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Order F17-36

**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
(TRANSLINK)**

Celia Francis
Adjudicator

September 11, 2017

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Summary: TransLink requested authorization to disregard four outstanding requests from the respondent under ss. 43(a) and (b) of *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that TransLink had not established that the requests would unreasonably interfere with its operations (s. 43(a)) or that they were frivolous or vexatious (s. 43(b)). The adjudicator found that TransLink was not authorized to disregard the four outstanding requests under either section.

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

Authorities Considered: BC: Order F17-18, 2017 BCIPC 19 (CanLII); Auth. (s. 43) 99-01 (December 22, 1999), <https://www.oipc.bc.ca/decisions/170>; Auth. (s. 43) 02-01 (September 18, 2002) (unreported), <http://www.oipc.bc.ca/decisions/171>; Decision F06-12, 2006 CanLII 42644 (BC IPC); Order F13-18, 2013 BCIPC 25 (CanLII); Decision F08-09, 2008 CanLII 57361 (BC IPC); Order F13-16, 2013 BCIPC 20 (CanLII); Order F17-18 2017, BCIPC 19 (CanLII).

INTRODUCTION

[1] The South Coast British Columbia Transportation Authority (TransLink) has requested authorization to disregard four requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The requests were from an individual (the respondent) for video recordings of himself made by TransLink's

closed circuit television (CCTV) system. In TransLink's view, the requests would unreasonably interfere with its operations because they are systematic or repetitious within the meaning of s. 43(a) of FIPPA. It also submits that the requests are frivolous or vexatious within the meaning of s. 43(b). It has also asked for relief from any future access requests that the respondent may make, specifically that it not have to respond to more than one request at a time, for a period of two years.

ISSUES

[2] The issues before me are these:

1. Are the respondent's four outstanding requests repetitious or systematic and, if so, would they unreasonably interfere with TransLink's operations, for the purposes of s. 43(a)?
2. Are the respondent's requests frivolous or vexatious, for the purposes of s. 43(b)?
3. If the answer to either 1 or 2 is yes, what relief, if any, is appropriate?

[3] Past orders and decisions on s. 43 have placed the burden of proof on the public body.¹

DISCUSSION

Background

[4] TransLink implemented a CCTV system on its buses in 2009 with a view to: enhancing customer service; improving safety and security of its passengers and drivers; and assisting in the investigation of claims, accidents and on-board incidents. Approximately 900 of its 1,400 buses have CCTV systems. A regular bus has six on-board cameras and an articulated bus has eight. The cameras are positioned to record the front of the bus, the doors and the interiors. A digital video recorder on the bus records the audio and visual images and retains them for seven days, after which they are overwritten.²

[5] TransLink has one security employee (investigator) responsible for processing internal and external requests for video recordings.³ Upon receiving a request, the investigator reviews the video captured by the cameras

¹ For example, Order F17-18, 2017 BCIPC 19 (CanLII).

² TransLink's initial submission, paras. 2-3. Affidavit of TransLink's Information Access Co-ordinator, para. 3; Affidavit of TransLink's Transit Security investigator, para. 3.

³ Internal requests are primarily from Transit Police, TransLink's claims department and Transit Security's operations department. External requests include requests from external police departments and FIPPA requests; TransLink's initial submission, paras. 3, 5; investigator's affidavit, paras. 2, 4.

to determine if it is responsive to the request. After further processing, he typically provides a two-minute video clip to the requester. In the case of FIPPA requests, the investigator uses software to mask the identities of any third parties who appear in each of the recordings.⁴

Application of s. 43

[6] 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.

[7] Former Commissioner Loukidelis has discussed the function and importance of s. 43 and had the following to say about its role in the scheme of access rights created under FIPPA:

... 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 43 exists, of course, to guard against abuse of the right of access....⁵

[8] In order to merit relief under s. 43(a), the requests must be repetitious or systematic and they must unreasonably interfere with the public body's operations. A repetitious request is one that is made over again.⁶ 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.⁷

⁴ TransLink's initial submission, para. 4, 7-8; investigator's affidavit, paras. 6-9.

⁵ Auth. (s. 43) 99-01 (December 22, 1999) at p. 7.

⁶ Auth. (s. 43) 99-01 at p. 3.

⁷ Auth. (s. 43) 99-01, at p.3; Auth. (s. 43) 02-01 (September 18, 2002), at para 16.

