



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

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Order F19-08

**MINISTRY OF CITIZENS' SERVICES  
AND  
MINISTRY OF FINANCE, PUBLIC SERVICE AGENCY**

Celia Francis  
Adjudicator

February 15, 2019

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**Summary:** The Ministries of Finance and Citizens' Services (Ministries) requested authorization to disregard a respondent's outstanding requests on the grounds that the requests are frivolous or vexatious under s. 43(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that the requests were neither frivolous nor vexatious and that the Ministries were not, therefore, authorized to disregard them.

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

## INTRODUCTION

[1] The Ministry of Finance and the Ministry of Citizens' Services (Ministries) have requested authorization under s. 43(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard the respondent's nine outstanding access requests, on the grounds that the requests "lack seriousness and/or are made for the purpose of harassing both the public body and the third party employees referred to in the Requests."<sup>1</sup> I have decided, for reasons that follow, not to grant the Ministries' request.

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<sup>1</sup> Ministries' letter of September 5, 2018.

## ISSUES

[2] The issues before me are these:

1. Are the respondent's outstanding requests frivolous or vexatious, for the purposes of s. 43(b)?
2. If the answer to the first issue 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.<sup>2</sup>

## DISCUSSION

### *Principles for applying s. 43(b)*

[4] Section 43(b) of FIPPA reads as follows:

- 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
- ...
- (b) are frivolous or vexatious.

[5] 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....<sup>3</sup>

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<sup>2</sup> For example, Order F17-18, 2017 BCIPC 19 (CanLII).

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

[6] 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):<sup>4</sup>

- 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.

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

### ***The outstanding requests***

[8] The Ministries said that the requests that are the subject of this s. 43 application are these:

#### Ministry of Citizens' Services:

1. Any and all allegations made by employee A against the respondent, either in writing or in an audio recording.
2. Any and all text messages sent and received on employee C's work phone, including backups.
3. Any and all records related to: employee B's personnel file; and all allegations of harassment against employee B.
4. Any and all text messages sent and received on employee B's work phone, including backups.

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<sup>4</sup> Auth. (s. 43) 02-02, (November 8, 2002), at pp. 4-8.

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Ministry of Finance – Public Service Agency

5. Any and all employment records related to employee C.
6. Any and all employment records related to employee D, Legal Counsel, Attorney General from hiring date to present [July 24, 2018].
7. Any and all allegations made by employee A against the respondent, either in writing or in an audio recording.
8. Any and all records related to: employee B's personnel file; and all allegations of harassment against employee B.
9. Any and all records related to employee E's employment records.<sup>5</sup>

[9] Employee A was the respondent's colleague.<sup>6</sup> Employees B and C were the respondent's managers.<sup>7</sup> Employees D and E were the lawyers who handled the respondent's human rights complaints.<sup>8</sup>

***Other requests***

[10] The Ministries' submission indicates that the respondent has made 23 other requests.<sup>9</sup> The Ministries appear to have responded to all 23, which included requests for the following:

- Records related to a privacy breach;
- Records related to the processing of several earlier requests;
- Records regarding a letter of reprimand issued to the respondent;
- Records related to the respondent's return to work;
- Records of leave taken by employees B and F;
- Offers of employment and training, as well as standards of conduct letters and applications for indemnity coverage, for employees B, F, G and I; and
- Phone logs of employees B, G and H.<sup>10</sup>

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<sup>5</sup> Ministries' initial submission, para. 10. The Ministries said that it originally included two other requests in its s. 43 application. These requests, one directed at each ministry, were for "records related to the inappropriate workplace relationship with [employees B and C]." The Ministries said that the respondent has since withdrawn them, so it no longer seeks relief from these requests. Ministries' initial submission, para. 11.

<sup>6</sup> Ministries' initial submission, para. 15.

<sup>7</sup> Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services, para. 9.

<sup>8</sup> Ministries' initial submission, para. 15.

<sup>9</sup> The respondent also initiated 12 complaints and reviews with the OIPC.

<sup>10</sup> Some of the employees named in the 23 other requests are also the subject of the outstanding requests.

