



Order F20-39

WORKERS' COMPENSATION BOARD

Laylí Antinuk
Adjudicator

September 8, 2020

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Summary: The Workers' Compensation Board (WorkSafeBC) requested authorization under ss. 43(a) and/or 43(b) to disregard the respondent's outstanding access and correction requests because of their repetitive, systematic, frivolous and vexatious nature. WorkSafeBC also requested authorization to disregard future requests from the respondent. The adjudicator found the outstanding requests repetitive and systematic under s. 43(a), so she authorized WorkSafeBC to disregard them. The adjudicator also provided WorkSafeBC with some relief respecting future requests from the respondent.

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

INTRODUCTION

[1] The Workers' Compensation Board (WorkSafeBC) applied to the Office of the Information and Privacy Commissioner (OIPC) for authorization to disregard the respondent's outstanding and future access and correction requests¹ under ss. 43(a) and/or 43(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Section 43(a) gives the OIPC the power to authorize a public body to disregard requests that will unreasonably interfere with the operations of the public body because of their systematic or repetitious nature. Section 43(b) gives the OIPC the power to authorize public bodies to disregard frivolous or vexatious requests.

[2] Both parties made submissions for this application.

¹ This application deals with both access and correction requests (collectively, FIPPA requests). Access requests are requests for access to information made under s. 5. Correction requests, made under s. 29, are requests for correction of factual errors or omissions in an individual's personal information. See Order 02-41, 2002 CanLII 42475 (BC IPC) at para. 7.

Preliminary matters

[3] In her submission, the respondent requests that I make a variety of orders in this application. For example, she requests costs and asks for:²

- a sealing order to protect the privacy of her health information;
- an order for production of a variety of records;
- an order for disclosure of a variety of records;
- an order requiring WorkSafeBC to make certain corrections and annotations to her personal information;
- an order requiring WorkSafeBC to pay her chiropractic bills;
- an order requiring WorkSafeBC to remove certain information from its records that identifies her as a threatening client; and
- an order requiring WorkSafeBC to undo certain forms of “data linking” on her claims.

[4] I will not make any of the respondent’s requested orders because they fall outside the scope of this application or my jurisdiction, or are unnecessary. For example, as will become clear in the remainder of this decision, a sealing order is unnecessary because I will not discuss any details about the respondent’s health. Additionally, the OIPC has no authority to order any party to pay costs in relation to an application or inquiry under FIPPA nor does it have jurisdiction to order WorkSafeBC to pay medical bills. The respondent also makes a complaint against WorkSafeBC under s. 43 because she says they are vexatious. Section 43 allows public bodies to request relief from responding to certain types of FIPPA requests, including vexatious requests. It does not allow individuals to make complaints about the vexatious behaviour of public bodies.

[5] The respondent’s submission also raises a myriad of issues that fall outside the scope of this application. For instance, she alleges that WorkSafeBC has breached her privacy and failed to adhere to various requirements of FIPPA. She also raises concerns about her ex-employer, former union, and various individuals and organizations, including doctors and physiotherapists. She discusses at great length her medical and health issues and her feelings of frustration, anger, and distrust in relation to WorkSafeBC. I have read the respondent’s submissions carefully. I understand that she feels deeply aggrieved and profoundly violated by her perceptions of WorkSafeBC’s interactions with her. However, my role in this application is confined solely to the consideration of whether I should authorize WorkSafeBC to disregard certain FIPPA requests under s. 43.

² For example, at pp. 1, 3, 4, 6, 9, 46, 48, 54 (of fax 2). When referring to page numbers of the respondent’s submission, please note that I am referring to the page number of the PDF document the registrar of inquiries prepared for me from fax 2 or fax 3 sent by the respondent.

[6] To clarify further, I have no jurisdiction to consider the propriety of decisions made by WorkSafeBC respecting the respondent's WorkSafeBC claims nor am I here to assess its responses to her past FIPPA requests or her privacy related complaints. Lastly, I note that the respondent criticizes the OIPC and its responses to her various complaints and requests made in relation to WorkSafeBC and others under FIPPA and the *Personal Information Protection Act*. This is not an appropriate forum to raise such concerns and I will not address them here.

ISSUES

[7] In this application, I will decide whether the respondent's outstanding FIPPA requests meet the requirements of ss. 43(a) and/or 43(b). If they do, I will also decide what relief, if any, is appropriate.

[8] Previous decisions have established that WorkSafeBC has the burden of proof under s. 43.³

Approach to the evidence

[9] Both parties submitted extensive material for consideration in this application. The respondent alone provided over 93,300 pages of material in addition to her nearly 150-page submission. WorkSafeBC's submissions and evidence total almost 300 pages. In these reasons, I will address the parties' evidence and arguments only to the extent necessary to explain my decision respecting s. 43.

DISCUSSION

Background

[10] The respondent has made nine workers' compensation claims (claims) with WorkSafeBC over the years.⁴ To provide claimants with access to information respecting their claims, WorkSafeBC has a secure online service portal (portal). Claimants can create a portal account to access and download the information and records contained in their claim file, including claim decisions, payment information, return to work dates, correspondence, medical reports, telephone memos, and memoranda. The respondent created a portal account and used it for a few years, but then deleted it in 2018.