[9] The following non-exhaustive list of factors should be considered when determining whether a request is frivolous or vexatious for the purposes of s. 43(b):⁸

- A frivolous or vexatious request is one that is an abuse of the rights conferred under FIPPA.
- The determination of whether a request is frivolous or vexatious must, in each case, keep in mind FIPPA's legislative purposes and those purposes should not be frustrated by an institution's subjective view of the annoyance quotient of particular requests or that the purpose for requesting the information is not important or apparent to the public body.
- 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, without merit 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.

[10] I apply below these principles in analyzing the parties' submissions.

Chronology of respondent's requests

[11] TransLink said that, prior to 2015, the respondent made three FIPPA requests concerning incidents on the transit system.⁹ It said that, in 2015, the respondent's requests "increased significantly" in frequency and scope, totalling another 22 by the end of 2016. TransLink said that most of the requests were for video of the respondent "travelling without incident on specific buses" and that many were for video covering the entire duration of the respondent's trip, which could be over 40 minutes.¹⁰

[12] TransLink said that, when he made his requests, the respondent typically provided a physical description of himself and sometimes of others (*e.g.*, other passengers or the bus driver), the name of the bus route and the stops where he boarded and left the bus. TransLink said the requests, which spanned the

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

⁹ He made two in 2011 and one in 2014.

¹⁰ TransLink's initial submission, paras. 12-14; Information Access Co-ordinator's affidavit, paras. 3-4.

period from November 2015 to December 2016, included requests for the following:¹¹

- videos of the respondent interacting with other passengers or with a bus driver;¹²
- videos of other passengers;¹³
- videos of bus trips which passed without incident for 30 or 40 minutes;¹⁴
- copies of all video requests made by police or security organizations to TransLink, which happened to capture images of himself;¹⁵
- requests for which there were no responsive records;¹⁶
- videos of incidents that happened outside a bus.¹⁷

[13] TransLink said that, because a number of the respondent's requests were for videos of bus rides of up to 45 minutes, it began to ask the respondent to request no more than 10 minutes of video at a time and to identify an incident that occurred on the bus. TransLink told the respondent that processing requests for more than five to ten minutes of video is time-consuming and would place an unreasonable burden on its staff. It explained that this was because of the need to review video recordings from a number of different camera angles and to mask the identities of other passengers on the bus. In response, the respondent began to request videos of lengthy bus rides, broken into 10-minute segments. In some of these cases, TransLink nevertheless released an entire video.¹⁸

¹¹ The information in this paragraph on the respondent's requests is drawn from TransLink's initial submission, paras. 17-45, the Information Access Co-ordinator's affidavit, paras. 25-46, and its exhibits.

¹² For example, in one case, the respondent said the bus driver did not stop for him. In another, he said another passenger was "verbally abusive" to him. In another, he said a group of people got on the bus and that one of them stepped on him. TransLink said it provided him with copies of these videos, although it said they did not always reveal the alleged behaviour.

¹³ The respondent made a number of separate requests for videos of other passengers drinking what he thought was alcohol.

¹⁴ For example, the respondent requested a video of a bus ride which showed him boarding the bus, sitting down and leaving the bus 37 minutes later.

¹⁵ In this case, TransLink told the respondent it had no way of determining if the respondent appeared in such videos without reviewing them all which, it said, was not feasible. It appears that the respondent did not pursue this request.

¹⁶ For example, in one case, the respondent asked for video of himself riding a community shuttle but these vehicles are not equipped with video cameras. In another, the respondent did not appear in any recordings taken on the 40 minute bus trip he specified in his request. In another, more than seven days had passed since the specified bus trip.

¹⁷ For example, in one case, the respondent requested videos from nearby buses showing an incident in which he said a vehicle almost collided with him and then crashed.

¹⁸ TransLink's initial submission, paras. 18, 21, 25, 31, 33; Information Access Co-ordinator's affidavit, paras. 8-10, 14, 23, 28, 30, 40.

[14] TransLink has responded to all of the respondent's requests, except for the four requests that are the subjects of its s. 43 application. There is no indication that the respondent has made any FIPPA requests since December 2016.

