



Order F22-61

CITY OF NEW WESTMINSTER

Lisa Siew
Adjudicator

November 22, 2022

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Summary: The City of New Westminster (City) made an application, under s. 43(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA), for authority to disregard an applicant's access requests on the basis the requests are frivolous or vexatious. It also requested other relief regarding any future access requests made by, or on behalf of, the applicant. The adjudicator found the access requests at issue were vexatious and the City was authorized to disregard them under s. 43(a). However, the City was not authorized to disregard any future access requests made by, or on behalf of, the applicant. There was insufficient evidence to establish that the applicant would continue to use FIPPA for an improper purpose.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 43(a).

INTRODUCTION

[1] This inquiry is to decide an application made by the City of New Westminster (City) to the Office of the Information and Privacy Commissioner (OIPC) for authorization under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) to disregard six outstanding access requests from an applicant (the respondent in this s. 43 application).

[2] After the City made its s. 43 application, the respondent made an additional three access requests. Therefore, for this s. 43 application, the City is requesting the authority to disregard a total of nine outstanding access requests from the respondent. The City submits these nine access requests are frivolous

or vexatious under s. 43(a) of FIPPA.¹ It seeks relief from responding to these access requests.

[3] The City also seeks future relief by asking for authorization to disregard any and all future access requests made by, or on behalf of, the respondent in excess of one open request at a time in any calendar year. It also seeks the authority to disregard any of the respondent's future access requests related to the employment of a former City employee.

ISSUES AND BURDEN OF PROOF

[4] The issues I must decide in this inquiry are the following:

1. Are the nine access requests from the respondent frivolous or vexatious under s. 43(a)?
2. If the answer to the above is “yes”, what relief if any is appropriate?

[5] As the party applying for relief under s. 43, the City has the burden to prove that its s. 43 application should be granted.²

[6] I find the respondent's submission includes matters that fall outside the issues identified above. For example, the respondent alleges the City improperly withheld information under FIPPA in response to his previous access requests and that the City breached his rights under the *Canadian Charter of Rights and Freedoms*.³ He also alleges the City contravened s. 71 of FIPPA by not proactively disclosing and establishing categories of records available without request. I conclude these additional matters fall outside the scope of this inquiry and, therefore, will not address them in this inquiry.

DISCUSSION

Background

[7] After serving in the City's fire and rescue service for twelve years, the former fire chief retired in October 2021.⁴

¹ FIPPA was amended in late 2021 resulting in changes to s. 43. The City's s. 43 application was made after the amendments were in force. The OIPC's registrar of inquiries also confirmed the City's application was made under the new s. 43. Therefore, my citations in this order are to the amended s. 43 of FIPPA.

² Auth. (s. 43) 99-01 (December 22, 1999) at p. 3, decision available on the OIPC website at <<https://www.oipc.bc.ca/decisions/170>>. Order F17-18, 2017 BCIPC 19 (CanLII) at para. 4.

³ *Constitution Act, 1982, Schedule B to the Canada Act, 1982 (UK)*, 1982, c 11.

⁴ The information in this background section is compiled from the parties' submissions and evidence.

[8] The respondent is a journalist who contacted the City, in January 2022, to obtain information about the retirement, including whether the former fire chief received a severance or any other kind of separation payment. The City did not answer all of the respondent's questions, in particular, it refused to answer whether the former fire chief received a severance. The City's Chief Administrative Officer (CAO) informed the respondent that "any details about retirements are personal information and the City does not discuss personnel issues publicly."⁵

[9] During this time, the respondent also submitted an access request to the City for a list of all individual payments made by the City to the former fire chief from October 2021 to January 2022. The City responded by withholding all of the requested records under s. 22 of FIPPA.

[10] In March 2022, the respondent continued to ask questions about the City's handling of the matter, including why there was no public announcement about the retirement. He also requested interviews from the CAO, who turned down the interview request, and from the City's mayor who did not respond to the interview request.

[11] From March 2022 to July 2022, the respondent made sixteen separate requests for access, which included access to records related to the CAO and the former fire chief's employment with the City and correspondence between those individuals for a specific time period. One of the respondent's requests was for a list of all individual payments made by the City to the CAO (both payroll and expenses reimbursement) from January 1, 2020 to June 30, 2022. The City assigned this access request the reference number "FOI 2022-48". The City responded to all of the access requests that the respondent made between March 2022 to July 2022.

