clearly requests for records that have already been requested one or more times in the past. For clarity, the requests that I find are repetitious are 2016-82, 108 and 110 (but not 107).

Summary of findings: Nature of the outstanding requests

[30] In summary, the City has not established that four of the outstanding requests are frivolous, vexatious, systematic or repetitious, so its application to disregard them under s. 43 is denied.²⁶

[31] However, I find that two of the outstanding requests are frivolous and the City is authorized to disregard them under s. 43(b).²⁷

[32] I also find that 14 of the outstanding requests are systematic or repetitious.²⁸ I will now consider below whether responding to them would unreasonably interfere with the City's operations.

²² Request 2016-107.

²³ Request 2016-110.

²⁴ Requests 2016-82 and 108.

²⁵ Request 2016-49. City Clerk's affidavit exhibit H (p. 62-63).

²⁶ Requests 2016-71, 99, 102 and 107.

²⁷ Requests 2016-84 and 86.

²⁸ Requests 2016-82, 103, 104, 105, 106, 108, 109, 110, 120, 121, 122, 131, 132 and 134.

Unreasonable interference

[33] The City provides evidence about the past impact of processing the concluded requests. The City Clerk explains that White Rock is a small municipality with limited resources, and the high volume of requests from the respondent unreasonably interferes with its ability to process other access requests. She says that the respondent's requests account for approximately 27% of the 135 access requests the City received between January and October 2016.

[34] The City Clerk also says the City does not have detailed records of the time it took to respond to the 16 requests it did process, but she estimates that staff spent at least 96 hours doing so.²⁹ She says that this is a conservative estimate that does not account for telephone conversations or follow-up. She states that the respondent's requests take significantly longer to process than typical requests and interfere with the day-to-day operations because:

- he sends multiple requests at the same time or within a very short period of time;
- he requests a high volume of records often spanning a multi-year period;
- he includes multiple pages of unnecessary content and commentary in his access requests;
- he forwards his requests to multiple City staff and officials leading to duplication of work;
- it takes time to review what he sends in order to see if it even contains an access request.

[35] The City Clerk says that, in the past, handling access to information requests was just one of the duties assigned to a single staff person. She says that in June 2016 the City had to hire a full-time Freedom of Information Clerk because of the high volume of access requests being made by the respondent. She also says that between June 18 and August 24 alone, the respondent made 20 requests. (I note that the chart indicates that the City responded to three of those and then another three outstanding requests were made after August 24).

[36] The City Clerk says that because the respondent sends his requests not only to the Freedom of Information Clerk but also to other staff, as well as the Mayor and Council, it interferes with their day-to-day operations by creating confusion about who is required to respond and unnecessary duplication of effort.

[37] The respondent says that I should doubt the veracity of what the City says about how responding to his requests in the past interfered with City's

²⁹ City Clerk's affidavit, para. 8.

operations. That is because it does not provide affidavits with specific details from the individuals who actually received and processed his requests about the impact it had on them. He also disputes that responding to his requests impeded responses to other access applicants. He also says his outstanding requests cannot be judged because the City did not provide them here.

[38] While the outstanding requests as they are recorded on the chart are not difficult to understand, it seems to me that this is the result of work on the part of the City to summarize them. The respondent's usual manner of communicating his access requests is well demonstrated by the majority of the access requests that were provided in evidence. Very few of those requests are a straightforward and clearly worded request for records. In most, trying to determine if there even is a request for records, let alone what exactly is being requested, is difficult. It requires much analysis to sift through and untangle the unrelated material in his emails. In many, he also copies City staff and the mayor and council. There is nothing to suggest that the respondent's usual communication style, as reflected in his concluded requests, changed in any way during the ten month period reflected in the chart. Therefore, I am persuaded by the City's evidence that the respondent's outstanding access requests share the same problematic characteristics as his concluded requests.