[11] WorkSafeBC also has a Disclosures Department dedicated to disclosing claim file records to claimants. Claimants can receive disclosure of everything on

³ For example, Order F17-18, 2017 BCIPC 19 at para. 4.

⁴ The information summarized under the *Background* heading comes from the Senior Manager's Affidavit #1 at paras. 4-8, 10-13, 36 and Exhibit D; and WorkSafeBC's initial submission at paras. 3, 12-13 and 15.

their claim file, subject only to s. 19 (harm to public health or safety) of FIPPA, by sending a written request to the Disclosures Department. Additionally, under the *Workers Compensation Act*, the Disclosures Department provides any claimant who appeals a claim decision or requests a review with complete disclosure of their claim file records. The Disclosures Department has made disclosures to the respondent on at least 80 occasions, both in response to her requests for disclosure and for the purpose of a review or appeal.

[12] Against this backdrop, WorkSafeBC also opened 123 FIPPA request files for the respondent between January 2013 and April 2019. In addition to the correspondence that prompted the opening of these 123 request files, WorkSafeBC has also received approximately 127 faxes from the respondent that it deemed were duplicates of, or follow-ups to, request files that WorkSafeBC had already opened. In total, WorkSafeBC says it has responded to over 120 FIPPA requests from the respondent and now makes this s. 43 application for relief, arguing that the respondent's requests are systematic and repetitive and that, cumulatively, they have reached the point of being frivolous and vexatious.

Past FIPPA requests

[13] As noted, the respondent made nine claims with WorkSafeBC. Most of the respondent's FIPPA requests relate to a claim she made in 2012. WorkSafeBC allowed this claim, but the respondent has taken issue with certain aspects regarding her entitlements under it.⁵ The respondent's past access requests related to the 2012 claim include requests for:

- Specific policies that she believes must exist in relation to decisions made on the claim;
- Records to support medical opinions or decisions made about the claim;
- Specific records relating to the claim, such as the evidence regarding one review, the records for all reviews done on the claim, certain medical records, a copy of the correspondence section of the claim, a copy of the account section of the claim, and copies of certain forms and receipts submitted on the claim;
- Records that show the dates certain health care providers made reports to WorkSafeBC about the claim;
- Records to show why certain forms were rejected or were not on her claim file;
- Records to show why certain documents or coding are not on the claim file; and
- Any and all records related to the 2012 claim.

⁵ WorkSafeBC's initial submission at para. 13.

[14] The respondent's past correction requests include requests that WorkSafeBC:

- Change the answers to certain questions on WorkSafeBC forms, such as changing the answer to the question "was the injury caused by accident?" from "no" to "yes".
- Change all its records to say that she "has never threatened anyone perceived or otherwise".
- Change a medical advisor's finding that a certain condition was pre-existing to say that the condition was not pre-existing.
- Change all phrases that say her injuries are "resolved" to say that the injuries are "not resolved".

Outstanding FIPPA requests

[15] WorkSafeBC requests authorization under ss. 43(a) and/or 43(b) to disregard the respondent's ten outstanding FIPPA requests. WorkSafeBC says that the majority of the respondent's outstanding requests either duplicate, or are connected to, another request.⁶ By my count, the outstanding requests comprise seven access requests and three correction requests and were made by the respondent in 2019 and 2020.⁷ I have read all the outstanding requests. Without repeating them verbatim and speaking in broad terms, the access requests seek records related to: the 2012 claim; the interactions the respondent has had with the Fair Practice and Compliance Department; and a specific incident involving an alleged threat. The correction requests relate to information on the 2012 claim file.

[16] WorkSafeBC also requests authorization to disregard a complaint the respondent made respecting WorkSafeBC's use of her personal information.⁸ Section 43 only applies to access requests made under s. 5, or correction

⁶ *Ibid* at para. 36.

⁷ Initially, WorkSafeBC made this s. 43 application in respect of the respondent's outstanding 2019 FIPPA requests. The respondent then made an additional eight requests in 2020. I note that WorkSafeBC characterizes the respondent as having made seven requests in 2020, but I count eight (on March 31, 2020, the respondent made two correction requests and one access request). WorkSafeBC then requested and received permission to add the respondent's 2020 FIPPA requests to this s. 43 application (the OIPC's April 15, 2020 letter to the parties grants permission to add the 2020 requests). This brings the total number of outstanding requests to ten. For clarity, these outstanding FIPPA requests comprise: (1) the March 11, 2019 correction request; (2) the December 9, 2019 access request; (3) the March 27, 2020 access request; (4) the March 30, 2020 access request; (5)-(6) the two March 31 correction requests; (7) the March 31 access request; (8)-(10) the three access requests made on April 6, 2020. WorkSafeBC's August 24, 2020 letter to the OIPC. WorkSafeBC's initial submission at paras. 35-36; the Senior Manager's Affidavit #1 at paras. 19 and 24 and Exhibit G; and the Senior Manager's Affidavit #2 at para. 4.

