



Order F21-04

MINISTRY OF HEALTH AND MEDICAL SERVICES COMMISSION

Elizabeth Barker
Director of Adjudication

January 28, 2021

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Summary: The Ministry of Health and the Medical Services Commission jointly applied for authorization to disregard the respondent's outstanding access requests and certain future access requests under s. 43(a) and (b) of FIPPA. The adjudicator found that the outstanding requests were repetitious and systematic and responding to them would unreasonably interfere with the public bodies' operations under s. 43(a). The public bodies were authorized to disregard the outstanding requests and all but one of the respondent's future access requests at a time for two years from the date of the authorization.

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

INTRODUCTION

[1] This order decides a joint application by the Ministry of Health and the Medical Services Commission (applicants) for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard certain access requests made by the respondent. The applicants' position is that these requests unreasonably interfere with the applicants' operations because of their repetitious or systematic nature (s. 43(a)) and because the requests are frivolous or vexatious (s. 43(b)).

[2] In addition to requesting authorization to disregard the respondent's outstanding requests, the applicants seek permission to only respond to one of the respondent's future access requests at a time for a period of two years from the date of the authorization.

[3] This s. 43 application initially related to 15 outstanding requests. However, after the Office of the Information and Privacy Commissioner (OIPC) issued the

notice of application, the respondent made another access request.¹ With the OIPC's permission, that 16th request was added into the application.

Preliminary Matters

Affidavit evidence

[4] The respondent raises concerns with the format of the applicants' affidavit evidence because it was initially submitted as signed but undated and unsworn affidavits. The applicants said this was to prevent the risk of spreading COVID-19. The affidavits were subsequently dated and sworn, however, and provided to the OIPC and the respondent.²

[5] The respondent says it is false to say the affiants could not properly swear their affidavits due to COVID-19 restrictions. He says this "speaks very loudly to the lack of credibility" of the affiants.³ I do not agree. In my view, it is completely understandable that, in light of the pandemic, the applicants were concerned about bringing affiants and commissioners together to swear affidavits. I do not find this has any bearing on the credibility of the affidavit evidence.

Section 74 allegation

[6] In his response submission, the respondent alleges that the applicants have committed offences under s. 74 of FIPPA.⁴ Section 74 reads as follows:

74(1) A person must not willfully do any of the following:

- (a) make a false statement to, or mislead or attempt to mislead, the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;
- (b) obstruct the commissioner or another person in the performance of the duties, powers or functions of the commissioner or other person under this Act;
- (c) fail to comply with an order made by the commissioner under section 58 or by an adjudicator under section 65 (2).

¹ The notice of application was issued on October 2, 2020. The 16th request was dated October 19, 2020.

² The sworn affidavits are dated October 16, 2020 and January 4, 2021 (correcting typographical errors).

³ Respondent's submission at p. 20.

⁴ Respondent's submission at p. 31. The applicants did not respond to what the respondent said about s. 74.

- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine of up to \$5 000.
- (3) Section 5 of the *Offence Act* does not apply to this Act.

[7] Section 74 creates offences that only the appropriate authority can prosecute. The Attorney General is responsible for prosecuting offences under s. 74 of FIPPA, and the courts are responsible for deciding those matters. I have no authority respecting anything covered by s. 74, including issuing orders for breaches of s. 74(1).⁵

ISSUES

[8] The issues I will decide in this application are as follows:

1. Would responding to the respondent's 16 outstanding access requests unreasonably interfere with the applicants' operations because the requests are repetitious or systematic under s. 43(a) of FIPPA?
2. Are the respondent's 16 outstanding access requests frivolous or vexatious under s. 43(b) of FIPPA?
3. If the answer to either of these questions is "yes", what relief, if any, is appropriate?

[9] The burden of proof is on the applicants to show that s. 43(a) or s. 43(b) applies.⁶

DISCUSSION

Background

[10] The Ministry of Health (Ministry) and Medical Services Commission (MSC) are each a separate public body under FIPPA with the Minister of Health as their head.⁷ MSC is established under the *Medicare Protection Act*⁸ and is comprised of appointees from government, the BC Medical Association and members of the public. MSC's administrative operations are supported by staff in the Ministry.

⁵ Order 00-51, 2000 CanLII 14416 (BC IPC) at p. 6. See also *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2011 BCSC 1204 (CanLII) at para. 58. This point was not overturned on appeal, see: *British Columbia (Ministry of Children and Family Development) v. Harrison*, 2012 BCCA 277 (CanLII) at para. 42.

⁶ Order F19-44, 2019 BCIPC 50 (CanLII) at para. 4.

⁷ See Schedules 1 and 2 of FIPPA for the definitions of "public body" and "head" and a list of public bodies.

⁸ *Medicare Protection Act*, R.S.B.C. 1996, c. 286.

The MSC administers and operates the Medical Services Plan (MSP), the province's public health insurance program.

[11] MSC's Audit Inspection Committee has the authority to audit physicians who are compensated through MSP. The Ministry's Billing Integrity Program monitors and mines MSP data to detect erroneous billing, and the Audit Inspection Committee uses its reports and recommendations to decide which physicians to audit.