Requests at issue

[15] The respondent made three requests in February.¹⁹ After initial attempts to "clarify" these requests, in the manner discussed above,²⁰ TransLink said that it did not hear from the respondent again until early May 2016, when he asked why TransLink had not responded to his three February requests. TransLink reiterated that it was awaiting clarification of the requests and asked that he request no more than 10 minutes of video in each case. The respondent did not respond but made a new request on May 13, 2016 in which he asked for a video of a 28-minute bus ride. TransLink again attempted to "clarify" this request. TransLink said this issue also remained "unresolved".

[16] In late May 2016, TransLink received notice that the respondent had complained to the Office of the Information and Privacy Commissioner that TransLink had not responded to his four requests of February and May 2016. TransLink said that, as of January 2017, the investigation of this complaint was still underway.²¹ There is no indication in the material before me of the outcome of this complaint.

[17] On December 20, 2016, the respondent made three more requests. TransLink eventually responded to all of them. TransLink confirmed in its March 2017 inquiry submission that, although it had initially included two of the December 20, 2016 requests in its s. 43 application, it is now requesting relief under s. 43 only for the four February and May 2016 requests.²²

Would the requests unreasonably interfere with TransLink's operations?

[18] TransLink said that the respondent's four outstanding requests are repetitious and, in particular, systematic, and that they would unreasonably interfere with its operations. I have decided that it is not necessary to consider whether the requests are repetitious or systematic because, even if they are,

¹⁹ The respondent made two requests on February 20, 2016 and one on February 23, 2016. They were for videos of a 37-minute bus ride, a bus ride of unspecified length and a 20-minute bus ride.

²⁰ In response, the respondent said that, in one case, another passenger had put his feet on the bus seat. The respondent did not say what if any "incidents" he considered were captured by the other two February 2016 requests.

²¹ Affidavit of TransLink's Information Access Co-ordinator, para. 16.

²² The information on the "requests at issue" is drawn from TransLink's initial submission, paras. 17-22 and 45, and from the affidavit of TransLink's Information Access Co-ordinator, paras. 7-16 and 44-46.

I have concluded that they would not unreasonably interfere with TransLink's operations.

TransLink's submission

[19] TransLink said that all its other FIPPA applicants make single requests for videos of specific incidents and that these videos are typically under five minutes each.²³ It said that it responds to about four FIPPA requests a week, usually for five minutes of "incident-based" video each. It said that, where there is responsive video, processing each of these FIPPA requests typically takes its investigator 1½ hours and that this represents about 16% of his weekly workload.²⁴

[20] TransLink said that, by contrast, the respondent makes multiple access requests which are "not incident-based" and are typically for longer periods, from 14-40 minutes each. TransLink added that processing the respondent's requests takes much longer than other requests for videos. Its investigator said that it typically takes him 2½ hours to process each of the respondent's requests and sometimes up to eight hours. Moreover, TransLink said, the respondent tends to make three requests within a short time which makes it difficult for its investigator to secure and process the responsive videos in a timely way. TransLink said this "significantly disrupts" its investigator's work schedule and compromises his ability to perform his other duties. TransLink said processing the respondent's requests in 2016 took its investigator approximately 50 hours. The investigator estimated that processing the four outstanding requests would take him more than 20 hours.²⁵

Respondent's submission

[21] The respondent's submission dwelt largely on his views that he is entitled to his personal information. He also questioned the adequacy of TransLink's staffing, including its decision to have only one employee process requests for security videos.²⁶

Analysis and finding

[22] I acknowledge that TransLink has put more effort and time into processing the respondent's requests than it has for other FIPPA applicants, particularly when he makes a number of requests within a short time. The respondent argued, however, and I agree, that there is no requirement in FIPPA that requests be confined to videos of a certain length or that they show an

²³ For example, an accident involving a TransLink vehicle or an injury on a bus.

²⁴ TransLink's initial submission, para. 46; investigator's affidavit, paras. 4-10.

²⁵ TransLink's initial submission, para. 61; investigator's affidavit, paras. 11-17. TransLink did not say whether or not there are responsive records for the four outstanding requests.

²⁶ Respondent's response submission, para. 14.

“incident”.²⁷ Moreover, while TransLink said that the investigator is the only employee who processes requests for security videos, I am left wondering why another employee could not assist the investigator with his other duties at peak times. TransLink did not address this question.