⁸ Described in item 10 of Exhibit G to the Senior Manager's Affidavit.

requests made under s. 29. Therefore, I have no jurisdiction to authorize WorkSafeBC to disregard a complaint under s. 43 and I decline to do so.

[17] To summarize, in this application, I will consider whether to authorize WorkSafeBC to disregard ten outstanding FIPPA requests. I will also consider whether to grant relief respecting future requests.

[18] With these background facts in mind, I will now describe the legal principles for s. 43 applications.

Legal principles – authorization to disregard requests under s. 43

[19] WorkSafeBC submits that ss. 43(a) and/or 43(b) apply in this case. Section 43 states:

If the head of a public body asks, the commissioner may authorize the public body to disregard requests under section 5 [access requests] or 29 [correction requests] 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.

[20] Former Commissioner Loukidelis has said that s. 43 applications require careful consideration because granting a public body relief under s. 43 necessarily curtails or eliminates the statutory rights of individuals.⁹ Similarly, former Commissioner Flaherty cautioned that “[g]ranteeing section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation.”¹⁰

[21] While s. 43 applications should be approached carefully, the British Columbia Supreme Court has described s. 43 as “an important remedial tool in the Commissioner’s armory to curb abuse of the right of access.”¹¹ Abuse of FIPPA rights detrimentally impacts the rights of others and harms the public interest. Accordingly, applicants should always exercise their FIPPA rights in good faith and must not abuse them. As stated by former Commissioner Loukidelis:

... 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

⁹ Auth. (s. 43) 99-01, (December 22, 1999) at p. 3. Available on the OIPC website at <https://www.oipc.bc.ca/decisions/170>.

¹⁰ Auth. (s. 43), (October 31, 1996) at para. 3. Available on the OIPC website at <https://www.oipc.bc.ca/decisions/162>.

¹¹ *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at para. 33 [*Crocker*].

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...¹²

[22] Section 43 provides for the authorization to disregard existing requests, not past requests that a public body has already responded to. However, a respondent's past FIPPA behaviour is relevant when making a decision under s. 43. Former Commissioner Loukidelis explained:

Section 43 contemplates an authorization to "disregard requests under section 5". While this refers to disregarding existing requests, one cannot ignore past requests in deciding whether existing requests are repetitive or systematic. For example, if Jane Doe makes the same request for the same records once each month, it must be open to the commissioner to consider the repetitive nature of the requests even if the immediately preceding monthly request has been closed.¹³

[23] The British Columbia Supreme Court has also clarified that s. 43 can be used to authorize a public body to disregard future FIPPA requests.¹⁴

[24] Keeping these legal principles in mind, I will begin by considering s. 43(a).

Analysis and findings – repetitious and systematic under s. 43(a)

[25] In order for s. 43(a) to apply, WorkSafeBC must establish that:¹⁵

- 1) The requests are repetitious or systematic; and
- 2) Responding to the requests will unreasonably interfere with WorkSafeBC's operations.

First, I will decide whether the outstanding requests are repetitious or systematic.

¹² Auth. (s. 43) 99-01, *supra* note 9 at pp. 7-8.

¹³ Authorization (s. 43) 02-01, (September 18, 2002). Available on the OIPC website at <https://www.oipc.bc.ca/decisions/171>.

¹⁴ *Crocker*, *supra* note 11 at paras. 40-43; *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC) at para. 15 [*Mazhero*].

¹⁵ Auth. (s. 43) 02-01, *supra* note 13 at para. 16.

Are the requests repetitious or systematic?

[26] Repetitious requests are requests made more than once.¹⁶ WorkSafeBC submits that the respondent has consistently sent: (a) access requests that seek copies of the same claim file records; and (b) correction requests that relate to the same medical opinions.¹⁷ While some of these requests may not be exact duplicates, WorkSafeBC says they all relate to the same general issues. The respondent does not believe her requests are repetitious and says “when I find irregularities or lies I address them and feel that is a workers [sic] right.”¹⁸

[27] After reviewing the evidence in this case, I have no hesitation in concluding that the majority of the outstanding access requests are repetitious. For the most part, they seek copies of claim file records for the 2012 claim, which the respondent has already requested and received on multiple occasions. The evidence shows that the respondent has received claim file documents, yet in the outstanding requests she continues to ask for copies of those claim files or particular records from those files.¹⁹ Similarly, the respondent’s outstanding correction requests seek to correct opinions and decisions made on her claim files, rather than factual errors or omissions. The respondent has been informed by WorkSafeBC and the OIPC on numerous occasions that s. 29 relates solely to factual errors.

[28] I also find all the respondent’s requests systematic. Systematic requests involve “a method or plan of acting that is organized and carried out according to a set of rules or principles.”²⁰ The key characteristics of systematic requests include:²¹

- A pattern of requesting more records, based on what the respondent sees in records already received;
- Combing over records deliberately in order to identify further issues;
- Revisiting earlier freedom of information requests;
- Systematically raising issues with the public body about their responses to freedom of information requests, and then often taking those issues to review by the OIPC; and
- Behaviour suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events.