[12] The respondent is a physician whose MSP billings came to the attention of the Billing Integrity Program when his practice was part of a pilot project regarding billing related to complex care management. From May 1-5, 2017, the Billing Integrity Program conducted an on-site audit of the respondent's practice. The audit was conducted by a Billing Integrity Program auditor and an independent medical inspector retained under contract.

[13] In June 2018, the audit report was completed. In November 2018, the MSC issued the respondent a notice stating that it would be taking action to recover funds erroneously paid to him and to have him de-enrolled from MSP. It also provided the respondent with a copy of the audit report. Because the matter was not settled, it proceeded to an MSC panel hearing.

[14] The MSC panel hearing took place in September 2020. The respondent chose not to participate. At the time the parties made their submissions in the present application, the MSC panel was still deliberating.⁹

Applicable Principles

[15] 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

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

Access to information legislation confers on individuals such as the respondent a significant statutory right, *i.e.*, the right of access to

⁹ BIP Director's affidavit at paras. 27, 28 and 76.

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....¹⁰

[17] Section 43 is, therefore, "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."¹¹

[18] For the reasons that follow, I find it is only necessary to consider s. 43(a) in this case.

[19] In order to merit relief under s. 43(a), the requests must be repetitious or systematic and responding to them must unreasonably interfere with the public body's operations. A repetitious request is one that has already been made one or more times.¹² A systematic request is characterized by a method or plan of acting that is organized and carried out according to a set of rules or principles.¹³ The key characteristics of a systematic request include:

- 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;
- 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; and
- an increase in frequency of requests over time.¹⁴

¹⁰ Auth. (s. 43) 99-01 (December 22, 1999) at p. 7. All unreported decisions can be found on the OIPC's website at <https://www.oipc.bc.ca/decisions>.

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

¹² Auth. (s. 43) 99-01 (December 22, 1999) at p. 3.

¹³ Auth. (s. 43) 02-01 (September 18, 2002) at para. 17, citing Auth. (s. 43) 99-01 (December 22, 1999) at p. 3.

¹⁴ Order F18-37, 2018 BCIPC 40 (CanLII) at paras. 26-27; Order F13-18, 2013 BCIPC 25 (CanLII) at para. 25; Decision F06-03, 2006 CanLII 13535 (BC IPC) at paras. 51 and 53.

Applicants' position

[20] The applicants say the following about the nature of the respondent's access requests:

The respondent's requests to the applicants routinely duplicate information he has previously received through the disclosure process in the oral hearing process, repeat earlier access requests, systemically target every public servant or independent contractor whom have had anything to do with the audit of his practice or his oral hearing and/or are needlessly frivolous or vexatious.¹⁵

[21] The applicants provide affidavit evidence from a Team Lead with the Ministry of Citizens' Services Information Access Operations (IAO Team Lead) and from the Director of the Ministry's Billing Integrity Program (BIP Director).

IAO Team Lead

[22] The IAO Team Lead explains that IAO provides services for and on behalf of the Province's ministries to assist them in fulfilling their statutory duties under FIPPA. She is one of two team leads on the Health Education Team, which provides services to the Ministry and MSC. She says the Health Education Team currently has ten full time employees. She explains in detail how the IAO provides services to and on behalf of its client ministries.

[23] The IAO Team Lead provides a table (Exhibit B) she created listing the details of the respondent's past and outstanding requests to the applicants. She says requests to the MSC are recorded as requests to the Ministry in the table. According to the table, between April 2017 and September 2020, the respondent made 65 access requests to the applicants. As previously mentioned, after this application and the IAO Team Leads' affidavit were made, the respondent made one more request, bringing the total to 66. The list also contains details of another 16 requests the respondent made during the same time frame to the Ministry of Attorney General, the Ministry of Finance and the Public Service Agency for records related to the MSC audit and hearing matter.

[24] The IAO Team Lead says the IAO's senior director told her that between January 1 - August 31, 2020, government received 21,211 access requests from 6801 applicants, and 76 per cent of applicants submitted only one request. She says the IAO's senior director also told her that only three applicants submitted as many or more requests than the respondent. Two of those applicants are making requests to conduct research for work and the third is the subject of a current s. 43 order from the OIPC.

¹⁵ Applicants' submission at para. 4.

[25] The IAO Team Lead says processing the respondent's access requests takes more communication than normal because his requests and communications "can be wordy, confusing, repetitive or convoluted, necessitating additional time or follow-up to clarify or comprehend."¹⁶

[26] The IAO Team Lead says her manager told her that since July 2019, IAO has dedicated 40 per cent of one full-time team member's work to handle the respondent's access requests. She adds the respondent is the only access applicant for whom the Health Education Team has had to do this.