[39] The City does not say how many hours it foresees would be required to respond to the respondent's outstanding access requests. However, it provides evidence that it took 96 hours to respond to 16 of his concluded requests. It seems likely that that it would take roughly the same amount of time if the City were required to respond to the systematic and repetitious requests. It is also evident that eight of the outstanding requests will certainly involve more work to process than some of the others because they are multipart requests covering a lengthy time period.³⁰

[40] The time and resources available to respond to access requests is finite, and the respondent is not the only access applicant requiring the City's attention. It is evident to me that over an extended period of time, the respondent has made an excessive number of access requests. On more than one occasion, he sent a barrage of requests. Obviously, the time spent responding to his high volume of requests negatively impacts the rights of other access applicants as it diminishes the amount of public resources available to respond to them. His 36 requests amount to 27% of the total requests received during a ten month period, and the City has already spent approximately 96 hours processing 16 of them. The City had to hire a new staff person to handle the increased volume of work due to his requests. It appears to me that City has devoted more than an ample amount of time and resources to process this single individual's access requests.

³⁰ Those eight are about water testing results: 2016-103, 104, 105, 106, 109, 131, 132 and 134.

[41] I have found that four of the respondent's access requests are not frivolous, vexatious, systematic or repetitious, and the City's application to disregard them under s. 43 is denied. It will have to use its time and resources to process those four requests. In my view, however, it would unreasonably interfere with the City's operations to require it to also respond to the 14 repetitious and systematic access requests. Therefore, I authorize the City to disregard the 14 repetitious and systematic access requests under s. 43(a).³¹

Future relief

[42] The City also requests authorization to disregard all of the respondent's future requests. In the alternative, it seeks authorization to limit the respondent to one open access request at a time and to refuse to spend any more than three hours responding to any one access request.

[43] In my view, it would be too drastic to authorize the City to indefinitely disregard all of the respondent's future requests when it is not known whether responding to them would cause unreasonable interference with the City's operations. However, I do find that some relief regarding responding to future requests is appropriate in this case. That is because the respondent has demonstrated a well-established practice of making multiple access requests in quick succession with little regard for the impact of his requests on the City. More often than not his requests are broad, multipart, full of unrelated commentary and complex to understand. Based on what I glean from the respondent's submissions, there is no indication that the frequency and volume of his requests are likely to diminish in the future. His requests for records relate to the full range of City business and are not limited to any soon to be concluded matter.

[44] Therefore, after the City responds and provides its decision regarding the four access requests that I find are not frivolous, vexatious, systematic or repetitious (*i.e.*, 2016-71, 99, 102 and 107), it is authorized to respond to only one of the respondent's open access requests at a time. An open access request is a request for which the City has not yet provided its decision under Part 2 of FIPPA. Given the respondent's practice of making multipart requests, the City has the discretion to determine what is "one" request.

[45] However, it is not necessary or warranted to have this "one open request only" restriction continue indefinitely, so it will end two years after the date of this order. Also, in light of the above authorization to disregard all but one open access request at a time, I do not find it necessary to authorize the City to limit how many hours it spends responding to a request. Section 75 of FIPPA

³¹ For clarity, the 14 requests are: 2016-82,103, 104, 105, 106, 108,109, 110,120, 121, 122, 131, 132 and 134.

provides that under certain conditions a public body may charge an applicant a fee for more than three hours of time spent processing a request.

CONCLUSION

[46] For the reasons provided above, I authorize the following under s. 43 of FIPPA:

1. The City is authorized to disregard requests 2016-82, 84, 86, 103, 104, 105, 106, 108,109, 110,120, 121, 122, 131, 132 and 134.
2. After the City responds and provides its decision under s. 8 of FIPPA to requests 2016-71, 99, 102 and 107, it is authorized, for a period of two years from the date of this order, to disregard all access requests made by, or on behalf of, the respondent over and above one open access request at a time.
3. For the purposes of the above, an “open access request” is a request for records under s. 5 of the FIPPA to which the Ministry has not responded under s. 8 of FIPPA.
4. The City may determine what is “one” access request for the purposes of this authorization.

April 12, 2017

ORIGINAL SIGNED BY

Elizabeth Barker, Senior Adjudicator

OIPC File No.: F16-67437