



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F23-90

## CITY OF DELTA

Emily Kraft  
Adjudicator

October 26, 2023

CanLII Cite: 2023 BCIPC 106  
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 106

**Summary:** The City of Delta (City) applied under ss. 43(a) and 43(c)(ii) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) for authorization to disregard seven access requests it says were made by the respondent. The City also requested prospective relief, including authorization to disregard all future requests made by the respondent for a period of two years. The adjudicator declined to consider one of the access requests because it was overdue at the time of the City's s. 43 application (an access request that a public body does not respond to by the deadlines set out in FIPPA is considered an overdue request). The adjudicator also declined to consider two other access requests because the City had already responded to them in accordance with s. 8 of FIPPA. The adjudicator authorized the City to disregard the other four requests under s. 43(a) as well as future requests, over and above one open request at a time, for a period of one year.

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

## INTRODUCTION

[1] The City of Delta (City) applied 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 one outstanding request from an access applicant (the respondent in this s. 43 application). The City applied to disregard this request after the response deadline required under FIPPA.

[2] After the City made its s. 43 application, and before the OIPC issued the notice of application to the parties, the respondent made four additional access requests. During the inquiry, the City received another two access requests that it believes were made by or on behalf of the respondent. Therefore, the City is requesting authorization to disregard a total of seven access requests.

[3] The City says the requests are frivolous or vexatious in accordance with s. 43(a). The City also says that responding to the requests would unreasonably interfere with the City's operations because the requests are systematic under s. 43(c)(ii). It is seeking permission to disregard all seven requests. It is also seeking permission to disregard any requests from the respondent for two years following the date of this decision and that it be at liberty to apply for further relief under s. 43 at any time.<sup>1</sup>

## **PRELIMINARY MATTERS**

### **Chronology of respondent's requests**

[4] The respondent is the former spouse of a City employee. Between March 9, 2021 and April 6, 2021, the respondent made nine access requests to the City.<sup>2</sup> Three of those requests were about the respondent's former spouse. Specifically, he requested some of her employment and payroll records, information about her leave history, and information about her work location.<sup>3</sup> The other requests were about three other named employees' sick leaves, salaries, work locations, work contact information, and other employment and work-related information. One request was for general information about City staffing.<sup>4</sup> The City provided me with copies of its responses to all but one of the nine requests.

[5] In December 2021, the respondent complained to the City that his personal information was inappropriately disclosed to City staff while processing his access requests.<sup>5</sup> Specifically, the respondent alleged that the City told his former spouse about his access requests.<sup>6</sup> The City acknowledged receipt of the respondent's complaint but did not address it with him any further.<sup>7</sup>

[6] In February 2022, the respondent complained to the OIPC about the alleged disclosure of his personal information. Following the respondent's complaint to the OIPC, the City conducted an internal investigation about the complaint and determined that an improper disclosure of his personal information did not occur. The City communicated the results of its investigation to the

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<sup>1</sup> City's initial submission at para 7.

<sup>2</sup> The respondent also submitted two requests for information that the City did not treat as "access requests" under s. 5(1) of FIPPA. In my view, some of the other nine requests are also requests for information or questions rather than "access requests" under s. 5(1), but the City treated them as "access requests" so I refer to them as such.

<sup>3</sup> City Clerk's affidavit, Exhibit C (access requests sent March 9, 2021, March 21, 2021, and March 23, 2021).

<sup>4</sup> City Clerk's affidavit, Exhibit C.

<sup>5</sup> City Clerk's affidavit, Exhibit G.

<sup>6</sup> City Clerk's affidavit, Exhibit I.