[27] The IAO Team Lead says the respondent's communications with IAO include unnecessary allegations and criticism of the Ministry and its employees and contractors. By way of example, she provides a lengthy two-page email (with 10 attachments) the respondent sent to an FOI analyst detailing his allegations with the form and substance of the MSC audit.¹⁷

[28] She also says the respondent does not accept or believe the Ministry's answers and responses to his access requests, which requires the IAO to engage in further communication with him. By way of example, she provides 48 pages of his email communications challenging the veracity or completeness of the Ministry's response to 18 of his requests.¹⁸

[29] The IAO Team Lead provides an excerpt from a 2019 Deloitte report that calculated that it costs an average of \$3,000 for the Province to process an access request.¹⁹ She says it is a conservative amount because the respondent's requests require more time and resources than average.

[30] The IAO Team Lead says the respondent is litigious and initiates far more OIPC proceedings (i.e., complaints and requests for review) than the average applicant. She says IAO client ministries received a total of 272 OIPC proceeding files between January 1, 2019 and September 16, 2020, and the respondent initiated 35 or about 13 per cent of them.²⁰ By way of comparison, she says the applicant with the second most OIPC proceedings initiated only 13 for the same time period.

[31] The IAO Team Lead also says 43 per cent of the respondent's access requests result in OIPC proceedings. By way of comparison, she says the individual who has the second highest number of OIPC proceedings initiated OIPC proceedings for only 3 per cent of his requests over the same time frame.

¹⁶ IAO Team Lead's affidavit at para. 27.

¹⁷ IAO Team Lead's affidavit at Exhibit C.

¹⁸ IAO Team Lead's affidavit at Exhibit D.

¹⁹ IAO Team Lead's affidavit at Exhibit A at p. 25.

²⁰ The IAO Team Lead says the applicant's 35 requests for review and complaints relate to 28 of his access requests.

[32] She provides a table she created summarizing the respondent's 28 OIPC proceedings involving the applicants, all of which were commenced between January 1, 2019 and September 16, 2020.²¹

[33] The IAO Team Lead says the OIPC has not substantiated any of the respondent's complaints and she provides the OIPC decision letters for eight complaints.²² She says the respondent also has three outstanding OIPC inquiries pending involving the Ministry and a fourth inquiry was recently decided.²³

[34] The IAO Team Lead concludes by saying the significant amount of resources required to address the respondent's requests, communications and OIPC proceedings is impairing her IAO team's ability to respond to other applicants. She says, in order to manage the significant workload caused by the respondent's access requests, the IAO supports the applicants' request for s. 43 relief.

BIP Director

[35] The BIP Director describes the MSC audit and hearing process and identifies the various officials involved in the audit and hearing of the respondent's MSP billing practices. Her evidence details how the respondent made access requests for records regarding those individuals. For instance, he asked for information about their appointments, employment oaths, statements they may have made about conflicts of interest or bias, other employment and contracts, compensation and how many days they billed MSP. She says, in her opinion, the only reason the respondent made these requests is to harass and intimidate Ministry staff.²⁴

[36] She also says she has reviewed emails in which the respondent refers to the MSC Hearing Coordinator by misstating her name by using a derogatory term. She does not provide a copy of those emails. However, the BIP Director provides two emails in which the respondent uses two derogatory terms to refer to the Hearing Coordinator and the person who fills in for her.²⁵ The BIP Director also says the respondent communicated with the Hearing Coordinator frequently, and she provides examples of lengthy argumentative emails he sent building on what he learned from his earlier FIPPA requests and raising substantive issues that are beyond the Hearing Coordinator's role to decide.²⁶

²¹ IAO Team Lead's affidavit at Exhibit E. The table also lists seven that involve the Ministry of Attorney General and the Ministry of Finance.

²² IAO Team Lead's affidavit at para. 47 and Exhibit F.

²³ Order F20-12, 2020 BCIPC 14 (CanLII). She also says the respondent has pending inquiries involving the Public Service Agency and the Ministry of Attorney General.

²⁴ BIP Director's affidavit at para. 67.

²⁵ BIP Director's affidavit, first email in Exhibit B and first email in Exhibit D.

²⁶ BIP Director's affidavit at paras. 60-67 and Exhibits B and C.

[37] The BIP Director says the respondent has already been given unredacted copies of the records that relate to the audit and the issue for determination before the MSC hearing panel. She says the respondent received more than 144,000 pages as part of that hearing process.²⁷ She describes 18 of the respondent's past and outstanding access requests that overlap with the 144,000 pages he already received. She says processing these access requests requires her staff to take additional time to review and sever the records the respondent already has, and when a request is repetitive, to cross-check that FIPPA has been applied consistently over multiple disclosure packages.²⁸

[38] She says the respondent also made access requests for information about the audit process. She says much of this information was already, or could have more easily been, provided to him through the MSC hearing disclosure process. She identifies 14 of the respondent's access requests of this nature.²⁹

[39] The BIP Director also says the respondent made access requests for information that is publicly available, and she provides one example related to the MSC's strategic plan.³⁰

[40] The BIP Director provides a timeline showing the increasing frequency of the respondent's access requests.³¹ She says recently the Billing Integrity Program was assigned six new access requests from the respondent in one day. To put it in perspective, she says between 2008-2018 the Billing Integrity Program responded to an average of seven requests annually.

