



Order F23-37

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

Jay Fedorak  
Adjudicator

May 18, 2023

CanLII Cite: 2023 BCIPC 44  
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**Summary:** TransLink requested authorization to disregard 18 outstanding access requests from the respondent under ss. 43(a) and (c) of *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that TransLink had not established that the requests were frivolous or vexatious under s. 43(a) or that they were repetitious or systematic under s. 43(c)(ii). The adjudicator declined to provide TransLink with authorization to disregard the outstanding requests.

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

**INTRODUCTION**

[1] The South Coast British Columbia Transportation Authority (TransLink) has requested from the Office of the Information and Privacy Commissioner (OIPC) authorization to disregard 18 access requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The requests were from an individual (the respondent) for video recordings of himself captured by TransLink's closed-circuit television (CCTV) system and audio recordings. TransLink submits that the requests are frivolous or vexatious within the meaning of s. 43(a) of FIPPA. It also asserts that the requests would unreasonably interfere with its operations because they are repetitious or systematic within the meaning of s. 43(c)(ii). It has asked for permission to disregard any future access requests beyond two requests per month, for a period of two years.

## ***Preliminary Matter***

### *Improper reply submission*

[2] The *Instructions for Written Inquiries* that the OIPC has published sets out the rules of all written inquiries. It clearly stipulates the process and criteria for submissions as follows:

1. The public body or organization provides the initial submission. Other parties may also be asked to provide an initial submission if the Registrar considers it appropriate. A party's initial submission should include its argument about how the relevant sections of the legislation apply in the circumstances of their case and explain how the evidence supports its position.
2. The person or third party who initiated the inquiry [or the respondent in the case of a s. 43 application] then provides a response submission. It should focus on the issues set out in the notice of inquiry and the information provided by the other parties in their initial submissions. Response submissions should not raise any new issues or exceptions that were not listed in the notice of inquiry.
3. The parties that provided initial submissions are then given the opportunity to provide a reply submission. The reply submission must only reply to what is contained in the response submission.<sup>1</sup>

[3] In this case, the reply submission of TransLink does not conform with the requirement that it “must only reply to what is contained in the response submission”. TransLink's reply submission introduces new material, including a list of requests the respondent made during the period since its application for relief. It also repeats its arguments from its initial submission. I am unable to identify any passages in the reply submission that relate directly to the respondent's response submission.

[4] TransLink has not asked permission from the OIPC to introduce this new material. The respondent has not had an opportunity to respond to this new material.

[5] Therefore, I find it contrary to the established and published practice of the OIPC (and administratively unfair to the respondent) to consider this new material.

## **ISSUES**

[6] The issues to be decided in this inquiry are:

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<sup>1</sup> A copy of these instructions is available at <https://www.oipc.bc.ca/guidance-documents/1744>.

1. Whether the respondent's 18 outstanding requests are frivolous or vexatious, for the purposes of s. 43(a)?
2. Whether the respondent's 18 outstanding requests are repetitious or systematic and, if so, would they unreasonably interfere with TransLink's operations, for the purposes of s. 43(c)(ii)?
3. If the answer to either 1 or 2 is yes, what relief, if any, is appropriate?

[7] Past orders and decisions on s. 43 have placed the burden of proof on the public body.<sup>2</sup> TransLink states that it accepts this burden.

## DISCUSSION

[8] **Background** –The respondent has requested access to records of video images of himself that the TransLink CCTV system has captured during travel on buses and SkyTrain, as well as waiting on a SkyTrain platform or at a bus stop. The 18 outstanding requests for which TransLink requests relief involve CCTV and audio recordings of the respondent.

[9] According to TransLink, it installed a CCTV and audio recording system on its buses in 2009 for the purpose of:

- improving safety and security of its passengers and drivers against acts of terrorism or violence; and
- assisting in the investigation of claims, accidents, on-board incidents and fare disputes.