¹⁶ Decision F12-01, 2012 CanLII 22871 (BC IPC) at para. 5.

¹⁷ WorkSafeBC’s initial submission at para. 61.

¹⁸ Respondent’s submission at p. 60 (fax 3).

¹⁹ Senior Manager’s Affidavit #1 at paras. 15-16 and Exhibit D.

²⁰ Auth. (s. 43) 02-01, *supra* note 13 at para. 17.

²¹ Order F18-37, 2018 BCIPC 40 at paras. 26-27.

Based on the evidence before me, including the thousands of pages the respondent submitted for this application, I find that this case involves the key characteristics identified above.

[29] First, I find it readily apparent that the respondent has a pattern of requesting more records based on what she sees in records she has already received. For example, in one request, the respondent sought access to records that support a “perceived threat” remark she saw on a form that WorkSafeBC had disclosed to her earlier.²² In another example, the respondent requested records to show why WorkSafeBC told a certain business to approach her with caution, which she discovered in a phone memo WorkSafeBC had disclosed to her.²³ In yet another request, she sought access to a copy of a specific voice mail message referred to in an email she received via disclosure from WorkSafeBC.²⁴

[30] I also find it obvious that the respondent combs over records deliberately in order to find what she perceives to be problems that she wants WorkSafeBC to address. For instance, upon receiving WorkSafeBC’s response to one of her access requests, the respondent complained that: (a) WorkSafeBC did not number the pages it provided to her; (b) the records provided were not organized consecutively by date; and (c) the records did not appear to contain all the information she thought they should.²⁵ In another example, the respondent made a correction request after noticing that her name was spelled with a lower-case letter rather than an upper-case letter in a certain record.²⁶ The respondent’s new FIPPA requests and correspondence also repeatedly revisit and reference details from her earlier FIPPA requests.

[31] The evidence in this case also shows how systematically, consistently and frequently the respondent raises issues with WorkSafeBC about its responses to her FIPPA requests, and then takes those issues to the OIPC.²⁷ Furthermore, in my view, the respondent’s behaviour plainly indicates that she has no intention of stopping the flow of her requests and questions, all of which relate to essentially the same records, communications, issues and events. For example, a few months after WorkSafeBC made this s. 43 application, the respondent made

²² July 24, 2014 access request as summarized in the Senior Manager’s Affidavit #1 at Exhibit E.

²³ November 10, 2015 access request as summarized in the Senior Manager’s Affidavit #1 at Exhibit E.

²⁴ August 1, 2016 access request at p. 1887 of the respondent’s paper materials.

²⁵ September 4, 2016 letter from the OIPC to the respondent at p. 2148 of the respondent’s paper materials.

²⁶ Senior Manager’s Affidavit #1 at para. 34 and Exhibit O.

²⁷ It is abundantly clear from the thousands of pages the respondent sent with her submissions that she has repeatedly involved the OIPC on a myriad of occasions respecting her complaints about WorkSafeBC. This is also clear from the respondent’s submission, for example at pp. 43, 45, 60, 64, 67, 68 and 74 (fax 2). WorkSafeBC also included a sample of letters the OIPC has sent to the parties respecting complaints and requests for review the respondent has made related to WorkSafeBC (Senior Manager’s Affidavit #1 at Exhibit Q).

eight more FIPPA requests, many of which I find repeat previous FIPPA requests from prior years.

[32] In short, I find the respondent's outstanding FIPPA requests both repetitious and systematic. Next, I will consider whether responding to the requests will unreasonably interfere with WorkSafeBC's operations.

Will responding to the requests unreasonably interfere with WorkSafeBC's operations?

[33] WorkSafeBC submits that responding to the respondent's outstanding requests will unreasonably interfere with its operations. WorkSafeBC provides evidence to show that the respondent's past FIPPA requests have had negative impacts on its staff and resources.²⁸ For example, WorkSafeBC says that the aggressive and abusive nature and tone of the respondent's FIPPA-related correspondence ultimately required WorkSafeBC to implement staff protection measures, such as limiting communication to a particular senior staff member and having correspondence to the respondent go out under the signature of Corporate Security staff. WorkSafeBC's evidence indicates that it continues to use these staff protection measures when dealing with the respondent's FIPPA correspondence.

[34] While WorkSafeBC does not require staff to keep time records on a per file basis, WorkSafeBC estimates that it has spent an average of 5 hours per request on the respondent's requests. This adds up to a total of approximately 615 hours spent responding to the 123 FIPPA request files WorkSafeBC has opened in the past six years. As mentioned previously, in addition to the 123 FIPPA request files, WorkSafeBC has also received an additional 127 faxes related to FIPPA from the respondent. WorkSafeBC estimates that its staff have spent an additional half an hour per fax to determine if it is a duplicate, follow-up, or new request. According to WorkSafeBC, this brings the total amount of time spent on the respondent's FIPPA activity to approximately 678.5 hours over the past six years.