[41] The BIP Director says dealing with the respondent's repetitive requests is "a huge time commitment over and above the time necessary to search, retrieve and assemble records."³² She says some of his requests are repetitive, which requires additional time to review past record packages to ensure consistency.

[42] The BIP Director says the Billing Integrity Program is also impacted even when the respondent's access requests are made to other program areas in the Ministries of Health, Finance and Attorney General. That is because the Billing Integrity Program has to participate in consultations and search for records.³³

[43] She also says the respondent will often refuse to follow the FIPPA protocol although he is well aware of how it works. Not only does he contact IAO about his access requests, but he often also contacts the Billing Integrity

²⁷ BIP Director's affidavit at para. 85. At Exhibit E she provides a copy of the Province's December 2018 List of Documents from the hearing.

²⁸ BIP Director's affidavit at para. 87.

²⁹ BIP Director's affidavit at para. 89.

³⁰ BIP Director's affidavit at para. 92.

³¹ BIP Director's affidavit at Exhibit G.

³² BIP Director's affidavit at para. 104.

³³ BIP Director's affidavit at para. 98-99.

Program directly. She says this causes confusion and requires additional efforts to coordinate responses to his many access requests. She says, “He is also aggressive, suggesting staff are not fit to fulfill their duties, that they are not aware of their obligations/duties or that they are not fulfilling those obligations.”³⁴ She says all of this takes away from the ability of the Billing Integrity Program staff to address their other duties.³⁵

[44] The BIP Director says she estimates she spends approximately 30 per cent of her time managing the respondent’s access requests, including supporting her team, discussing with legal counsel, following up with IAO, providing evidence for complaints and follow-ups and other related inquiries.³⁶ She says this detracts from the time she can spend responding to other access requests and “leading the team that is responsible for ensuring that public funding for public health care is being spent correctly, appropriately and lawfully.”³⁷

[45] The BIP Director says the Billing Integrity Program’s Information Access Analyst (BIP Analyst) advised that in their nine years working for the Billing Integrity Program no other physician had generated as many requests or demanded as much time as the respondent. The BIP Director says the BIP Analyst has been so stressed and overwhelmed by these requests that the BIP Analyst has requested to no longer be responsible for FIPPA tasks.³⁸

[46] The BIP Director says the BIP Analyst has shared details of how the respondent’s conduct has negatively impacted the BIP Analyst’s physical and mental health on the condition that these details would be kept confidential. She says the BIP Analyst said the BIP Analyst is not comfortable providing an affidavit or permitting the BIP Director to share more details because the BIP Analyst fears the respondent will target the BIP Analyst for further harassment and intimidation. The BIP Director says the loss of this experienced individual in the BIP Analyst role has been a loss to the Billing Integrity Program staff and the public.

[47] The BIP Director says her team made every effort to respond to the respondent’s access requests, including in one case creating records for him.³⁹ She says, “it has become necessary to make this application given the volume of requests, the unclear and convoluted way they are framed, their increasingly systematic and almost conspiratorial trajectory and his escalating abusive behaviour towards our team.”⁴⁰

³⁴ BIP Director’s affidavit at para. 101.

³⁵ BIP Director’s affidavit at paras. 102-103.

³⁶ BIP Director’s affidavit at para. 109.

³⁷ BIP Director’s affidavit at para. 114.

³⁸ BIP Director’s affidavit at para. 110.

³⁹ BIP Director’s affidavit at para. 113.

⁴⁰ BIP Director’s affidavit at para. 113.

[48] Regarding the s. 43 remedy they seek, the applicants submit the MSC hearing is concluded and the respondent's outstanding access requests are not necessary for him to defend himself regarding the allegations related to his MSP billings. Further, they say if there is a judicial review, it would be based on the record from the MSC hearing and the court can order document disclosure if necessary to ensure fairness between the parties.⁴¹

[49] The applicants also say the following considerations are relevant when it comes to remedy:

- The respondent has already been provided access to the information relevant to his dispute with the applicants.
- No new information will be created in relation to the audit of his practice or the substance of the dispute with the applicants.
- The respondent's access requests have been increasing in frequency, are repetitious and overlap.
- The respondent's adequate search complaints have repeatedly been unfounded.
- The respondent's approach to conflict, as demonstrated in this instance and in his previous litigation, demonstrates a relentless disrespectful strategy designed to exhaust, berate and unreasonably interfere with the public bodies.
- The nature and volume of the respondent's past requests suggests they will continue unabated into the future.
- There is the potential for litigation related to the MSC hearing to proceed for years.⁴²

Respondent's position

[50] The respondent's submission focusses in large part on the parties' underlying dispute and indicates that he made his access requests to get information to substantiate his concerns. He believes that the audit and hearing processes were improper and he disputes the audit findings and the integrity of the individuals involved in conducting it and the hearing. He asserts that the MSC did not have jurisdiction to hold a hearing regarding his MSP billing and he says they held "mock" or "putative" hearings.⁴³

⁴¹ Applicants' initial submission at paras. 116-117.