[11] Employee F was the respondent's manager.<sup>11</sup> Employee I was the respondent's supervisor.<sup>12</sup> Employee G appears to have been a colleague. Employee H was a third lawyer.<sup>13</sup>

### ***Parties' submissions***

[12] The Ministries said that the respondent is a former employee of the Ministry of Citizens' Services. It said that, during his employment, his supervisors "had to deal with some performance management issues in relation to" the respondent, which started in 2016 and continued until he resigned in 2018.<sup>14</sup> They resulted in the delivery to the respondent of letters of expectation and a letter of reprimand. There were also two investigations into allegations regarding the respondent's workplace behaviour.<sup>15</sup> The Ministries said that the respondent "regularly expressed his displeasure with the Ministry [of Citizens' Services] through union grievances, human rights complaints, a privacy complaint to the Office of the Information and Privacy Commissioner, and the Ministries submit, through his requests for records under the Act."<sup>16</sup>

[13] The Ministries said that the respondent's requests focus on his former colleagues and others involved in personnel matters relating to him, including employees D and E, who are the two lawyers who dealt with his human rights complaints. The Ministries added that, after making a request about a former colleague, the respondent will often request that the OIPC review the Ministries' response and will then often make a new request for records related to the processing of earlier requests.<sup>17</sup>

[14] The respondent said this, in reply:

I would like to start off by saying that I find this application absurd. The Ministry is intentionally slandering me when it is clearly aware that all the issues they had stated in this application have been resolved. They purposely omitted this fact and are in clear violation of our agreement. I will be seeking recourse for their egregious behaviour. All of the theories

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<sup>11</sup> Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services, para. 15.

<sup>12</sup> Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services, para 12.

<sup>13</sup> Exhibit B, Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services.

<sup>14</sup> These issues included non-attendance or late attendance at meetings and failure to comply with requirements to update his supervisors on his work.

<sup>15</sup> The allegations included that the respondent spoke disrespectfully of his superiors, used profanities and accused his superiors of being liars. Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services, paras. 21-22.

<sup>16</sup> Ministries' initial submission, paras. 13-14. Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services, paras. 5-27. The Ministries' initial submission indicates that the four grievances and two human rights complaints were settled and the privacy complaint was not substantiated. Affidavit of Assistant Deputy Minister, Ministry of Citizens' Services, paras. 24-27.

<sup>17</sup> Ministries' initial submission, paras. 15-16, 19, 22.

that the Ministry has laid out through their attorney are clearly based on fictional tales with no merit.<sup>18</sup>

### ***Analysis and findings***

[15] Past orders on s. 43 have found that where the respondent had a live issue or grievance with a public body and the respondent had a genuine need for, or interest in, the requested records, the requests were not frivolous or vexatious.<sup>19</sup> Other orders have found that requests were vexatious where the respondent was: using his requests to express his opinion and criticism of the public body and thus for a purpose other than a good faith desire to access information in the records he requests;<sup>20</sup> trying to harass a public body into taking a particular action;<sup>21</sup> or trying to antagonize and pressure the public body to back down on a particular decision.<sup>22</sup> Frivolous requests include those that are “trivial or not serious,” or have been made primarily for a purpose other than gaining access to information.<sup>23</sup> Some s. 43 decisions have found that requests were frivolous, in part, because the respondent had no live issue with the public body.<sup>24</sup>

[16] In this case, the respondent said he was “more than willing to explain [his] reasoning for making these requests.” He said he has made a complaint to the Law Society of BC (LSBC) about the two lawyers (employees D and E). He said that the individuals involved in his requests “have important information that I need to facilitate my claim against [the two lawyers]” and to hold the lawyers “accountable.” He did not explain how the requested records would “facilitate” his “claim,” saying he was “not at liberty nor do I wish to disclose the contents of the complaint as it is deemed confidential.”<sup>25</sup>

[17] The Ministries said, and I accept, that they are not aware of any restriction on the respondent’s ability to provide particulars of his LSBC complaint.<sup>26</sup> The Ministries also said that the LSBC’s rules allow it to compel the production of records it needs to conduct its investigations.<sup>27</sup> I note, however, that the LSBC’s letter to the respondent asked him to provide “any written information which may support your allegation.”<sup>28</sup> I accept, therefore, that the respondent has a live

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<sup>18</sup> Respondent’s response submission, p. 1.