[23] In Decision F06-12,²⁸ another case involving s. 43(a), former Commissioner Loukidelis said that the respondent’s requests were voluminous, detailed, overlapping and often difficult to understand, and that the respondent followed up with numerous communications. The Commissioner noted that public body staff had already spent over 300 hours processing the requests and that the public body had found it necessary to hire two additional staff to help it deal with the respondent’s requests. He found that the respondent’s requests had unreasonably interfered with the public body’s operations and that the outstanding requests would have the same effect. Other decisions have also taken into account the voluminous, overlapping, wide-ranging and complex nature of respondents’ requests in finding that they would unreasonably interfere with public bodies’ operations.²⁹

[24] By contrast, in this case, the respondent’s requests are for discrete records and are not difficult to understand. There is also no indication that he has followed up numerous times with TransLink on his requests. Moreover, even if I assumed that the four outstanding requests arrived on the same day, the expenditure of 20 hours over 30 business days to deal with the four outstanding requests would represent only about 8% of the investigator’s time for that period.³⁰ In light of previous s. 43 cases as discussed above, I do not consider that 50 hours spent in processing the completed requests in 2016 to have been overly onerous. By the same token, I am not persuaded that the projected 20 hours to deal with the four outstanding requests would “unreasonably” interfere with TransLink’s operations.

[25] I also note that, except for the four requests which are the subject of this s. 43 application, TransLink continued, for seven more months, to process over a dozen more of the respondent’s requests. A number of these requests arrived in groups, as did the February 2016 requests, and many were for videos of bus trips that were considerably longer than the videos that are the subject of the outstanding requests. TransLink did not say that the later requests had interfered

²⁷ Respondent’s response submission, paras. 6-7.

²⁸ Decision F06-12, 2006 CanLII 42644 (BC IPC).

²⁹ Auth. (s. 43) 02-01; Order F13-18, 2013 BCIPC 25 (CanLII).

³⁰ The investigator said it takes him 6 hours a week to process 4 normal FIPPA requests (at 1.5 hours per request) and that this represents 16% of his time. This indicates that he works 37.5 hours per week. FIPPA allows 30 business days for public bodies to respond to requests. Thirty business days at 7.5 hours per day add up to 225 hours. Twenty hours to process the four outstanding requests would thus represent about 8% of the investigator’s time over 30 business days.

unreasonably with its operations. In this light, it is not clear how responding to the four outstanding requests would have this effect.

[26] For these reasons, I find that the four outstanding requests would not unreasonably interfere with TransLink’s operations for the purposes of s. 43(a).

Are the respondent’s requests frivolous or vexatious?

[27] I have also concluded, for reasons discussed below, that the respondent’s requests are neither frivolous nor vexatious.

Respondent’s submission

[28] The respondent indicated that he has had concerns for his safety while riding the bus due to the behaviour of other passengers.³¹ He said that, when he has reported incidents to the Transit Police, they have told him they are busy and cannot attend the scene and he is left to fend for himself. He said that, when he videos “perpetrators” who are “behaving badly”, in an effort to “force them to stop”, he risks his “wellbeing, physically, and mentally”. He said that TransLink and the Transit Police have taken no action about the incidents he has encountered on the bus. He said he therefore started telling TransLink that he was requesting the videos “for every legal usage”, knowing that TransLink would retain a copy of the unmasked video “which can be subpoenaed at a later date when required”.³²

TransLink’s submission

[29] TransLink submitted that the respondent’s requests are frivolous or vexatious. TransLink said that its other FIPPA applicants request videos of particular incidents involving them and that it attempted to clarify the respondent’s requests with him on this basis. TransLink said it then became clear that what the respondent regarded as an “incident” included behaviour by other passengers which he believed was directed at him, even if it did not involve any interaction with him.³³

[30] In TransLink’s view, the respondent is not making his requests to obtain access to information about himself but to make TransLink retain complete recordings he believes could be used in a future legal proceeding against other passengers. While TransLink argued that the respondent’s requests are vexatious, it nevertheless also said that it is not suggesting that the respondent’s outstanding requests are a “vexatious effort to harass it into taking particular

³¹ For example, he asked how a “boisterous group of young adults with open liquor contribute to my safety on TransLink”; respondent’s response submission, para. 9.

³² Respondent’s response submission, p. 1; p. 2, paras. 8-9; p. 7, para. 20.