⁴² Applicants' initial submission at paras. 121-124.

⁴³ Respondent's appendices Xxi- Xxii.

[51] The respondent says he had to make access requests because, during the MSC audit and hearing process, the applicants failed to comply with the document disclosure requirements under the *Physician Master Agreement*.⁴⁴

[52] The respondent denies he made access requests to harass and intimidate Ministry staff.⁴⁵ He also denies he targeted the Hearing Coordinator in his communications and he says he does not know her and he only communicated with her in writing to the email addresses that she herself used. He disputes he referred to her with one of the terms the applicants allege he used and says the applicants provided no documentary evidence that he did so. He does not comment, however, on the emails that the applicants did provide where he used other derogatory terms for the Hearing Coordinator and the person that filled in for her.⁴⁶

[53] The respondent does not specifically respond to the applicants' allegations and evidence about how his requests are repetitious.

[54] The respondent does not reply to what the BIP Director says about how some of his requests were for information that was publicly available.

[55] The respondent's submissions also include details about how he disagrees with decisions the applicants issued in response to some of his past FIPPA access requests, and he makes arguments of the type that belong in an OIPC request for review or complaint process.⁴⁷ He does not explain the relevance of reviving these past disputes in the context of this s. 43 application.

[56] The respondent disputes the BIP Director's evidence that he contacted the Billing Integrity Program directly about his access requests, and he points out that there was no corroborative evidence he did so. He provides copies of correspondence, however, that show otherwise, specifically letters from the Billing Integrity Program in which they refer to his access requests and tell him to deal with IAO directly.⁴⁸

[57] The respondent says the BIP Director's statement that he is aggressive towards Billing Integrity Program staff and suggested they are not fit to fulfill their duties is false and libelous and there is no corroborative evidence.⁴⁹

[58] He disputes the BIP Director's evidence that his behaviour is responsible for the BIP Analyst no longer wanting to work on FIPPA tasks. He says what the

⁴⁴ Respondent's submission at p. 3.

⁴⁵ Respondent's submission at pp. 15-16.

⁴⁶ These emails are in the BIP Director's affidavit at Exhibits B and D.

⁴⁷ The respondent does not say if he pursued these matters with the OIPC by requesting a review or making a complaint.

⁴⁸ Respondent's submission Appendices Aii, B and C (in PDF file labelled "esk 1").

⁴⁹ Respondent's submission at p. 18 (Bullet 101).

BIP Director says about this is hearsay without evidentiary support. He says the likely real reason is because the BIP Analyst is disappointed in the BIP Director's "modus operandi."⁵⁰

[59] He says the IAO Team Lead's evidence about how the access to information process works within government "illustrates how incestuous those processes are and also the nature of internal conflicts that arise."⁵¹ He goes into detail about what he perceives as a named individual's conflict of interest and bias.

[60] The respondent disputes the applicants' claim that he systematically targets his access requests to every public servant or independent contractor involved in the audit of his billing.⁵²

[61] He also disputes what the IAO Team Lead says about his requests requiring additional time or follow-up to clarify and comprehend. He says: "The changes in wording suggested at times from Intake have been minor. Most of the time, the requests are limited to one or two sentences."⁵³ By way of example, he refers to his February 14, 2020 request which he says "is patently clear." It was worded as follows:

[Chair] has served as Hearing Panel Chair and Panel member on at least three occasions as detailed herein. I wish to know the total sum of money paid by the Medical Services Commission and/or Ministry of Health for his work in each of the hearings: a) MSC v. Carvalho, 2015-2016, and b) MSC v. Hefnawi, 2017. In addition, he is the designated Hearing Panel Chair for a hearing relating to myself, and I wish to know how much he has billed the MSC and/or Ministry of Health in these regards to date.⁵⁴

[62] The respondent suggests the reason so many resources have been assigned by the applicants to manage his access requests is not due to the nature of his requests and behavior. He says it is because the applicants have been spending so much time "to develop strategies to deny rather than release information."⁵⁵

[63] The respondent agrees with the IAO Team Lead that he did not accept or believe the Ministry's answers and responses to his access requests.⁵⁶ He does not respond, however, to what she says about how that mistrust resulted in IAO having to communicate frequently with him.

⁵⁰ Respondent's submission at p. 19 (Bullet 110). Also mentioned at p. 27 (Bullet 29).

⁵¹ Respondent's submission at p. 20.

⁵² Respondent's submission at p. 15 (Bullet 59) and p. 23 (Bullet 3).

⁵³ Respondent's submission at p. 21 (Bullet 27).

⁵⁴ Respondent's submission at p. 21 (Bullet 27 referring to his appendices BB and CC in esk 7).

⁵⁵ Respondent's submission at p. 21 (Bullet 28) and p. 33.

⁵⁶ Respondent's submission at p. 21 (Bullet 30).