<sup>7</sup> City Clerk's affidavit, Exhibits G and H.

respondent in a letter dated February 23, 2023. The letter said as follows:

I am writing to you today to advise you on the results of our new and second investigation regarding inappropriately disclosing your personal information. The investigation results are as follows:

- 59 records reviewed
- 9 individuals interviewed
- 4 privacy breach meetings conducted
- 4 staff members not interviewed due to no longer being employed by the City of Delta

Our review of all affiliated records, as well as meetings, and interviews have consistently indicated that an improper disclosure did not occur. Therefore, based on our thorough investigation we have determined that the Office of the City Clerk did not disclose your personal information inappropriately. We consider this investigation file to now be concluded.<sup>8</sup>

[7] On February 28, 2023, the City received the following request from the respondent:

All records, notes, emails, copies of the breach of FOI privacy investigation conducted including but [not] limited to 59 records reviewed, 9 individuals interviewed, 4 privacy breach [meetings] conducted and names & job position of 4 staff members not interviewed due to no longer being employed with the city, names of 9 individuals interviewed and persons [who] attended breach meeting and all notes, emails, records & copies. A search of the emails of 4 ex-staff employees' emails for key words [former spouse's name], [respondent's name], ex-husband, [street name of respondent's address] for period Jan 2019-Feb 27, 2023 and copy of such records and of 9 individuals interviewed emails.<sup>9</sup>

[8] The City did not respond to the respondent's February 28, 2023 request within the timeline required by FIPPA. On May 1, 2023, the respondent requested that the OIPC review the City's failure to respond (OIPC File F23-93013).<sup>10</sup>

[9] On June 9, 2023, the City applied to the OIPC for authorization to disregard the February 28, 2023 request. The City did not inform the respondent of its application.

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<sup>8</sup> City Clerk's affidavit, Exhibit P.

<sup>9</sup> City Clerk's affidavit, Exhibit L.

<sup>10</sup> Under s. 53(3), a public body's failure to respond by the deadlines set out in FIPPA is treated as "a decision to refuse access to the record," and this gives the OIPC jurisdiction to review such matters. The OIPC refers to these reviews as "deemed refusals."

[10] On June 13, 2023, the OIPC notified the respondent of the City's application. Approximately 30 minutes later, the respondent made two further access requests to the City. The first request was as follows:

I'm requesting all of the records of communication by the 2 above named employees and all other employees involved in their application to the OIPC office to not provide the records I requested. Again, I am [requesting] records of all communication related to myself and my application and the City of [Delta's] internal communications from Feb 27/2023 to June 14/2023.<sup>11</sup>

[11] The second request, which was made less than 15 minutes after the first request, was as follows:

Requesting copies of last 3 employee performance reviews of the above 3 employees; detailed copies including call log, text log and billing information showing amount billed to City of Delta for cell phones provided to them by City of Delta; what is City of Deltas policy regarding employee theft; what is the City of Delta employees policy regarding 'use' of City of Delta owned cellphones; what time is [named employees'] lunch break; what length of time is [named employees'] lunch break.<sup>12</sup>

[12] On July 14, 2023, the respondent made the following additional request to the City:

Send me copies of all FOI requests I have made since 2021.<sup>13</sup>

[13] On July 19, 2023, the City's legal counsel wrote to the respondent and told him that the City was seeking authorization from the OIPC to disregard his June 13, 2023 and July 14, 2023 requests in addition to his February 28, 2023 request. On the same day, the respondent made the following additional request:

Copies of all communication and billing between the City of Delta and the [City's legal counsel].<sup>14</sup>

[14] On July 31, 2023, during the submissions period for this inquiry, the City received two more access requests that were not sent from the respondent's email address or signed with the respondent's name, but the City believes they were made by the respondent or on his behalf. The first request was as follows:

The search of all files/emails/documents of City of Delta computer services for the word [respondent's name]. In addition to the files associated to the word [respondent's name].

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<sup>11</sup> City Clerk's affidavit, Exhibit T.

<sup>12</sup> City Clerk's affidavit, Exhibit T.

<sup>13</sup> City Clerk's affidavit, Exhibit U.

<sup>14</sup> City Clerk's affidavit, Exhibit W.