[12] The respondent requested the OIPC review the City's response to four out of the seventeen access requests made so far in the year. Those four access requests are not the subject of the City's current s. 43(a) application.

[13] During this time, the respondent also communicated his thoughts and views to City staff about what he describes as the City's erroneous and illegal application of certain FIPPA exceptions to withhold information and records.

[14] In response to those communications, in August 2022, the City's Solicitor/Manager of Legal Services (Solicitor) wrote the respondent a letter sent via email (Letter). In the Letter, the Solicitor affirms the City's decision to withhold

⁵ Email from CAO to respondent dated January 14, 2022.

information in the records under FIPPA and requested the respondent be “considerate and respectful of staff” in his communications.⁶

[15] In response to the Letter, the respondent told the Solicitor via email that there was “no legal authority that permits you to withhold in its entirety the list of individual payments to any public employee or contractor.”⁷ The respondent also informed the Solicitor that he was reserving “the right to complain to the OIPC and to make this letter public” and “to formally complain to the Law Society of BC to seek discipline against you” for “breaking a law [FIPPA] and breaching the code of ethics of your own profession.”⁸

[16] A few days after receiving the Letter, the respondent made the following six access requests to the City:

- Request #1: All records about the processing and handling of FOI 2022-48.
- Request #2: A list of all individual payments made by the City to the Solicitor (both payroll and expenses reimbursement) for a specified time period.
- Request #3: Copies of all expense reports submitted by the Solicitor and proof of payment for a specified time period.
- Request #4: Copies of all expense reports submitted by the CAO and proof of payment from January 1, 2022 to June 30, 2022.
- Request #5: The CAO’s employment contract.
- Request #6: The Solicitor’s employment contract.

[17] On September 22, 2022, the City notified the respondent by email of its intention to apply for authorization under s. 43 to disregard these six access requests. On the same day, the respondent made the following three additional access requests:

- Request #7: Copies all expense reports submitted by the CAO and proof of payment from July 1, 2022 to present day.
- Request #8: Copies all expense reports submitted by the former mayor and proof of payment from January 1, 2022 to June 30, 2022

⁶ A copy of the Letter is located at exhibit “D” of the affidavit of R.D. under the City’s initial submission.

⁷ Copy of email located at exhibit “E” of R.D.’s affidavit found in the City’s initial submission.

⁸ *Ibid.*

- Request #9: Copies all expense reports submitted by a former city councillor and proof of payment from January 1, 2022 to June 30, 2022

[18] These three access requests also form part of the City's s. 43 application for a total of nine access requests that the City is requesting authorization to disregard under s. 43(a).

Authority to disregard an access request – s. 43

[19] FIPPA gives individuals a “significant statutory right” to access information under the custody or control of a public body, including one’s own personal information.⁹ However, that right of access should not be misused or abused. When someone abuses their access rights under FIPPA, it can have serious consequences for the access rights of others by overburdening a public body and impacting the public body’s ability to respond to those other requests.¹⁰ It can also harm “the public interest” by unnecessarily adding to a public body’s costs of complying with FIPPA.¹¹

[20] Therefore, s. 43 serves as “an important remedial tool in the Commissioner's armoury to curb abuse of the right of access.”¹² It allows the Commissioner or their delegate “to grant the extraordinary remedy of limiting an individual’s right to access information under FIPPA.”¹³ For that reason, the Commissioner’s authority under s. 43 should be exercised after careful consideration since it can limit or take away a person’s statutory right to access information.¹⁴

Authority to disregard frivolous or vexatious requests – s. 43(a)

[21] The City seeks authorization under s. 43(a) to disregard the respondent’s nine outstanding access requests. Section 43(a) of FIPPA gives the Commissioner or their delegate the discretionary power to authorize a public body to disregard access requests that are frivolous or vexatious. The City also requests other future relief, as previously mentioned, which I will address later in this order.

[22] In order to exercise my discretion to grant relief under s. 43(a), the City must prove the respondent’s nine access requests are frivolous or vexatious. The terms “frivolous” and “vexatious” are not defined in FIPPA. However, previous

⁹ Auth. (s. 43) 99-01, *supra* note 2, at p. 3.

¹⁰ *Ibid* at p. 8.

¹¹ *Ibid*.

¹² *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at paras. 32-33.