[35] WorkSafeBC also submits that the respondent makes more frequent and more burdensome FIPPA requests than other individuals. To support this claim, it provides statistics that show the respondent made far more FIPPA requests than any other individual in 2013-2016 and 2018. For example, in 2014, 2015 and 2016, the respondent made 23, 34, and 25 FIPPA requests respectively, whereas the average number of FIPPA requests per individual during those years was 1.2. WorkSafeBC argues that the respondent's FIPPA activity consumes inordinate staff time because, among other things, the requests tend to be repetitive, handwritten, and they often cover the same subject matter.

²⁸ The information summarized in this paragraph and the two that follow comes from the Senior Manager's Affidavit #1 at paras. 21, 36, 37, 38, 39, Exhibit P, and H.

WorkSafeBC also says that the respondent frequently sends multiple pieces of correspondence in relation to each FIPPA request. From all this, I understand WorkSafeBC to argue that the respondent's past behaviour supports a finding that her current and future FIPPA activity will unreasonably interfere with WorkSafeBC's operations.

[36] The respondent denies that her requests have interfered with the operations of WorkSafeBC and disputes the statistics provided by WorkSafeBC regarding her FIPPA requests.²⁹ She says that WorkSafeBC has never requested a time extension or asked her to pay fees prior to granting access "as an indicator it would take an excessive amount of time to answer my requests".³⁰ She argues that if her requests "were really interfering they have the option of asking OIPC for extension of time to respond and [WorkSafeBC] made no such extension requests therefore it was not interfering in their work and they cannot cry wolf now."³¹ The respondent also accuses WorkSafeBC's affiant, the Senior Manager for Access to Information and Privacy, of perjury and says the Senior Manager does not understand her job and "is simply scapegoat [*sic*] me for the misuse of their time." The respondent says she does not understand why it takes the Senior Manager five hours to respond to each of her requests and argues that the Senior Manager has a time management problem.

[37] Given the totality of the evidence before me, I reject the respondent's argument that the Senior Manager has a time management problem. I also do not accept that the fact that WorkSafeBC has never charged fees for access, or requested time extensions means that her FIPPA requests were not time consuming to process and respond to.³² Instead, having reviewed the thousands of pages submitted in this application, many of which contain copies of the respondent's FIPPA correspondence to WorkSafeBC, I accept WorkSafeBC's evidence respecting the frequent and burdensome nature of the respondent's FIPPA activity. I have also noticed that the respondent sends numerous pieces of correspondence in relation to the same FIPPA requests and tends to blend complaints and requests in the same correspondence.

[38] Based on the evidence, I also find it reasonable that WorkSafeBC had to implement and continues to use staff safety measures in relation to the respondent's FIPPA activity. The evidence clearly demonstrates that the respondent has repeatedly engaged in disparaging name-calling in her FIPPA correspondence. She has accused specific WorkSafeBC employees of being

²⁹ The information summarized in this paragraph comes from the Respondent's submission at pp. 10 and 58 (fax 2), and 52, 62-63 (fax 3) unless otherwise stated.

³⁰ Respondent's submission at p. 8 (fax 2).

³¹ Respondent's submission at p. 10 (fax 2).

³² I also note that in *Crocker*, the Court clarified that a public body does not need to charge fees prior to requesting s. 43 authorization. The Court said that the fee provisions in FIPPA are "concerned with the alleviation of financial burdens on a public body while s. 43 is designed to alleviate administrative hardship." *Supra* note 11 at para. 44.

liars, bullies, stalkers, manipulators, and rapists, and made vehement and repeated complaints about her perceptions of their behaviour.³³ In these circumstances, I understand why WorkSafeBC implemented staff protection measures that it continues to use when dealing with the respondent's FIPPA activity. Implementing and using such measures has undoubtedly caused more work for WorkSafeBC and, in my opinion, will continue to do so.

[39] Taking all this into account, including the evidence about WorkSafeBC's past experience with the respondent's FIPPA requests, I find that responding to the respondent's outstanding FIPPA requests will interfere with WorkSafeBC's operations. I also find this interference unreasonable, particularly because: (a) WorkSafeBC has already spent almost 700 hours dealing with the respondent's FIPPA matters; and (b) WorkSafeBC has the portal and the Disclosures Department. The respondent has used both of these mechanisms for access over the years on many occasions. In my view, it is not reasonable to continue making FIPPA access requests for records that, for the most part, are available via other means. I recognize that some of the respondent's FIPPA requests are for policies that I presume are not available via the portal or Disclosure Department. I also recognize that some of the requests at issue are for corrections. Despite this, I find that many of the respondent's FIPPA requests seek access to records that she has already seen or could see via the portal or the 80 disclosures she has received from the Disclosures Department. In other words, the other available avenues for obtaining information in this case support my finding that the respondent's outstanding requests are repetitive and that the interference caused by responding to them would be unreasonable.