[10] TransLink states that the outward facing cameras on its buses also assist the police in investigating motor vehicle accidents and other incidents within view of the bus. It has installed cameras on 1,700 buses: six cameras on a regular bus and eight on an articulated bus. Combined these constitute more than 10,000 cameras. The cameras are positioned to record the front of the bus, the doors and the interiors. A digital video recorder on the bus records visual images and audio and retains them for seven days, after which they are overwritten. Buses also contain microphones for recording conversations in the vicinity of the driver. Each SkyTrain car has four inward facing cameras.<sup>3</sup>

[11] The respondent has a history of difficult interactions with bus drivers, particularly regarding the deployment of the loading ramp. The respondent also claims to have been harassed by other passengers. The respondent states that his requests for his personal information captured by CCTV and audio recordings

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

<sup>3</sup> TransLink's initial submission, paras. 5-6, 15-16.

relate to these kinds of interactions.<sup>4</sup>

[12] TransLink made a similar s. 43 application regarding the same respondent that was subject to Order F17-36, in which the adjudicator denied the request for relief.<sup>5</sup>

### **SECTION 43**

[13] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right to access information under FIPPA by authorizing a public body to disregard requests. The relevant provision reads as follows:

**43** If the head of a public body asks, the commissioner may authorize the public body to disregard a request under section 5 or 29, including because

- (a) the request is frivolous or vexatious,
- (b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source, or
- (c) responding to the request would unreasonably interfere with the operations of the public body because the request
  - (i) is excessively broad, or
  - (ii) is repetitious or systematic.

[14] As such relief restricts an individual's right to access information, the Commissioner grants relief under s. 43 applications after careful consideration and only in exceptional cases.<sup>6</sup>

[15] As noted above, TransLink has requested relief from responding to 18 requests that it has received for audio and video recordings of the respondent's and to disregard any future access requests beyond two requests per month, for a period of two years.<sup>7</sup>

#### ***Section 43(a) – frivolous or vexatious***

[16] Requests that are frivolous or vexatious are an abuse of the right to access information under FIPPA. Both frivolous and vexatious requests are made for a purpose other than a genuine desire to access information.

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<sup>4</sup> Respondent's response submission, pp. 5-7.

<sup>5</sup> F17-36, 2017 BCIPC 40 (CanLII).

<sup>6</sup> Order F22-08, 2022 BCIPC 8 (CanLII) para. 29.

<sup>7</sup> TransLink's initial submission, para. 65.

*Are the requests frivolous?*

[17] Frivolous requests include requests that are trivial or not serious. Past OIPC orders have found that a request was frivolous when the requested information was publicly available, the request was for documents that the respondent authored and sent to the public body, and because the respondent cancelled a large access request after the public body had spent significant time processing the request.<sup>8</sup>

[18] TransLink's submission first sets out what it believes to be the relevant case law regarding the application of s. 43. It organizes its analysis under the following headings relating to the separate provisions of s. 43(a) and (c)(ii):

- Purpose of s. 43
- Frivolous or vexatious
- Repetitious or systematic
- Unreasonable interference in the public body's operations

[19] When it turns to applying its analysis to the respondent's requests, it takes a different approach. It discusses these requests in relation to all of the provisions combined under the heading of "Application of general principles to Respondents Access Requests".<sup>9</sup> It does not deal systematically with each of criteria for requesting relief in isolation. Nor does the response of the respondent. As a result, I have endeavoured to identify and extract the materials of both parties and consider them under separate headings for each of the relevant criteria for relief.

[20] In reviewing its integrated analysis, I ascertain TransLink's argument with respect to whether respondent's requests are frivolous to be that, in its opinion, the respondent's intent is not to obtain his own personal information but rather to access the information of drivers and other passengers. TransLink asserts that, as s. 22 requires that it blur the faces of these individuals in the videos the respondent requests, the applicant cannot obtain the information he is seeking, anyway, rendering his requests "pointless".<sup>10</sup>

[21] The respondent replies:

Each request is a result by an action taken by a TransLink employee - my actions are reactive to the events that occur to me. When my mental health is

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<sup>8</sup> Order F22-08, supra, para. 82; Auth (s. 43) 02-02, 2002 BCIPC 57 (CanLII), para. 27; Order F17-18, 2017 BCIPC 19 (CanLII), para. 23; Order F13-18, 2013 BCIPC 25 (CanLII), para. 34; Order F18-09, 2018 BCIPC 11 (CanLII), para. 29.