¹³ Order F22-08, 2022 BCIPC 8 (CanLII) at para. 26.

¹⁴ Auth. (s. 43) 99-01, *supra* note 2 at p. 3.

OIPC decisions and orders considered the following non-exhaustive factors in determining whether an access request is frivolous or vexatious:

- A frivolous or vexatious request is made for a purpose other than a genuine desire to access information. It will usually not be enough that a request appears on the surface to be for an ulterior purpose – other facts will usually have to exist before one can conclude that the request is made for some purpose other than gaining access to information.
- The determination of whether a request is frivolous or vexatious must, in each case, keep in mind the legislative purposes of FIPPA, and those purposes should not be frustrated by a public body's subjective view of the annoyance quotient of particular requests.
- Alongside other factors, the fact that one or more requests are repetitive may support a finding that a particular request is frivolous or vexatious.
- Frivolous requests include requests that are trivial, without merit or not serious.
- Vexatious requests include those made in bad faith, such as for a malicious motive or for the purpose of harassing or obstructing the public body.
- A public body's perception that a request is frivolous or vexatious, on its own, would rarely merit relief under s. 43.¹⁵

[23] Previous decision-makers have also found requests are vexatious in the following circumstances:

- The purpose of the request was to pressure the public body into changing a decision or taking an action.
- The respondent was motivated by a desire to harass the public body.
- The intent of the request was to express displeasure with the public body or to criticize the public body's actions.

¹⁵ Auth. (s. 43) 02-02 (November 8, 2002) at paras. 20, 22 and 27, decision available on the OIPC website at: <www.oipc.bc.ca/decisions/172>. Order F22-08, 2022 BCIPC 8 (CanLII) at paras. 81-84.

- The request was intended to be punitive and to cause hardship to an employee of a public body.¹⁶

[24] I agree with the above-noted considerations and principles and will apply them to the facts of this inquiry.

City's position on s. 43(a)

[25] The City submits the respondent is abusing his right of access under FIPPA because the access requests at issue are both frivolous and vexatious.

[26] The City submits the requests are frivolous because the respondent made them for no meritorious or serious purpose. The City contends the respondent's access requests "seek trivial information" and target City employees who process or respond to his access requests.¹⁷ To illustrate, the City notes that six of the nine access requests at issue are for lists of payments, expense reports and the employment contracts of the Solicitor and the CAO. It submits there is no valid reason for the respondent to seek this information aside from the fact that he is unhappy with how these individuals have responded to his access requests.

[27] The City also says that when the respondent is dissatisfied with its response to an access request, he threatens, criticizes and intimidates City staff and makes additional requests soon after. As an example, the City notes how the respondent requested access to the Solicitor's employment contract and expense reports and threatened to report the Solicitor to the Law Society after receiving the Letter.

[28] Given this behaviour, the City argues the respondent is not genuinely interested in obtaining access to the requested records at issue. Rather, it contends the respondent's purpose for making the requests was to retaliate against the City for its refusal to provide him with all his previously requested records, for sending him the Letter and for making a s. 43 application to the OIPC. The City says the respondent "has chosen to express his frustration and distrust with the City by harassing them" and filing the access requests at issue.¹⁸

[29] To support its position, the City points to the timing of the respondent's nine outstanding access requests, which it says were made shortly after the respondent received a response or communication from the City that he disagreed with. For instance, the City notes the respondent only requested access to records related to the Solicitor after receiving the Letter, which suggests the respondent had other motives for making the requests. As another example, the City notes how the respondent made three additional access

¹⁶ Order F22-08, 2022 BCIPC 8 (CanLII) at para. 83 and the decisions and orders cited therein.

¹⁷ City's initial submission at para. 27.

¹⁸ *Ibid* at para. 22.

requests on the same day he was notified of the City's s. 43 application. Therefore, the City submits the respondent's behaviour and the timing and focus of the requests indicate that he only made the requests for "trivial or retaliatory purposes" and there was no valid reason for the respondent to require or desire the sought-after records.¹⁹

[30] The City also relies on those factors to argue the requests are vexatious because they were made in bad faith and for improper purposes. The City contends the respondent made the access requests at issue to retaliate against the City for its responses, to express his distrust with City employees, to otherwise challenge or harass the City and to cause hardship to the City employees who are the focus of his access requests such as the CAO and the Solicitor.²⁰ The City argues these factors support a finding that the access requests are vexatious and that the respondent does not have a genuine interest in the requested records. It cites several OIPC orders where the public body established those factors existed and warranted relief under s. 43.²¹

[31] The City submits that the nature, increased volume and frequency of the requests are further proof that the respondent made the access requests in bad faith and for improper purposes. For instance, the City notes that prior to 2022, the respondent made an average of two access requests to the City every two years. However, in 2022 so far, it says the respondent has made a total of 26 access requests. The City also notes the respondent has a history of making multiple, overlapping access requests that are about the same or similar subject matter and about trivial subjects. The City points to how the respondent made three separate requests for payments made to the CAO for different time periods.