<sup>19</sup> For example, Decision F07-08, 2007 CanLII 42406 (BC IPC), and Order F18-32, 2018, BCIPC 35 (CanLII).

<sup>20</sup> For example, Order F16-24, 2016 BCIPC 26 (CanLII).

<sup>21</sup> For example, Decision F08-09, 2008 CanLII 57361 (BC IPC).

<sup>22</sup> For example, Order F13-16, 2013 BCIPC 20 (CanLII).

<sup>23</sup> Auth. (s. 43) 02-02, (November 8, 2002).

<sup>24</sup> For example, Decision F05-01, 2005 CanLII 11955 (BC IPC).

<sup>25</sup> Respondent’s response submission, p. 1.

<sup>26</sup> Ministries’ reply submission.

<sup>27</sup> Ministries’ reply submission.

<sup>28</sup> The respondent attached a copy of this letter to his response. Much of the text is blacked out but it appears to acknowledge receipt of the respondent’s allegations against the two lawyers.

issue with the LSBC and that he is seeking information that he thinks will support his complaint.

[18] The Ministries' evidence is that the respondent has an advanced knowledge of FIPPA. They argued that, therefore, he knows that the requested personnel records would be heavily severed under s. 22 of FIPPA.<sup>29</sup> While I do not take a position on this issue, the proper application of exceptions is certainly one method available to the Ministries to help it manage the requests.

[19] In addition, as the respondent pointed out, the Ministries may charge fees to process his requests (except where they concern his personal information). There is no indication that they have done so in an effort to manage his requests.

[20] I also understand from the Ministries' submission that they have processed the respondent's 23 other requests, many of which also related to other individuals. The Ministries did not explain how they had responded to these requests, although it appears that they denied access to at least some of the requested information.<sup>30</sup> Nor did the Ministries say why they now wish to treat the nine outstanding requests differently.

[21] Moreover, two of the outstanding requests, numbers 1 and 7, are for records related to allegations made by employee A against the respondent. These are, on their face, requests for information that is, in part, about the respondent.<sup>31</sup> There is no evidence that the respondent has made requests 1 and 7 under FIPPA in the past. There is also no indication that he has received the responsive records through other means, such as his complaints and grievances. The Ministries did not specifically address these requests and did not explain why the respondent should not have access to his own personal information.

## CONCLUSION

[22] I recognize that the respondent may have been a challenge to deal with before he resigned. There is also no doubt that he has made use of a number of avenues to demonstrate his dissatisfaction with the Ministries. I also understand that the Ministries may find it annoying to process the respondent's requests.

[23] However, the Ministries have not, in my view, demonstrated that the respondent's outstanding requests are frivolous or vexatious, to the extent that

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<sup>29</sup> Ministries' initial submission, paras. 13, 17-18; Ministries' reply submission, para. 4. The respondent's response submission also indicates that he is familiar with FIPPA, including its exceptions to disclosure. Section 22 requires public bodies to withhold personal information where its disclosure would be an unreasonable invasion of third-party privacy.

<sup>30</sup> The respondent said he received more records as a result of requesting reviews by the OIPC of some of the Ministries' earlier responses. Respondent's response submission, p. 1.

<sup>31</sup> Request IDs CTZ-2018-80005 and PSA-2018-80008.

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his rights of access, including to his own personal information, should be curtailed. The Ministries have also not made use of available methods for handling his requests, such as charging fees and the proper application of exceptions to disclosure. I also take into account that the respondent is entitled to present the LSBC with information that he thinks will support his complaint.

[24] I find, therefore, that the respondent's outstanding requests are neither frivolous nor vexatious for the purposes of s. 43(b). The Ministries must process them and give the respondent a response under s. 8 of FIPPA.

February 15, 2019

**ORIGINAL SIGNED BY**

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Celia Francis, Adjudicator

OIPC File Nos: F18-76543  
F18-76544