<sup>9</sup> TransLink's initial submission, paras. 52-64

<sup>10</sup> TransLink's initial submission, para. 60.

challenged on a daily basis, when my health is as a result of that, when my security, my safety, my existence is threatened, I need to document what is happening to me.

[22] The respondent adds that he is entitled to his personal information that provides evidence of his experience.<sup>11</sup>

### *Analysis*

[23] I disagree that the requests are “pointless”, simply because images of third parties in the CCTV footage are subject to severing in accordance with s. 22 of FIPPA. The wording of the respondent’s requests specifies that he wants access to security video and audio recordings of himself on particular buses, trains and platforms at specific times and specific dates. The requests do not mention any third parties.

[24] The wording of the requests, as TransLink has described them,<sup>12</sup> and the submissions of the respondent persuade me that he has a genuine interest in examining all of the audio and video recordings of himself, which he believes to be relevant to injustices that he alleges he suffered.

[25] Therefore, I find that his requests do not meet the definition of frivolous, in accordance with s. 43(a), as previous orders have interpreted the term.

### *Are the requests vexatious?*

[26] Vexatious requests include requests made in bad faith, such as for a malicious purpose or requests made for the purpose of harassing or obstructing the public body.<sup>13</sup> Past orders have found requests to be vexatious because:

- The purpose of the requests 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 requests was to express displeasure with the public body or to criticize the public body’s actions; and
- The request was intended to be punitive and to cause hardship to an employee of a public body.<sup>14</sup>

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<sup>11</sup> Respondent’s response submission, 5-7.

<sup>12</sup> TransLink’s initial submission, table of access requests.

<sup>13</sup> Order F22-08, *supra*, para. 83.

<sup>14</sup> *Auth* (s. 43) 02-02 *supra*, para. 27; Decision F08-10, 2008 BCIPC 57362 (CanLII), paras. 38-39; Order F13-16, 2013 BCIPC 20, para. 20; Order F13-18, 2013 BCIPC 25 (CanLII), para. 36; Decision F10-11, 2010 BCIPC 51 (CanLII); Order F16-24, 2016 BCIPC 20 (CanLII), para. 40; Order F20-15, 2020 BCIPC 17 (CanLII), para. 33; Order F19-44, 2019 BCIPC 50 (CanLII), para. 33.

[27] The above share the characteristic that the respondent had an ulterior vexatious motive unrelated to any genuine interest in access to the information and that this motive was a central factor in finding that the requests were vexatious.

[28] TransLink submits that the respondent's requests are vexatious because they "disproportionately seem to single out bus drivers as an object of fixation [sic] and harassment by him".<sup>15</sup> TransLink asserts that he is "abusing FIPPA as a means to obtain information in a way that constitutes an abuse of TransLink's CCTV system and its important purposes".<sup>16</sup> It describes the purposes of its CCTV system as to address violence, vandalism and disputes over fares. TransLink submits that the respondent's requests are not aligned with these purposes. Moreover, TransLink states that the volume of the respondent's requests alone demonstrate that he is not making these requests in good faith.<sup>17</sup>

[29] The respondent replies that he is not vexatious: he is protecting himself and seeking his own personal information.<sup>18</sup>

### *Analysis*

[30] The respondent requests access to his own personal information in response to some incidents where he claims he has had difficult interactions with drivers or passengers. As was the case with Order F17-36, the respondent appears to have a genuine and reasonable purpose for requesting his personal information. Neither the subject matter nor the pattern of the requests indicates that his primary purpose is to harass TransLink or cause unnecessary hardship. The fact that interactions between the respondent and transit drivers appear frequently in requested records does not indicate an intent to harass those drivers. The respondent does not identify particular drivers in any of the requests for which TransLink has applied for relief.

[31] TransLink suggests that for a FIPPA request for CCTV footage to be considered to be made in good faith, the purpose of that request must be related to the purpose for which TransLink implemented the CCTV system. TransLink states:

it is clear that he is abusing FIPPA as a means to obtain information in a way that constitutes an abuse of TransLink's CCTV system and its important purposes. The CCTV system is designed to be used to address violence on buses, vandalism, disputes over fares and the like, which incidents can, in turn,

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<sup>15</sup> TransLink's initial submission, para. 59

<sup>16</sup> TransLink's initial submission, para. 58.

<sup>17</sup> TransLink's initial submission, para. 60.