Respondent's position on s. 43(a)

[32] The respondent disputes the City's allegations about his behaviour and intentions. The respondent says he "is admittedly guilty of being an inquisitive journalist," but denies being frivolous or vexatious.²² The respondent says he is interested in uncovering or finding answers to the following questions:

- What is the relationship between the CAO and the former fire chief?
- What led to the fire chief's sudden retirement?
- What was the true cost to taxpayers for the fire chief's sudden departure?

¹⁹ City's initial submission at para. 22.

²⁰ *Ibid* at para. 30.

²¹ The City cites Order F20-15, 2020 BCIPC 17 (CanLII), Decision F10-11, 2010 BCIPC 51 (CanLII) at para. 33 and Order F13-18, 2013 BCIPC 25 (CanLII) at para. 36.

²² Respondent's submission at para. 23.

- Why was there no public announcement about the retirement?
- What was city council's role in the fire chief's departure?
- Should taxpayers be concerned with the CAO's spending and management?²³

[33] In support of his position, the respondent provided a copy of four news articles that he wrote in 2022 which focused on the fire chief's sudden retirement, the City's handling of the matter and its refusal to provide some answers or information. In his reporting, the respondent says the former fire chief suddenly retired in October 2021 with less than a week's notice and that in 2021 the fire chief was paid \$324,081 compared to \$194,802 in 2020. The respondent theorizes that the additional pay of over \$129,000 that the former fire chief received was a 13-month severance from the City. Therefore, the respondent submits the information that he seeks is not trivial and that "a public body has a duty to show how it spends public funds and whether it is making the right personnel decisions."²⁴

[34] Citing previous OIPC orders, the respondent submits that s. 43 will not apply to an access request made for a legitimate purpose and where individuals or groups are seeking to hold public bodies accountable.²⁵ For instance, the respondent cites several OIPC orders where the public body's s. 43 application was denied because the adjudicator found the access applicant had a live issue or grievance with the public body and, therefore, a legitimate purpose for seeking the records.²⁶ The respondent submits that he had "a legitimate purpose, as a journalist reporting in the public interest, seeking to get to the bottom of why the fire chief departed and received a substantial severance, and to learn about the chief administrative officer's expense account spending."²⁷

[35] The respondent denies acting inappropriately and says the City is making "false and defamatory allegations" against him.²⁸ The respondent says "a journalist will naturally ask more questions if denied answers" and "will file more access requests if the public body frivolously and/or vexatiously evades its duties under [FIPPA]."²⁹ The respondent submits City employees "know or ought to know the public has a right of access to those records and to deny that right is to

²³ *Ibid* at paras. 1-7, 26.

²⁴ *Ibid* at para. 54.

²⁵ The respondent cites Order F18-32, 2018 BCIPC 35 (CanLII); Decision F07-08, 2007 CanLII 42406 (BCIPC); Order F20-33, 2020 BCIPC 39 (CanLII); Order F19-34, 2019 BCIPC 37 (CanLII).

²⁶ Respondent's submission at paras. 57-62.

²⁷ *Ibid* at para. 61.

²⁸ *Ibid* at para. 66.

²⁹ *Ibid* at para. 53.

contravene the letter and spirit of FIPPA and naturally give[s] rise to reasonable suspicions about the conduct of senior public servants.”³⁰

[36] The respondent also accuses the City of acting inappropriately and alleges the City is using s. 43 to:

- prevent or delay reporting about the departure of a public servant;
- defame a reporter;
- reduce its public accountability;
- avoid the “reasonable public scrutiny of its affairs”; and
- “obscure its failure to properly fund compliance with FIPPA duties.”³¹

[37] The respondent further notes the City refused to negotiate or accept an offer he made to resolve the matters in dispute and chose to continue with its s. 43 application. The respondent describes the City’s decision as a “wasteful expenditure”, the “costlier” option and a misuse of s. 43.³²

City’s response to the respondent’s submission

[38] The City reaffirms its position that the respondent does not have a genuine interest in the requested records. It recognizes the respondent is seeking information about the former fire chief, but the City says none of the access requests at issue are related in any way to the former fire chief.