[40] To summarize, I find the respondent's outstanding FIPPA requests systematic and repetitious. I also find that responding to these FIPPA requests will unreasonably interfere with WorkSafeBC's operations within the meaning of s. 43(a). As such, and as discussed in greater detail below, I have decided to grant WorkSafeBC relief under s. 43(a). Given my findings respecting s. 43(a), I will not consider whether the respondent's FIPPA requests are also frivolous and vexatious under s. 43(b) because there is no need to do so.

Granting relief under s. 43(a)

[41] For the reasons set out above, I have found that WorkSafeBC has established that responding to the outstanding FIPPA requests would unreasonably interfere with WorkSafeBC's operations because of the systematic and repetitious nature of the requests. Therefore, WorkSafeBC has satisfied the requirements of s. 43(a) and I authorize WorkSafeBC to disregard all ten of the respondent's outstanding FIPPA requests.

³³ For example, the Senior Manager's Affidavit at Exhibit H. I noted many other similar examples in the thousands of pages of material submitted by the respondent, such as at pp. 107, 1192, 2068, 2270 and 3942 of the respondent's paper materials.

[42] The ample evidence in this case also leads me to conclude that future requests from the respondent will likely continue to unreasonably interfere with WorkSafeBC's operations because of their systematic and repetitive nature. In my view, the respondent's behaviour strongly suggests that she "has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events."³⁴ For example, as set out above, the respondent continued to make multiple repetitive access requests in 2020, despite knowing that WorkSafeBC filed this s. 43 application. Therefore, I find it appropriate to provide WorkSafeBC with relief respecting future FIPPA requests from the respondent.

[43] Previous decisions have tailored their s. 43 remedies to the circumstances of each case, taking into account factors such as:

- A respondent's right to her own personal information;
- Whether there are live issues between the public body and the respondent;
- Whether there will likely be any new responsive records in the future;
- The respondent's stated intentions;
- The nature of past requests; and
- Other available avenues for obtaining information in the past and the future.³⁵

[44] In this case, I find that, other than FIPPA requests, the respondent has two avenues available to her for accessing her claims information, including her personal information: the portal and the Disclosures Department. The respondent argues that if I grant this s. 43 application, her relationship with WorkSafeBC will end and she will "no longer be able to try and get the healthcare" she needs and "have [her] bills paid."³⁶ I disagree. This s. 43 decision will not end the relationship the respondent has with WorkSafeBC or have any impact on the respondent's ability to try to get the healthcare she feels entitled to. The respondent will continue to have access to all the information, including all her personal information, that relates to her claims through the portal and the Disclosures Department.

[45] I recognize that the respondent says she does not use the portal and does not have the internet at home. However, nothing prevents her from using the library if she wishes to access the portal there. I note that in her submission, the respondent indicates that she uses the library and the internet.³⁷ Therefore, from

³⁴ Order F18-37, 2018 BCIPC 40 at para. 26.

³⁵ Decision F06-03, 2006 CanLII 13535 (BC IPC) at para. 69.

³⁶ Respondent's submission at p. 50 (fax 3).

³⁷ At p. 17 (fax 3) of the respondent's submission, she states "the disk should have opened at the library add [sic] it did not." This indicates that the respondent has used the library in the past. When it comes to internet use, in explaining why she made an access request about a specific

the respondent's own submission, I find it clear that she could use the portal if she wanted to. Further, if she does not want to use the portal, the Disclosures Department remains available to her. In my view, the existence of two different mechanisms for the respondent to access information respecting her claims weighs heavily in favour of authorizing WorkSafeBC to disregard future FIPPA requests related to her claims.

[46] I also find that there are no significant live issues between the respondent and WorkSafeBC at this time, other than those that have arisen in relation to the respondent's FIPPA activity. WorkSafeBC's evidence shows that, for the most part, each of the respondent's nine claims have effectively closed. The only active "task" on a few of the claims relates to a security protocol that requires claims correspondence to be sent to Corporate Security for signature.³⁸ In my opinion, the fact that there are no major live issues between the parties also significantly reduces the probability that there will be new records generated in the future that contain the respondent's personal information or have anything to do with her claims. The lack of live issues and low likelihood that new records related to the respondent's claims will come into existence in the future also weighs in favour of authorizing WorkSafeBC to disregard the respondent's future FIPPA requests.

[47] When it comes to the respondent's stated intentions, she says she did not make the FIPPA requests to harass or be vexatious to WorkSafeBC, but rather to "get to the bottom" of the "abusive tactics" used by WorkSafeBC's employees.³⁹ She questions, apparently rhetorically, why she would not ask for the records when WorkSafeBC's employees have lied, fabricated evidence, and performed vindictive actions against her.⁴⁰ She says that she made her correction requests because of WorkSafeBC's "spoliation of evidence" that directly impacted her care and benefits.⁴¹

[48] As stated previously, I find it clear that the respondent feels deeply aggrieved and wronged by WorkSafeBC. According to her evidence, this is part of why she made her FIPPA requests. Nothing in the evidence suggests to me that the respondent will stop feeling this way about WorkSafeBC, in fact the evidence suggests quite the opposite. Therefore, the respondent's stated intentions lead me to conclude that she will likely continue to make future FIPPA requests that all centre around the same few events, decisions, people, policies, and issues. As a result, I find that the respondent's stated intentions also weigh

WorkSafeBC employee, the respondent says, according to the internet, that specific employee attended a certain event. Respondent's submission at p. 80 (fax 2). This indicates that the respondent has used the internet in the past.