<sup>18</sup> Respondent's response submission, p. 7.

be addressed through claims services or by law enforcement. His requests are not aligned with these stated purposes ...<sup>19</sup>

[32] TransLink appears to be suggesting that “an abuse of the CCTV system” constitutes an abuse in accordance with s. 43(a). This is incorrect. The concept of abuse with respect to s. 43 relates to abuse of the statutory access rights of individuals under FIPPA, not to “abuse” of a records system.

[33] TransLink has failed to establish how the volume of requests proves that his intent is vexatious. The requests for which it has applied for relief relate to the respondent’s experiences on transit at different times and dates. I see no reason to conclude that he has inflated the number of requests for the purpose of harassing TransLink.

[34] Through the deployment of its CCTV system, TransLink collects a large volume of personal information about its riders, including the respondent. As TransLink submits, the purposes of implementing the system are to address violence, vandalism and fare disputes. The collection of personal information does not occur only when there are incidents of violence, vandalism or fare disputes. This means that the personal information that TransLink collects includes personal information that does not meet the purposes for which it implemented the CCTV system.

[35] In my view, it is not reasonable to conclude that any request for this extraneous personal information (i.e., information not required to address violence, vandalism or fare disputes) must necessarily constitute a vexatious request, on the grounds that such requests are not consistent with the purposes for which TransLink implemented the system.

[36] Without more proof of an ulterior motive, the desire to view one’s personal information out of genuine interest to know what a public body has collected about oneself does not make a request vexatious.

[37] For all of the reasons above, I find that the respondent’s requests are not vexatious. While his requests are voluminous, I conclude that he has made those requests from a genuine desire to view records about himself and what he experienced, consistent with section 2(1)(a) of FIPPA.

[38] As I have found that the respondent’s requests are neither frivolous nor vexatious, I find that s. 43(a) does not apply and TransLink is not entitled to relief on either of those grounds.

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<sup>19</sup> TransLink’s initial submission, para. 58.



**Section 43(c) – unreasonable interference**

[39] Under s. 43(c), the Commissioner may authorize a public body to disregard a request that would unreasonably interfere with the operations of the public body because it is excessively broad (s. 43(c)(i)) or because of the repetitious or systematic nature of the request (s. 43(c)(ii)). In this case, TransLink does not cite the broadness of the requests or claim s. 43(c)(i) as a reason for applying for relief. Instead, it relies on s. 43(c)(ii).

[40] Section 43(c)(ii) has two parts and TransLink must establish that both apply. First, the requests must be repetitious or systematic. Second, responding to the requests must unreasonably interfere with TransLink's operations.

[41] I discern from its submissions that TransLink believes that the respondent's access requests are both repetitious and systematic. I first will determine whether the requests at issue are repetitious or systematic and then, if they are, turn to whether responding to the request would unreasonably interfere with TransLink's operations.

*Are the requests repetitious?*

[42] Previous orders have established that requests are repetitious if they are made over again.<sup>20</sup> For example, requests which repeat a previous request to which the public body has already responded are repetitious.

[43] TransLink does not state explicitly that the respondent's requests are repetitious. It submits that the number of requests the respondent has made has increased over the years and that there are certain common themes to many of them. These themes are mask usage; deployment of ramps; and perceptions of unfair treatment or harassment. TransLink states that some of these themes overlap, but it does not explain the sense in which they overlap.<sup>21</sup>

[44] The respondent denies that his requests are repetitious. He submits that each request relates to a different specific incident.<sup>22</sup>

*Analysis*

[45] The fact that an applicant makes numerous requests does not mean that the requests are repetitious, as long as they are not requesting essentially the same information. I am satisfied that the respondent has not made repeated requests for the same CCTV or audio records. I can see from the requests that

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<sup>20</sup> Order F22-08, para. 37; Order F17-18, 2017 BCIPC 19 at para. 7; Order F13-18, 2013 BCIPC 25 at para. 15.

<sup>21</sup> TransLink's initial submission, paras. 52-56.

<sup>22</sup> Respondent's response submission, 5-7.

he has requested CCTV records containing his personal information on many different buses and trains on many different days. None of his requests repeat, in whole or in part, other requests. I accept that he uses transit frequently and similar types of incidents have occurred on many different buses or trains. I am satisfied that each of these records is unique and distinct.