[39] The City also submits the respondent’s submission raises issues that are outside the scope of this inquiry such as “unfounded allegations about City staff” and the accusation that it has “failed to properly fund its compliance with its duties under [FIPPA].”³³

[40] The City also challenges the OIPC orders relied on by the respondent. It submits those orders are either not applicable to the present circumstances because they are not about a s. 43 application or they are distinguishable on the facts. Specifically, the City submits that unlike the cases cited by the respondent, “there is no underlying business or personal grievance between the Respondent and the City such that the Respondent could have a genuine interest in the requested information at issue in this application.”³⁴

[41] In response to any suggestion that an outstanding issue between the parties is the respondent’s interest in records about the former fire chief’s retirement, the City says that it has already responded to the respondent’s

³⁰ *Ibid* at para. 12.

³¹ Respondent’s submission at paras. 10, 23, 45, 50 and 51.

³² *Ibid* at paras. 16 and 65.

³³ City’s response submission at paras. 3 and 5.

³⁴ *Ibid* at para. 16.

requests and questions about that matter. Therefore, the City argues that it does not have any underlying business or grievance with the respondent.

[42] Lastly, the City acknowledges the applicant offered to settle the matters in dispute related to his access requests. However, it says the respondent's offer to settle the matters in dispute was not reasonable considering his behaviour before and after it filed the s. 43 application.³⁵ The City made no further arguments about this matter.

Analysis and findings on s. 43(a)

[43] I have carefully considered the parties' submissions and evidence and, for the reasons that follow, I find the respondent has an ulterior purpose in making the nine access requests at issue other than a genuine interest in the records.

[44] The nine access requests at issue consist of the following:

- Three of the requests are about the CAO, specifically their expense reports and employment contract.
- One is about the City's handling of a prior access request about the CAO.
- Three of the requests are about the Solicitor, specifically expense reports, employment contract and payroll and expense payments.
- The remaining two requests are about the former mayor and a former city councillor and their expense reports.

[45] It is important to note whose information the respondent is seeking in these access requests. Most of the access requests focus on people who disagree with the respondent's position about FIPPA or refused to answer his questions. For instance, the CAO refused to answer the respondent's further requests for information about the former fire chief's retirement.³⁶ As well, both the CAO and the former mayor refused or did not respond to an interview request from the respondent.³⁷ In the Letter, the Solicitor also affirmed the City's decision to refuse access to the CAO's list of payroll and expense payments.

[46] The respondent submits that he is interested in these records to hold the City accountable for its spending and because he suspects City officials and

³⁵ City's response submission at para. 4. I considered whether this information may be subject to settlement privilege; however, considering both parties openly discuss this information, I find any potential privilege that could apply to this information was waived by the parties.

³⁶ Email from CAO to respondent dated January 14, 2022 located in respondent's submission.

³⁷ *Ibid* and email to former mayor from respondent dated January 5, 2022 in respondent's submission.

employees are breaking the law. Specifically, the respondent says the CAO and the Solicitor “know or ought to know the public has a right of access” to payroll and expense records and argues that their refusal to provide access “naturally give[s] rise to reasonable suspicions about the conduct of senior public servants.”³⁸

[47] As I understand it, the respondent is arguing that he is genuinely interested in the records to uncover any potential wrongdoing by City officials or employees. However, I am not persuaded that was the respondent’s motive for making the nine access requests at issue. In my opinion, the fact that a public body has withheld information under FIPPA does not naturally lead to suspecting City officials or employees of wrongful conduct. Specifically, the City’s refusal to provide access to the CAO’s payroll and expense reimbursements does not mean the CAO should then be suspected of corruption, as alleged by the respondent.