³⁸ Senior Manager's Affidavit #1 at Exhibit A.

³⁹ Respondent's submission at p. 10 (fax 2).

⁴⁰ *Ibid* at pp. 31-32 (fax 2).

⁴¹ *Ibid* at p. 41 (fax 3).

in favour of authorizing WorkSafeBC to disregard future FIPPA requests in this case.

[49] I also find that the nature of the respondent's past and outstanding FIPPA requests weighs in favour of authorizing WorkSafeBC to disregard her future FIPPA requests. As I have outlined in some detail, the respondent's FIPPA requests have often been repetitive and systematic and have interfered with WorkSafeBC's operations. I accept WorkSafeBC's evidence that it has spent over 678.5 hours in the past six years dealing with the respondent's FIPPA activity. The evidence also shows that the respondent frequently engages the OIPC in relation to her FIPPA requests with WorkSafeBC, which has unquestionably also had an impact on WorkSafeBC's resources and operations. In my opinion, the repetitive and systematic nature of the respondent's past FIPPA requests also weighs in favour of authorizing WorkSafeBC to disregard future requests.

[50] In addition to finding the nature of the respondent's past FIPPA requests repetitive and systematic, I also find much of her FIPPA correspondence to WorkSafeBC abusive and aggressive, as described above.⁴² WorkSafeBC submits that "there is nothing in FIPPA which requires a public body and its staff to be subjected to this level of abuse."⁴³ I agree. In my view, the aggressive, abusive nature of many of the respondent's past FIPPA communications also weighs in favour of authorizing WorkSafeBC to disregard her future FIPPA requests.

[51] The respondent argues that allowing WorkSafeBC to disregard her future FIPPA requests will violate the court order of Justice Butler that she says allows her to have a lawyer "correct" her judicial reviews.⁴⁴ WorkSafeBC supplied a copy of this court order.⁴⁵ Having reviewed it, I reject the respondent's assertion that a s. 43 authorization will violate this court order. The order allows the respondent to amend a Notice of Appeal she had filed with the British Columbia Court of Appeal. Allowing WorkSafeBC to disregard future FIPPA requests has nothing whatsoever to do with the respondent's ability to file an amended Notice of Appeal.

[52] The respondent also argues that if the OIPC limits her ability to make future FIPPA requests, it will "limit every worker in Canada" and cause access, privacy and correction rights to fail "all across Canada."⁴⁶ I disagree. My decision, based on the unique facts of this case, will only prevent this particular respondent's ability to continue to make repetitive, systematic FIPPA requests

⁴² See para. 38 above.

⁴³ WorkSafeBC's reply submission at para. 5.

⁴⁴ Respondent's submission at p. 52 (fax 3).

⁴⁵ September 19, 2019 Order of Justice Butler of the British Columbia Court of Appeal.

⁴⁶ Respondent's submission at p. 63 (fax 3).

that will unreasonably interfere with the operations of WorkSafeBC. Future cases will turn on their own facts.

[53] The respondent also contends that WorkSafeBC has filed this s. 43 application to attack, tarnish, damage, embarrass, and discredit her.⁴⁷ I am not persuaded by this argument because nothing in the evidence supports it. On the contrary, my review of the thousands of pages of material the respondent submitted in this application leads me to conclude that WorkSafeBC's freedom of information staff has continually treated the respondent with respectful professionalism.⁴⁸ In coming to this conclusion, I recognize that the respondent believes two WorkSafeBC employees called her two highly derogatory names that refer to women. However, I note that neither of these words appear anywhere in the thousands of pages submitted by the respondent, other than when added in the respondent's own handwriting. The specific page that the respondent believes contains the worst of these two derogatory words does not, in fact, contain that word at all, but instead contains an abbreviated form of the word "okay" followed by an ellipsis.⁴⁹ I understand that the respondent feels deeply offended by the thought that WorkSafeBC employees have used these derogatory terms to refer to her. However, nothing in the evidence before me shows that any employee ever used these words. In short, I am not persuaded by the respondent's arguments against providing future relief to WorkSafeBC under s. 43(a) in this case.

[54] To summarize, I find that multiple factors weigh in favour of providing WorkSafeBC with a remedy in relation to future FIPPA requests. This includes the nature of the respondent's past requests, other available avenues for access to information (including the respondent's own personal information), the lack of significant live issues between the parties, the respondent's stated intentions, and the unlikelihood that new records relating to the respondent's claims will come into existence in the future. I am not persuaded by the respondent's arguments respecting future relief and instead find it appropriate to fashion a remedy that includes prospective relief.