[15] The second request was as follows:

Any records, notes, emails, copies of the breach of FOI privacy investigation conducted in relation to the privacy breach of [respondent] including but not limited to 59 records reviewed, 9 individuals interviewed, 4 privacy breach [meetings] conducted and names & job position of 4 staff members not interviewed due to no longer being employed with the City, names of 9 individuals interviewed and persons [who] attended breach meeting and all notes, emails, records & copies. A search of the emails of 4 ex-staff employees' emails for key words [respondent's name] and for period Jan 2019-Feb 27, 2023 and copy of such records and of 9 individuals interviewed emails.

[16] The City is seeking authorization under ss. 43(a) and 43(c)(ii) to disregard all seven of the above-noted requests.

### **Should I consider an overdue request as part of the City's s. 43 application?**

[17] The first access request at issue was received by the City on February 28, 2023. As mentioned above, the City did not respond to this request within the 30-day deadline set out in s. 7(1) of FIPPA and it did not take any of the available time extensions under ss. 7(2) and 10. The City admits that it failed to respond to the February 28, 2023 request within the timeframe required by FIPPA. The February 28, 2023 request is therefore considered an overdue request.<sup>15</sup>

[18] Since the City did not respond to the February 28, 2023 request within the legislated deadline, I must decide whether it is appropriate to consider granting s. 43 relief for that request. Neither party addressed this issue in their submissions, so I wrote to the parties and invited them to make submissions on this matter.<sup>16</sup> I discuss those submissions further below.

[19] Previous OIPC orders and decisions have said that a decision on whether or not to consider granting s. 43 relief for overdue requests will turn on the specific circumstances of each case.<sup>17</sup> Adjudicators have decided to consider overdue requests when the respondent was responsible for contributing to the public body's inability to respond in time to the access request, for instance by overwhelming the public body with other access requests and with follow-up issues and questions, and when there was no evidence that the public body had deliberately neglected the overdue request.<sup>18</sup>

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<sup>15</sup> Decision F06-12, 2006 CanLII 42644 (BCIPC) at paras 16 and 25.

<sup>16</sup> Letter dated August 31, 2023.

<sup>17</sup> Decision F06-12, 2006 CanLII 42644 (BCIPC) at para 25.

<sup>18</sup> Decision F06-12, 2006 CanLII 42644 (BCIPC) at para 26; Order F20-15, 2020 BCIPC 17 at para 10; Decision F06-03, 2006 CanLII 13535 (BCIPC) at para 30.

[20] In this case, the City acknowledged that it did not respond to the February 28, 2023 request within the legislated deadline but submits that it did not deliberately neglect to respond.<sup>19</sup> The City says it was determining whether it should withhold the requested records under s. 22 of FIPPA and was “completing its due diligence,” which delayed its response. It also says that it was making its best efforts to fulfill its duties under FIPPA while managing the respondent’s vexatious requests.<sup>20</sup>

[21] In its initial submission, the City says that it searched for records that responded to the February 28, 2023 request and conducted staff interviews, but that it “did not respond to the [r]espondent’s request based on [its] reasonable concerns about the safety and well-being of City staff.”<sup>21</sup> I understand the City to be saying that it was concerned that disclosing the responsive records could threaten the safety and well-being of City staff.

[22] The respondent submits that the City purposely delayed its response to his February 28, 2023 request.<sup>22</sup>

[23] For the following reasons, I find it is not appropriate to consider the City’s request for s. 43 relief regarding the February 28, 2023 request.

[24] There is no evidence that the City was overwhelmed with the volume of other access requests made by the respondent, as was the case in previous s. 43 decisions that included overdue requests. I note that the City says it was making its best efforts fulfil its duties while managing the respondent’s “vexatious requests”;<sup>23</sup> however, prior to the February 28, 2023 request, the last access request that the City received from the respondent was on April 6, 2021. The respondent did not make any further requests after the February 28, 2023 request until June 13, 2023, which was after the City made its application for relief under s. 43.