³³ For example, the drinking incidents mentioned above, as well as a bus ride in which the respondent said another passenger put his feet on a bus seat when he saw the respondent.

action”. It also argued that the respondent’s requests are frivolous and trivial because they do not serve the purpose he has identified, since the identities of the third parties have been masked.

[31] TransLink said it has encouraged the respondent to raise his safety concerns with the Transit Police as the appropriate forum. Moreover, in some cases, TransLink said, the videos did not reveal the behaviour or interactions the respondent claimed had happened. TransLink acknowledged that the purpose for requesting information may not be important or apparent to a public body. However, TransLink argued, while the respondent’s subjective motivation for requests may be genuine, the requests are nevertheless frivolous and without objective merit.³⁴

Analysis and findings

[32] While TransLink may find the respondent’s requests frustrating to process, they do not nearly approach the level of previous cases which found a respondent’s requests to be vexatious.³⁵ The respondent is not, in my view, making his requests for a malicious purpose or in bad faith. For example, there is no indication that he is trying to punish or antagonize TransLink. He has also not said that he will continue to make multiple requests for lengthy videos until TransLink does what he wants regarding other passengers’ behaviour. Indeed, as far as I know, the respondent has not made any requests since December 2016. I therefore find that the respondent’s requests are not vexatious.

[33] On the other hand, I recognize that the respondent has not shown he needs the records to address a live issue with TransLink or another body.³⁶ The respondent did not, for example, explain what, if any, future legal proceedings he envisioned, in which he could subpoena the “unmasked” videos. It is also not clear from the material before me on what basis any legal proceedings might be initiated or how the “unmasked” videos would assist. However, while I agree with TransLink that the appropriate forum for the respondent to pursue his safety concerns is with the Transit Police or TransLink’s security department, I do not on that score alone discount the respondent’s desire for access to his personal information. It is clear that the respondent feels that TransLink and the Transit Police have not taken his concerns seriously. I also accept that the respondent

³⁴ The information on TransLink’s submission on these issues comes from its initial submission, paras. 63-70, and its reply submission, paras. 2-5.

³⁵ In Decision F08-09, 2008 CanLII 57361 (BC IPC), for example, the adjudicator found that an applicant’s requests were vexatious, even though the applicant had a genuine motive for making them, because the applicant was trying to harass the public body into taking a particular action. Order F13-16, 2013 BCIPC 20 (CanLII), found that certain requests were vexatious because they were made in attempt to antagonize and pressure the public body into backing down on a particular decision.

³⁶ Some s. 43 decisions (e.g., Decision F06-12) have found that requests were frivolous in part because the respondent had no live issue with the public body.

has concerns about other passengers’ “bad behaviour” and the impact it has on his safety. Whether or not his concerns are well-founded, I accept that they are genuine and that, for that reason, he wants access to his personal information.³⁷ I therefore find that the respondent’s requests are not frivolous.

[34] TransLink has, in any case, undermined its case by its own actions, in my view. The respondent made over a dozen requests after the four outstanding requests (many for videos of lengthy bus rides) and he provided the same reasons for wanting the information. TransLink did not say it considered these later requests to be frivolous or vexatious but rather processed them all. For reasons it did not explain, TransLink waited until February 2017 to request relief under s. 43.³⁸ I also consider that TransLink acted prematurely in requesting relief for the February and May 2016 requests, when they were still the subject of a complaint investigation by the OIPC.

[35] For these reasons, I find that the respondent’s requests are not frivolous or vexatious for the purposes of s. 43(b).

CONCLUSION

[36] For reasons given above, I find that TransLink has not proven that the requests are frivolous or vexatious (s. 43(b)) or that they would unreasonably interfere with TransLink’s operations (s. 43(a)). Therefore s. 43 does not apply. TransLink is not authorized to disregard the four outstanding requests.

September 11, 2017

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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³⁷ Past orders have found that requests were frivolous because the respondent already had the records, the requests were for publicly available records or they were “made for a purpose other than a good faith and genuine desire to access information”. See, for example, Order F17-18 2017, BCIPC 19 (CanLII), Order F13-16 and Auth. (s. 43) 02-02. There is no indication in this case that the respondent already has the requested records.

³⁸ I recognize that TransLink initially included two of the December 2016 requests in its s. 43 application. Nonetheless, again for reasons it did not explain, TransLink processed these requests.