[46] With respect to the extent to which the respondent's requests "overlap", it is important to clarify that TransLink's argument is that it is the themes of the request that overlap.<sup>23</sup> That is to say that the respondent makes requests for recordings where similar types of incidents have occurred. It is not the case that there is an overlap with respect to the recordings themselves. The respondent does not request identical records multiple times.

[47] Therefore, I find that the respondent's requests are not repetitious.

*Are the requests systematic?*

[48] Systematic requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles. Previous orders have identified characteristics of systematic requests as:

- 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 OIPC;
- behavior 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.<sup>24</sup>

[49] TransLink submits that the respondent's requests are systematic. It argues its case as follows:

A factor pointing to their systematic nature include the fact that his requests have significantly increased over time and are most often of the same nature seeking the same type of information for different trips for no reason (e.g., SkyTrain or bus trips start to finish) or for reasons that do not align with the purposes of TransLink's CCTV system or an ability to access what he seems to be looking for.<sup>25</sup>

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<sup>23</sup> TransLink's initial submission, para. 53.

<sup>24</sup> Order F13-18, 2013 BCIPC 25 (CanLII), para. 23; Order F18-37, 2018 BCIPC 40 (CanLII), para. 26.

<sup>25</sup> TransLink's initial submission, para. 62.

[50] As noted above in paragraph 21, the respondent replies that his requests are in response to separate events, of which he feels the need to obtain verification through viewing copies of the recordings.<sup>26</sup>

[51] I do not have before me the specific wording of each request. TransLink has provided a table that includes a paraphrased description of each request. The 18 requests at issue include 15 requesting security video footage of the respondent while on a bus or at a bus stop. Two of the requests are for both audio and video footage of him while on a bus. There is also one request for the audio recording of a customer service telephone call involving the respondent.

[52] I note that some of the requests from past years to which TransLink has already responded, relate to general information that is not in the format of audio or video recordings. Nevertheless, most of the past requests also relate to audio and video recordings.

### *Analysis*

[53] TransLink has the burden of proving that the respondent's requests are systematic. Having reviewed TransLink's integrated analysis, my understanding of its arguments with respect to the systematic nature of the request are as follows.

[54] One of TransLink's arguments appears to be that the increasing volume of the respondent's requests is a justification to conclude that these requests are systematic. While I agree that the volume and frequency of requests are relevant indicators in determining whether requests are systematic, it is also necessary to demonstrate that there is a systemic pattern or element in submitting their requests. Volume and frequency alone are not always sufficient indicators that requests are systematic.

[55] Order F21-04 illustrates this point. In this case, the adjudicator found that "the frequency and volume were excessive and, in essence, amounted to a barrage of requests".<sup>27</sup> These were significant indicators, but the adjudicator also found that there was a systematic method and plan behind these requests.

[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 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

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<sup>26</sup> Respondent's response submission, 5-7.

<sup>27</sup> Order F21-04, 2021 BCIPC 4 (CanLII), para. 79.

provoke and challenge.

[76] ... it is apparent that he is using access requests as a weapon in the underlying dispute about his MSP billings. ...

[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, 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).

[56] Whether requests are systematic relates to the nature of the requests, as well as the volume and frequency. It is evident that to be systematic, there must be multiple requests. Nevertheless, the simple fact that requests are increasing in volume does not mean that they necessarily are systematic. TransLink has the burden to establish that the respondent exhibits a method or plan of action.

[57] TransLink submits that the respondent has made 18 requests over a period of six weeks and 51 requests during the course of the year. The previous year he made 62 requests. The three years before that he made the following number of requests: 18, 10, and 21.

[58] It also submits that the requests are for the same type of information on different trips. I have reviewed a description of each request. Most of them simply specify that the respondent wants access to CCTV footage of himself for the duration of his journey at a particular time on a particular day. The respondent submits that he is seeking copies of his own personal information. I have nothing before me to indicate that TransLink collects the respondent's personal information in any other format than audio and video recordings. This means that, if he is seeking access to his own personal information, the only responsive records would be audio and video recordings. Therefore, the fact that he frequently requests audio and video recordings of himself does not necessarily prove that he has a systematic intent.