[25] In my view, the City’s own submission demonstrates that it deliberately neglected its obligations under FIPPA with respect to the February 28, 2023 request. The City says that it “did not respond to the [r]espondent’s request based on [its] reasonable concerns about the safety and well-being of City staff.”<sup>24</sup> If the City determined that the respondent was not entitled to access the responsive records or parts of the responsive records under, for example, s. 19(1) (disclosure harmful to individual or public safety) or any other exception

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<sup>19</sup> City’s additional submission dated September 6, 2023 at paras 5-6.

<sup>20</sup> City’s additional submission dated September 6, 2023 at paras 7 and 10.

<sup>21</sup> City’s initial submission at para 32.

<sup>22</sup> Respondent’s additional submission dated September 5, 2023 at p 2.

<sup>23</sup> City’s additional submission at paras 7 and 10.

<sup>24</sup> City’s initial submission at para 32.

to disclosure, then it should have told him that in response to his request.<sup>25</sup> The City is not entitled to ignore a request because it believes all or part of the responsive records are excepted from disclosure under Part 2 of FIPPA.

[26] Alternatively, if the City needed more time to respond to the request in order to determine if any exceptions applied, then it should have taken a time extension under s. 10(1) or requested an extension from the Commissioner under s. 10(2)(b). Public bodies have an obligation to respond to access applicants within legislated response times and, if they are likely unable to do so, then they must take or seek time extensions as permitted under FIPPA.<sup>26</sup> The City did not explain why it did not make use of s. 10. It only applied to the OIPC for authorization to disregard the February 28, 2023 request well after the respondent requested that the OIPC review the City's failure to respond.

[27] In my view, the City has failed to justify why it did not respond to the February 28, 2023 access request within the legislated response time. Therefore, I conclude that it would be inappropriate to consider the City's request for s. 43 relief regarding that request.

[28] Since the February 28, 2023 request was already the subject of a deemed refusal file with the OIPC at the time of this application (OIPC File F23-93013), work on that file should resume.

### **Should I consider the July 31, 2023 requests as part of the City's s. 43 application?**

[29] As mentioned above, the City received two more access requests on July 31, 2023 that were not sent from the respondent's email address or signed with the respondent's name, but the City believes they were made by the respondent or on his behalf. The City attached both of these requests to its reply submission and said that they should be considered as part of this inquiry.<sup>27</sup> However, the City provided evidence that it has already responded to both of these requests in accordance with s. 8 of FIPPA.<sup>28</sup>

[30] Section 43 provides the Commissioner with the authority to authorize a public body "to disregard a request under section 5 or 29." In my view, I cannot

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<sup>25</sup> Section 8 of FIPPA says that, in a response to an access request under s. 7, a public body must tell the applicant whether or not they are entitled to the record or part of the record, and if access to the record or part of the record is refused, the public body must tell the applicant the reasons for the refusal and the provision of FIPPA on which the refusal is based.

<sup>26</sup> Decision F06-12, 2006 CanLII 42644 (BCIPC) at para 25.

<sup>27</sup> Cover letter to the City's reply submission dated August 16, 2023 and City's email dated September 29, 2023.

<sup>28</sup> The City responded to both requests on August 18, 2023 and denied access to the requested records under s. 22 of FIPPA.

authorize a public body to “disregard” an access request that it has already responded to.

[31] In *Alberta Health Services (Re)*, 2021 CanLII 20390, the Alberta OIPC came to the same conclusion regarding s. 55 of the Alberta *Freedom of Information and Protection of Privacy Act*, which is the equivalent to s. 43 of BC’s FIPPA.<sup>29</sup> In reaching her decision, former Commissioner Clayton considered the Webster’s Dictionary definition of “disregard” as meaning “to pay no heed to” or “to ignore.” She went on to make the following finding, which I agree with:

Since s. 55(1) is all about authorizing a public body to “disregard” a request such as an access request, I do not see how it is possible to authorize a public body to disregard an access request when it has already responded to that access request. If a public body has already responded, there is nothing remaining that I can authorize it to disregard.<sup>30</sup>

[32] I recognize that responding to an access request under FIPPA is not necessarily the end of the matter, and a public body might have further obligations under FIPPA even after responding to a request. However, in my view, s. 43 only provides for authorization to disregard a request under s. 5 or s. 29; once a request has been responded to, s. 43 cannot be relied on to end or circumvent ongoing FIPPA processes.