[64] The respondent says the evidence comparing his volume of access requests to other individuals' requests is irrelevant because they were not "subjected to such a grossly fraudulent audit process along with the aftermath of abuses to follow."⁵⁷

[65] He says the IAO Team Lead's list of the complaints he made which were dismissed by the OIPC does not give a complete picture.⁵⁸ However, he does not elaborate or provide examples of substantiated complaints.

[66] The respondent also disputes his requests interfere with the applicants' operations because, he says, the applicants recommended that he make formal access requests. In support, he provides two 2017 letters from the Billing Integrity Program's director responding to his requests for information. In both, the director advises the respondent that all information and materials related to the audit will be disclosed to him at the conclusion of the audit and if he wants to make an access request, he can contact IAO directly.⁵⁹

Applicants' reply

[67] In reply, the applicants submit the respondent's submission is largely an attempt to litigate his concerns related to the conduct of the audit team, the MSC hearing process, the quality of evidence relied on by the MSC and conflicts of interest. The applicants deny all the respondent's allegations of wrongdoing and say they have no relevance to the s. 43 application.

[68] They dispute the respondent's allegation that they failed to disclose all relevant documents as required under the *Physician Master Agreement* during the audit and hearing. They say the respondent's requests were either not for "relevant" documents or they were for information that had already been provided. They also say the proper venue to resolve a dispute over whether all relevant documents were disclosed was through the MSC hearing panel. However, the respondent declined to appear before the panel or even acknowledge its jurisdiction. They say the respondent's argument that he was compelled to make the access requests to defend himself is not plausible.

[69] They also dispute his claim that they directed him to make his access requests, so are responsible for them. They say their employees explained how to make requests in instances where the information he sought did not fall within MSC's disclosure processes and they point to several records that the respondent provided with his submission that demonstrate this.⁶⁰ They say the

⁵⁷ Respondent's submission at p. 21 (Bullet 40). Also, at p. 22 (Bullet 51).

⁵⁸ Respondent's submission at p. 21 (Bullet 47).

⁵⁹ Respondent's submissions at p. 28 (Bullet 30) and appendices B and C to the respondent's submission (at esk 1.pdf).

⁶⁰ The applicants identify the respondent's appendices B, C, and G.

fact their employees explained this to him does not mean that they are “somehow responsible for his subsequent barrage of access requests.”⁶¹ They add, “It certainly did not excuse him from the corresponding responsibility not to abuse his access to information rights.”⁶²

[70] The applicants also say the respondent’s insistence in his submissions that they have failed to comply with their FIPPA obligations, despite the OIPC’s findings otherwise, supports the view that he will continue to abuse FIPPA processes.⁶³

Findings

[71] Altogether the respondent made 66 access requests to the applicants between May 2017 and October 2020, all of which relate to the audit and MSC hearing into his MSP billing practices. The respondent made the first two requests the day after the audit concluded. The applicants have responded to all but 16 of the 66 requests directed to them. It is these 16 outstanding requests that are the subject of this s. 43 application.⁶⁴

[72] I have carefully reviewed the wording of the 66 requests which the applicants provide in the IAO Team Lead’s Exhibit B and other tables. The respondent does not dispute these tables accurately capture the wording of his requests. The respondent’s past and outstanding requests cover almost every aspect of the audit and hearing, including the following:

- whether the Audit Inspection Committee’s decision to audit the respondent was unanimous, and if not, who voted for or against the audit;
- definitions, accounting practices, sampling processes and checklists used by the auditors;
- statistics and comparison data about the respondent’s and other physicians’ MSP billings;
- details about the MSP computer billing system and billing codes related to the audit;
- terms of reference, composition and quorum of various committees involved in the audit and hearing of his billing practices;
- details about how the MSC hearing panel is selected, its terms of reference, rules of practice, activities and composition;
- the approval process for changes to the general audit processes;

⁶¹ Applicants’ reply at para. 23.

⁶² Applicants’ reply at para. 23.

⁶³ Applicants’ reply at para. 28.

⁶⁴ The 16 outstanding requests are listed in the applicants’ Appendices A and A.1.

- MSC’s strategic plans;
- MSC and other bodies’ meeting minutes and information about how the minutes were made and approved;
- the Ministry’s communications with the College of Physicians and Surgeons about the respondent;
- the College of Physicians and Surgeons and the British Columbia Medical Association involvement in the nomination of various individuals to positions involved in the audit and hearing;

[73] The respondent also made requests for information about over a dozen employees, contractors and appointees involved in the MSC audit and hearing.⁶⁵ He requested records and information about their contracts, oaths of employment, nominations, appointments, income, MSP billings and how they declared themselves to be free of any conflicts of interest. In all but a few cases, he makes more than one request for information about each person. For example, in one 12-month stretch, he made four requests for information about the medical inspector who led the audit and three requests for information about the Chair of the MSC hearing panel.⁶⁶ His requests follow a pattern of repeating his earlier requests or requesting slightly different details about each individual. There are several instances, where he makes multiple requests for information about an individual in a space of a few days.⁶⁷ Three of the outstanding requests are requests for information about individuals involved in the audit and hearing.⁶⁸

[74] The respondent also made requests which I find duplicated other requests. For instance, he made numerous broad requests for “any” and “all” records the applicants had about him and his audit and hearing matters.⁶⁹ These broad requests were followed by duplicate requests for all records, with the added explanation of what the respondent believes should be included as part of all records.⁷⁰ In other instances, he asks for all records followed shortly afterwards by narrower requests that would be captured by the earlier, broader request.⁷¹ Eleven of the 16 outstanding requests are requests of that nature.⁷² I can clearly see how responding to such repeated and overlapping requests would require a lot of duplication of effort.