[59] A systematic series of requests involves a definite pattern of behaviour, such as using the records from one request to identify new issues for making further requests or revisiting previous requests. It may also involve a systematic pattern of complaints to the OIPC about a public body's responses to requests. None of these criteria apply in this case.

[60] TransLink also submits that the respondent has "no reason" for making the requests or that the requests are not consistent with the purposes of the CCTV

system. As I set out above, systematic requests are those that are made according to method or plan or acting carried out according to a set of rules or principles. Whether the purpose of the requests aligns with the purpose for which the public body created the records is irrelevant to this determination. Similarly, TransLink's argument that there is "no reason" for his requests does not establish that there is a pattern to his requests. In fact, it may support the opposite conclusion.

[61] TransLink must establish that the respondent exhibits a method, plan, pattern or other indication of a systematic intent behind these requests. While applicants generally do not need to justify why they request access to records, in the context of deciding an application under s. 43, the motive of the applicant is a relevant consideration. If it is clear that the motive of the applicant is predominantly to harass, coerce or manipulate the public body, rather than to obtain knowledge, this would support a finding that the requests were systematic.

[62] TransLink has not identified what it believes to be the respondent's purposes in making these requests, other than saying that he has "no purpose". The respondent's submissions are lengthy, convoluted and, for the most part, irrelevant to the matters at issue. The most I can discern is that he submits requests to obtain documentation of certain actions that he alleges TransLink employees have taken against him.

[63] Any other conclusions about his motives would be purely speculative. There is no clear pattern of behavior. The respondent uses public transportation, but it is not clear whether he makes a request for video footage every time he takes a bus or the SkyTrain. He makes requests for recordings in response to interactions he has with TransLink employees, but it is not clear whether he makes a request every time he interacts with employees. He does not exhibit any particular motives that would provide a reason to harass, frustrate, coerce or manipulate TransLink to do anything in particular. He states that he wants proof of his experiences but has not demonstrated whether he intends to do anything with this proof. I see nothing to indicate that he has any other motive than to obtain copies of his own personal information for its own sake.

[64] Consequently, all I am left to rely on is that the respondent has made 18 requests over a period of 6 weeks. While I would not characterize these requests as "a barrage of requests", such volume and frequency are exceptional, and place demands on TransLink that likely exceed those of most other applicants. Nevertheless, in the absence of a clear motive, mode, plan or pattern, the volume and frequency of these requests alone do not meet the threshold for a finding that they are systematic. In summary, to be systematic, there must be a system involved. TransLink has not demonstrated what the system is in this case.

[65] I would also note that TransLink collects and stores a large volume of personal information of the respondent every time he uses public transit, and the

respondent has no means of limiting the collection of his information, other than to find other methods of transportation. In that sense, the volume and frequency of the respondent's requests correlate directly with the volume and frequency of the collection of his personal information by TransLink, over which the respondent has no control. FIPPA gives the respondent a statutory right to access that information.

[66] I understand and appreciate the challenges that TransLink faces and the extraordinary resources that it expends in replying to the volume and frequency of the respondent's requests. Retrieving and severing audio and video recordings can be more complex and time consuming than with records in other formats. This case clearly illustrates one aspect of the administrative burden that the implementation of mass surveillance technology may impose on public bodies.

[67] Therefore, I find that, on balance, TransLink's submissions have not clearly established that the respondent's requests are systematic, in accordance with s. 43(c)(ii).

*Conclusion on s. 43(c)*

[68] TransLink claimed s. 43(c)(ii) applied, but I have found that the respondent's requests are neither repetitious nor systematic. Therefore, I find that s. 43(c)(ii) does not apply. As such, I do not have to determine whether the requests unreasonably interfere in the operations of the public body, and I decline to do so.

[69] Furthermore, I find that there are no other appropriate grounds for granting the relief TransLink has requested.

**Conclusion**

[70] For the reasons given above, under s. 58 of FIPPA, I find that TransLink has not proven that the requests are frivolous or vexatious in accordance with s. 43(a) or repetitious or systematic in accordance with s. 43(c)(ii). Therefore, s. 43 does not apply and TransLink is not authorized to disregard the 18 outstanding requests.

May 18, 2023

**ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

OIPC File No.: F22-91020