[55] For the reasons canvassed above, I find it appropriate to authorize WorkSafeBC to disregard some, but not all future FIPPA requests from the respondent. The BC Supreme Court has said that it will only be appropriate to authorize a public body to disregard all future requests for personal information in "very exceptional" circumstances.⁵⁰ Former Commissioner Loukidelis has also

⁴⁷ *Ibid* at pp. 6, 9 (fax 2), and 13, 29, 49 and 56 (fax 3).

⁴⁸ For example, pp. 315-316, 2159, 2323a, 2450, 2456, 2528, 2546, 2547, 2592 of the respondent's paper materials.

⁴⁹ Email sent Thursday, September 26, 2013 at 11:51 AM. Located, for example, at p. 816 of the respondent's paper materials. I also note that the derogatory word the respondent believes is being used here begins with a "c" not a "k", so I do not understand why the respondent believes this abbreviation for the word "okay" (i.e. "k") stands for the word she thinks it does.

⁵⁰ *Mazhero*, *supra* note 14 at para. 28.

explained that a one-year ban on access requests was in almost all cases an excessive remedy where the right of access to one's own personal information is in issue.⁵¹ However, unlike previous s. 43 decisions, this case involves a unique set of circumstances because the respondent has the option of accessing information respecting her claims, including her personal information, via the portal or through the Disclosures Department. This means that authorizing WorkSafeBC to disregard the respondent's future FIPPA requests will not prevent the respondent from having access to information respecting her claims, including her own personal information.

[56] WorkSafeBC has requested authorization to disregard all future FIPPA requests from the respondent.⁵² In the alternative, WorkSafeBC requests that I permit it to disregard the outstanding requests and, when it comes to future requests from the respondent, permit WorkSafeBC to disregard any of the respondent's future requests that: (a) seek access to records that WorkSafeBC has already provided; and (b) exceed more than one access or correction request per year. WorkSafeBC also requests authorization to determine what constitutes one access or correction request.

[57] I have carefully considered WorkSafeBC's requests. In the unique circumstances of this case, I have decided to authorize WorkSafeBC to disregard future FIPPA requests from the respondent as follows.

- 1) For the remainder of 2020, WorkSafeBC may disregard any FIPPA requests the respondent, or someone acting on her behalf, may make.
- 2) Beginning in 2021 and continuing indefinitely, WorkSafeBC may disregard any future access requests the respondent, or someone acting on her behalf, may make seeking information that is available to the respondent through the portal or the Disclosures Department.
- 3) Beginning in 2021 and continuing indefinitely, WorkSafeBC may disregard any future correction requests the respondent, or someone acting on her behalf, may make seeking to change someone else's opinions or decisions respecting the respondent's claims. In other words, WorkSafeBC may disregard any future correction requests that do not involve the correction of factual information. I leave it to WorkSafeBC to determine, in light of its s. 28 duty to ensure that personal information is accurate and complete, whether a correction request seeks to correct factual personal information.

⁵¹ Authorization (s. 43) 02-01, *supra* note 13 at p. 14.

⁵² The information summarized in this paragraph comes from WorkSafeBC's initial submission at paras. 102-105.

- 4) Beginning in 2021 and continuing for a period of two years, WorkSafeBC may disregard any FIPPA requests in excess of one open access request and one open correction request at a time made by the respondent, or someone acting on her behalf.
- 5) When responding to the one open access request and one open correction request specified in paragraph 4 immediately above, the following apply:
 - a. WorkSafeBC is not required to spend more than 7 hours responding to each request;⁵³
 - b. WorkSafeBC is not required to respond to any access request that seeks records that have already been provided to the respondent through the Disclosures Department or previous responses to FIPPA requests;
 - c. WorkSafeBC is not required to respond to any new correction request that duplicates any past correction request;
 - d. I leave it to WorkSafeBC to determine, in light of its s. 6(1) duties to the respondent, what is a single access or correction request for the purpose of this authorization; and
 - e. An “open access request” is a request for records under s. 5 that WorkSafeBC has not yet responded to under s. 8. An “open correction request” is a request for correction under s. 29(1) that WorkSafeBC has not yet acted upon under s. 29(2).

CONCLUSION

[58] For the reasons given above, under s. 43(a) of FIPPA, I authorize WorkSafeBC to:

- 1) Disregard all ten of the respondent’s outstanding FIPPA requests;
- 2) Disregard all future FIPPA requests made by or on behalf of the respondent for the remainder of 2020; and
- 3) Disregard all future FIPPA requests made by or on behalf of the respondent according to the parameters set out in paragraph 57 items 2-5, above.

⁵³ For examples of similar relief, see Decision F05-01, 2005 CanLII 11955 (BC IPC) at para. 44; Decision F09-04, 2009 CanLII 42411 (BC IPC) at para. 36; Decision F11-03, 2011 CanLII 82435 (BC IPC) at para. 25; and Decision F08-10, 2008 CanLII 57362 (BC IPC) at para. 46.

For clarity, WorkSafeBC is entitled to apply for further relief under s. 43 after the two-year time period referred to in item 4 of paragraph 57 expires, if it considers that such an application is warranted.

September 8, 2020

ORIGINAL SIGNED BY

Laylí Antinuk, Adjudicator

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