[75] I also find the wording of the 66 requests demonstrates that they are part of a plan or strategy to systematically challenge the legitimacy of the audit and

⁶⁵ The respondent made many of these same requests to the Ministry of the Attorney General, Ministry of Finance and the Public Service Agency.

⁶⁶ IAO Team Lead’s Exhibit B requests AR005, 014, 016 and 041; AR033, 038 and 046.

⁶⁷ For example, October 2019-January 2020.

⁶⁸ IAO Team Lead’s Exhibit B requests AR 048, 060 and 082.

⁶⁹ IAO Team Lead’s Exhibit B requests AR001 – 003, 021, 037, 049, 054 - 059 and 061.

⁷⁰ IAO Team Lead’s Exhibit B requests AR054 – 059, 062 and 063.

⁷¹ IAO Team Lead’s Exhibit B requests AR021 – 022 and 061 – 063.

⁷² IAO Team Lead’s Exhibit B requests AR021, 049, 054, 056 - 059, 061 - 063 and 082.

hearing process. What the respondent says in his inquiry submission also bolsters my finding that he is making access requests in a systemic way to drive-home his point, namely that the audit and hearing processes and participants were biased, fraudulent and in a conflict of interest. The language of quite a few of his requests shows that he is using the requests as a tool to provoke and challenge. The following request is an example:

For any individual that has participated in matters relating to an audit of my medical practice and relating to an audit of [medical company] and the subsequent deliberations at either the Ministry of Health, all of its bureaus, the Ministry of the Attorney General, all of its bureaus, including the [MSC's legal counsel] and the Legal Services Branch: All records indicating whether all such individuals have declared a lack of conflict of interest relating to [company] (as cited in the BC Securities Commission documents on whole), any Individual or company co-cited in the investigations (as cited in the BC Securities Commission documents on whole), and [medical company] and its affiliates for both work and investments.⁷³

[76] While his earlier requests do not demonstrate this, by 2019 it is apparent that he is using access requests as a weapon in the underlying dispute about his MSP billings. For instance, three of his past and two of his outstanding requests are for information about what he calls “mock” or “putative” panel hearings and proceedings.⁷⁴

[77] I also find many of his requests, including several of the outstanding requests, are challenging to understand largely because they are multipart but also because the wording tends to be convoluted. I agree with the applicants that responding to that kind of request requires extra effort and communication just to understand what is wanted. The following is one example:

The Medical Services Commission through has the power to create a Hearing Panel to adjudicate issues brought before relating to medical audits and related matters. Please provide a copy of records describing how the panel is selected, the terms of reference of that hearing panel, the qualifications and requirements to serve a member [sic] of the panel, the names of those who may be on the current pool from which they are selected, the selection process, the terms of employment and oaths of such employment, the information that is sent to the panelists in their appointment and prior to any hearing, and details of compensation for the panelists. For [MSC hearing coordinator, hearing panel chair and four panel members], and related to a hearing panel, please provide copies of their contracts or terms of engagements of employment including statements

⁷³ IAO Team Lead's Exhibit B requests AR034. Resulted in OIPC file F20-82545, which was closed after respondent's complaint was found to be unsubstantiated.

⁷⁴ IAO Team Lead's Exhibit B requests AR045, 050-052 and 065.

generally that they have no conflict of interest or reasonable apprehensions of bias in regard to any hearing panel participation.⁷⁵

[78] I also find the evidence establishes that the respondent routinely engages in excessive and argumentative back-and-forth communication about the responses to his access requests. His communications often contain allegations and unnecessary details and documentation.⁷⁶ It is obvious that all of that communication required extra work for the person responding. Although the respondent did not systematically take his disputes about his access requests to the OIPC, his requests did result in at least 28 complaints and requests for review, six of which resulted in inquiries.⁷⁷

[79] Only three of the respondent's 66 requests to the applicants were made prior to January 2019. I find that after January 2019, the frequency and volume were excessive and, in essence, amounted to a barrage of requests.⁷⁸ Between January 2019-October 19, 2020, seldom two weeks passed without the respondent making an access request to the applicants, and he often made multiple requests per day. The applicants would barely have had time to respond to one request before the respondent made another, often overlapping or duplicate request. Most of the outstanding requests follow this same rapid-fire, non-stop pattern, and six of the outstanding requests were made on the same day. It is clear that this pattern of making requests is the respondent's method of showing his disdain and challenging what was being alleged about his MSP billings.