[48] It is also not plausible that the respondent should suspect the former mayor and the former City councillor of any wrongdoing to justify requesting their expense reports. Based on the evidence before me, I can see that the only communication the respondent had with the former mayor was to request an interview, for which there was no response.³⁹ I do not find silence on the part of the former mayor logically leads to the conclusion that the former mayor is colluding with others to hide financial misconduct or corruption. There is no provision in FIPPA that requires the former mayor to respond to an interview request. The City is free to respond as it chooses to that kind of communication.⁴⁰

[49] Moreover, I do not find it believable to conclude the Solicitor should be a subject of investigation because of what was said in the Letter. In the Letter, the Solicitor affirms the City’s decision to refuse access to the CAO’s list of payroll and expense payments under s. 22 of FIPPA. The Solicitor also requested the respondent communicate with City staff in a respectful and considerate manner. I conclude there is nothing in the Letter that suggests the Solicitor should be suspected of financial misconduct to justify the respondent’s subsequent access requests for the Solicitor’s payroll and reimbursements, expense reports and employment contract. As a result, I do not find the respondent’s stated reasons for making the requests at issue credible, especially when those requests are targeted at City officials or employees that have previously reprimanded or disagreed with the respondent.

[50] I also find the timing of the respondent’s access requests supports the City’s position. In my view, it is significant that the respondent made six of the

³⁸ Respondent’s submission at para. 12.

³⁹ Email to former mayor from respondent dated January 5, 2022 in respondent’s submission.

⁴⁰ For example, Order F13-16, 2013 BCIPC 20 at para. 34.

nine access requests shortly after receiving the Letter from the Solicitor and the remaining three requests on the same day he received notice of the City's s. 43 application. The timing and rapidity of these nine access requests strongly suggests the respondent made them because he disapproved of the Letter and the City's s. 43 application rather than a sincere interest in obtaining access to the requested records.

[51] I find it notable that the respondent did not explain the questionable timing of his requests and why he waited only until he received the Letter and notice of the City's s. 43 application to request further records about the CAO, the former mayor and the former City councillor. Therefore, I agree with the City that there is a strong correlation between the City's actions and when the respondent decided to make the access requests at issue. I find the timing of the access requests indicates the respondent made the requests as a way to express his displeasure at the City for its actions.

[52] Furthermore, where an applicant and a public body ultimately disagree on the applicability of a FIPPA exception, the proper recourse is to request a review by the OIPC. The respondent is familiar with this process since he requested the OIPC review the City's decision to refuse access to records about the former fire chief. I find it important to note that the respondent did not request a review of the City's decision with regards to his previous requests for records about the CAO.⁴¹ Instead, after receiving the City's refusal to provide access to those records and the subsequent Letter from the Solicitor, the respondent made the majority of the access requests at issue, which focus on the CAO and the Solicitor.

[53] I also find there is a repetitiveness to most of the respondent's nine access requests at issue. As previously noted, alongside other factors, the fact that one or more requests are repetitive may support a finding that a particular request is frivolous or vexatious.⁴² I find that to be the case here. The requests at issue repeat themselves in that they seek expense information about several people. Therefore, considering the other factors mentioned above, I conclude the repetitiveness of the requests at issue and the fact the respondent made the requests in a grouping of six requests followed by another three requests supports the City's position that the respondent's intent is to harass and penalize the City for its actions.

[54] Lastly, the respondent's submission largely focuses on establishing that he is interested in uncovering what happened with the former fire chief's sudden retirement. I accept the respondent has a genuine interest in obtaining records

⁴¹ In his submission, the respondent provided a copy of an email dated April 22, 2022 that he sent to the OIPC requesting a review of the City's FIPPA responses to four of his previous access requests. None of the four access requests are about the CAO's payroll and expense reimbursements.

⁴² Auth. (s. 43) 02-02 (November 8, 2002), *supra* note 15 at para. 27.

related to the former fire chief's retirement. The respondent wrote four news articles about that matter and he also requested the OIPC review the City's decision to refuse access to records about the former fire chief. However, as discussed above, none of the nine access requests at issue are about the former fire chief or his retirement. Therefore, it is unclear and the respondent does not sufficiently explain how his interest in records about the former fire chief establishes that he has a genuine interest in the requested records at issue here.

[55] To conclude, for the reasons given above, I find the respondent's nine access requests are vexatious under s. 43(a) and the respondent is using FIPPA for a purpose other than a good faith desire to access the requested records.⁴³ I acknowledge that it is expected and not uncommon for journalists to utilize FIPPA to pursue potential news stories or investigate possible wrongdoing or issues of public interest. However, as set out above, I am not persuaded the respondent had those motives in this case. Taking into account all the circumstances, I conclude the respondent had an improper purpose in making the nine access requests at issue.