[33] I conclude it would be meaningless to authorize the City to disregard the two July 31, 2023 requests because the City already responded to them. Therefore, I decline to add them to this application.

[34] From this point forward, when I refer to the outstanding requests, I am only talking about the two requests the respondent made on June 13, 2023 and the single requests he made on July 14 and July 19, 2023.

## **ISSUES AND BURDEN OF PROOF**

[35] The issues I must decide in this inquiry are as follows:

1. Are the outstanding requests frivolous or vexatious under s. 43(a)?
2. Would responding to the outstanding requests unreasonably interfere with the operations of the public body because the requests are systematic under s. 43(c)(ii)?
3. If the answer to either of these questions is “yes,” then what relief, if any, is appropriate?

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<sup>29</sup> *Alberta Health Services (Re)*, 2021 CanLII 20390 (AB OIPC) at para 16.

<sup>30</sup> *Ibid* at para 11.



[36] The City has the burden of proving that ss. 43(a) or 43(c)(ii) applies.<sup>31</sup> However, with respect to s. 43(a), if the City establishes a *prima facie* case that the requests are frivolous or vexatious, the respondent bears some practical onus to explain why they are not.<sup>32</sup>

## DISCUSSION

### Section 43

[37] 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 an access request. Section 43 is remedial, not punitive in nature.<sup>33</sup> The relevant provisions in this case are 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,

...

(c) responding to the request would unreasonably interfere with the operations of the public body because the request

...

(ii) is repetitious or systematic.

[38] Since relief under this section restricts an individual's right to access information, the Commissioner only grants relief under s. 43 after careful consideration and only in exceptional circumstances.<sup>34</sup>

[39] The City submits that ss. 43(a) and 43(c)(ii) apply. I will first consider s. 43(a) and only if it does not apply, will I consider s. 43(c)(ii). If either ss. 43(a) or 43(c)(ii) apply, I will then decide what remedy, if any, is appropriate.

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

[40] 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.<sup>35</sup>

[41] Frivolous requests include requests that are trivial or not serious. Past OIPC orders have found that a request was frivolous when the requested

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<sup>31</sup> Auth (s. 43) 02-02, [2002] BCIPCD No 57 at para 4.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Crocker v British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at paras 32-33 [*Crocker*].

<sup>34</sup> Order F22-08, 2022 BCIPC 8 (CanLII) para. 29.

<sup>35</sup> Order F23-37, 2023 BCIPC 44 at para 16.

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 a significant time processing the request.<sup>36</sup>

[42] 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>37</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;<sup>38</sup>
- The respondent was motivated by a desire to harass the public body;<sup>39</sup>
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions;<sup>40</sup> and
- The request was intended to be punitive and cause hardship to an employee of a public body.<sup>41</sup>

[43] I will outline the parties' submissions about the requests below. Although I am not considering the February 28, 2023 request in this application, I will outline what the parties say about that request because it provides important context for considering the other requests.

*City's initial submission*

[44] The City submits that the purpose of the respondent's requests is to harass his former spouse and other City employees and to embarrass or cause discomfort to City employees.<sup>42</sup> It says that when the respondent did not receive the outcome he was looking for from the City's internal unauthorized disclosure investigation, he reacted by filing his February 28, 2023 request. The City submits that the respondent filed the February 28, 2023 request solely to get access to the City's interview with his former spouse and her colleagues that was conducted during its internal investigation, and to subvert the OIPC complaint outcomes and the City's responses (as far as I can see based on the parties' submissions, the respondent's complaint about the alleged unauthorized disclosure is still an active OIPC file).<sup>43</sup>

[45] The City says that the substance of the two June 13, 2023 access requests demonstrate that the requests are frivolous and vexatious. It says the

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<sup>36</sup> Order F23-37, 2023 BCIPC 44 at para 17.