[80] In addition, I find the large number of requests the respondent made about the same topic is unreasonable, in particular when many of the requests clearly overlap or duplicate each other. The number is also unwarranted considering the fact that he had access to a large number of records as part of the audit and hearing disclosure process. I accept the BIP Director's evidence about that, and I conclude a significant portion the respondent's access requests, especially the broad ones for "all" records would have certainly overlapped with the 144,000 pages he received as part of the audit and hearing disclosure process.

[81] In essence, I find the 16 outstanding requests are part of a four-year long pattern of making requests about the same events, people and information. The respondent's requests about these matters have been excessive in number,

⁷⁵ IAO Team Lead's Exhibit B requests AR033. Resulted in OIPC pending inquiry file F20-81906.

⁷⁶ Respondent's appendices Tiii and Uiii; BIP Director's affidavit Exhibits B and C; IAO Team Lead's affidavit Exhibits C, D. I find for the most part the respondent's language was polite, but on occasion his tone was overly demanding and aggressive.

⁷⁷ Concluded: F17-71431 (resulted in Order F20-12). Pending: F19-78879, F19-80933, F19-81203, F20-81906 and F20-82673.

⁷⁸ The flood of requests related to his audit and hearing was even greater when one considers the requests he made to the Ministry of Finance, the Public Service Agency and the Ministry of the Attorney General.

rapid-fire and non-stop, duplicate and/or overlapping, multipart and confusingly worded. In addition, the respondent's behaviour when it comes to making access requests suggests that he has no intention of stopping. When viewed as a whole and in context, the respondent's requests and behaviour reveal a method or plan of action, and I find they are repetitious and systematic under s. 43(a).

[82] Without repeating it here, I also accept the applicants' evidence that they have had to use a disproportionate amount of resources to respond to the respondent, given the volume and nature of his requests and communication about those requests.

[83] The respondent says any large draw on resources due to his access requests is the applicants' fault and has nothing to do with his behaviour. He says the applicants told him to make formal access requests so they are responsible for what he did. He also says any excessive amount of time spent on his request was because the applicants were spending their time developing "strategies to deny rather than release information". He also denies his behaviour had any negative impact on the applicants' staff, and he says the reason the BIP Analyst no longer works on FIPPA tasks has nothing to do with him but is because the BIPA Analyst is ashamed of the BIP Director's "modus operandi." I find what the respondent says about the impact of his requests and behaviour is not supported by the documents he and the applicants' provided in this application. Those documents undercut what he says and give credence to what the applicants' say about the negative impact the respondent's requests have had on staff and resources. I find the applicants' evidence and submissions to be more persuasive.

[84] I conclude responding to the respondent's 16 outstanding requests would unreasonably interfere with the applicants' operations because it would only increase what has already been an excessive use of resources on his past requests.

Appropriate Remedy

[85] The applicants asked for authorization to disregard the 16 outstanding requests. Because I find those requests are repetitious and systematic and responding would unreasonably interfere with their operations, I authorize the applicants to disregard them.

[86] The applicants also want authorization to disregard all access requests made by or on behalf of the respondent, over and above one open access request at a time for a period of two years from the date of the authorization.

[87] I have the power to make prospective orders and authorize the applicants to disregard future access requests,⁷⁹ and I find such a remedy is warranted in this case. Based on the material in this inquiry, including the respondent's own submissions, I have no doubt that until the MSC audit and hearing matter is concluded to the respondent's satisfaction, he will continue to make access requests. I am confident that unless I impose some limitations, the respondent's requests will follow the same pattern as the requests discussed above. In my view, limiting the respondent's future access requests to one open request at a time between the two applicants will sufficiently address well-founded concerns about a continuing barrage of repetitious and systematic requests.

[88] It is important to recognize that other members of the public have an equal right to a share of the public resources allocated to respond to access requests. When an individual overburdens the FIPPA system in the way the respondent has been doing, it has a negative impact on others who want to legitimately exercise their FIPPA rights. It also adds to the public bodies' overall costs of complying with FIPPA. In my view, the respondent's behaviour reveals a failure on his part to recognize that the right of access to information under FIPPA comes with the responsibility to not abuse that right by making repetitious and systematic requests.

CONCLUSION

[89] For the reasons provided above, I make the following authorization under s. 43 of FIPPA:

1. The applicants are authorized to disregard the respondent's 16 outstanding access requests listed in the applicants' appendices A and A.1.
2. For a period of two years from the date of this authorization, the applicants are authorized to disregard any access request made by, or on behalf of, the respondent over and above one open access request at a time. For clarity, this means one open access request between the applicants.
3. For the purposes of this authorization, an open access request is a request for records under s. 5 of FIPPA to which the applicants have not yet responded under s. 8 of FIPPA.

⁷⁹ *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at paras. 41 and 43.

4. Given the respondent's practice of making multipart requests, the applicants are authorized to decide what is "one" request.

January 28, 2021

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC Files: F20-84040 and F20-84041