Appropriate relief under s. 43(a)

[56] Section 43(a) gives the Commissioner or their delegate the discretion to authorize a public body to disregard requests that are frivolous or vexatious. Given the circumstances in this case, I authorize the City to disregard the respondent's nine access requests at issue under s. 43(a) because I find those requests are vexatious.

Future relief under s. 43(a)

[57] As set out below, the City has also requested relief in responding to future access requests made by the respondent. The Commissioner or their delegate has the power, under s. 43, to make prospective orders by authorizing public bodies to disregard future access requests when the circumstances warrant such relief.⁴⁴ However, the courts have emphasized that any remedy under s. 43 must be proportional to the harm inflicted and must bear in mind the objectives of s. 43, which in the present case is to avoid requests that are vexatious.⁴⁵

⁴³ The City has argued there are other factors that support its position such as the increase in the number of access requests made by the respondent in 2022 and the tone and content of the emails between the respondent and City staff. I have considered all of the City's arguments, but I have only focused on the factors that I found persuasive in establishing s. 43(a) applies to the access requests at issue.

⁴⁴ *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at paras. 40-41.

⁴⁵ *Crocker v British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at para. 45 and *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC) at para. 25.

[58] The City seeks the authority to disregard all future access requests on any matter made by, or on behalf of, the respondent in excess of one access request at a time in any calendar year. In *Mazhero v. British Columbia (Information and Privacy Commissioner)*, Justice Tysoe cautioned against providing remedies for future access requests where it is unclear that a future request will meet the requirements of section 43:

[27] The situation is different, however, when the Commissioner is dealing with future requests. One cannot predict with any certainty that a request which has not yet been made will unreasonably interfere with the operations of the public body. It would not be appropriate to effectively deprive an applicant from the right to make future requests which would not unreasonably interfere with the operations of the public body.

[59] Although Justice Tysoe's comments in *Mazhero* were in relation to access requests that would unreasonably interfere with the operations of a public body, I agree with other OIPC decisions which found they apply equally to requests that are found to be frivolous or vexatious.⁴⁶ Considering this caution, I find it is too drastic a remedy in these circumstances to indefinitely limit the number of requests the respondent can make to the City to only one open request every year.

[60] I conclude that type of authorization would be a wholly disproportionate remedy when it is not known whether any of the respondent's future requests would be vexatious. There is insufficient evidence for me to conclude the respondent will continue to use FIPPA for a purpose other than a good faith desire to access records in the custody or control of the City. I cannot ignore the possibility that circumstances may change resulting in a situation where the respondent has a genuine interest in the records that he may seek access to in the future. Therefore, I am not prepared to grant the City such expansive relief. To grant the City's requested relief would effectively deprive the respondent from the right to make future access requests that are not vexatious.

[61] The City also seeks future relief by asking for authorization to disregard any of the respondent's future access requests related to the employment of the former fire chief. In considering the City's request, I note the respondent previously made several requests for records related to the former fire chief. There is no evidence that those previous requests are frivolous or vexatious. Instead, the City responded to those requests and the respondent requested the OIPC review some of the City's responses. I also note there is no evidence that the respondent then continued to make additional requests for records related to the former fire chief. Therefore, it is unclear why the City would be asking for a remedy to prevent future requests about such records.

⁴⁶ For example, Decision F08-10, 2008 CanLII 57362 (BC IPC) at paras. 44-45.

[62] Furthermore, as noted by the City, none of the access requests at issue in this inquiry are about the former fire chief.⁴⁷ Therefore, any conclusions that I have made about the respondent's nine outstanding access requests do not apply to any future requests for records related to the former fire chief. Taking all of this into account, I conclude it is not appropriate to grant the City's request to disregard any future requests the respondent may make for records related to the employment of the former fire chief.

CONCLUSION

[63] For the reasons given above, under s. 58 of FIPPA, I make the following order:

1. The City is authorized, under s. 43(a), to disregard the respondent's nine outstanding access requests. For clarity, those access requests are identified at paragraphs 16-17 of this order and also listed at Exhibit "F" and "G" of the City's affidavit evidence.
2. The City is not authorized to disregard any future requests made by, or on behalf of, the respondent.

November 22, 2022

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

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⁴⁷ City's response submission at para. 6.