<sup>37</sup> Auth (s. 43) 02-02 [2002] BCIPCD No. 57 at para 27.

<sup>38</sup> Order F13-16, 2013 BCIPC 20 at para 20.

<sup>39</sup> Order F13-18, 2013 BCIPC 25 (CanLII) at para 36.

<sup>40</sup> Order F20-15, 2020 BCIPC 17 (CanLII) at para 33

<sup>41</sup> Order F19-44, 2019 BCIPC 50 (CanLII) at para 33.

<sup>42</sup> City's initial submission at para 55.

<sup>43</sup> City's initial submission at para 60.

performance reviews the respondent sought in one of his June 13, 2023 requests were about employees involved in processing his previous requests. The City says it is clear the respondent made this access request to embarrass and intimidate the City and express his frustrations at the City staff.<sup>44</sup>

[46] The City also says the July 14, 2023 request for copies of access requests that he authored is frivolous.<sup>45</sup> It cites Order F13-18,<sup>46</sup> where the adjudicator found that the respondent's request for documents authored by himself was frivolous.

[47] The City says the respondent's July 19, 2023 request for information about the billing and communication between the City and its legal counsel was made for harassment and nuisance value only. It says the respondent made this request only after learning the legal counsel was assisting the City in this application.<sup>47</sup>

[48] The City submits that the nature of the respondent's correspondence with City staff demonstrates that he is using FIPPA to air his grievances, vent his anger, and intimidate and harass staff involved in processing his access requests.<sup>48</sup> It lists the following quotes from the respondent's communications with City staff to illustrate this point:

- "Please [advise] [named employee] I will be seeking a court order and serving himself if a mutual agreement to access to his records is denied."
- "If you decide to do a tainted investigation, you better hope all emails, phone logs, appointments and interactions are deleted among everyone involved, including you at the City of Delta. There are too many people involved for you to nudge nudge wink wink to change the story."
- "Going forward once I commence legal proceedings against the City, yourself, present employees and ex-employees they will all be subjected to recorded discoveries of a minimum of 8hrs each. Your present nudge nudge wink wink tactics will fail and yourself plus present employees will be in jeopardy."
- "I strongly [advise] you to contact your legal counsel in regards to this matter."
- "Otherwise I wish you 'good luck' and do remember to state your name when replying to my communication."
- "[You're] hoping I forget and you can wash your hands."
- "Your 'in-house' investigation was obviously biased."

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<sup>44</sup> City's initial submission at para 58.

<sup>45</sup> City's initial submission at para 59.

<sup>46</sup> Order F13-18, 2013 BCIPC 25.

<sup>47</sup> City's initial submission at para 57.

<sup>48</sup> City's initial submission at para 56.

- “You just got caught with your pants down.”<sup>49</sup>

[49] The City attached copies of certain correspondence from the respondent, including the following email sent by the respondent on June 10, 2023:

Hello

[Your] date has come and gone. My original request was Feb 28, 2023. You have had over 3 months which is well over the 30 days allowed. Are you scared? Worried ex employees will expose how your foi office wasn't following proper protocols? Don't know what to do now that you got caught with your pants down? Figuring out a strategy to get out of your lies?

Are you hoping your delay tactics will make me forget or go away? I guarantee I will not. There will be more foi requests coming for all communication post the period ending your “investigation”

I wonder which of your employees will crumble under discovery by my lawyer. You have too many people involved to follow one lie

You can still admit my identity was disclosed since the hole you are digging can't go forever

I wonder if I should request the billings of call/text details of city of delta provided cellphones to all your staff to ensure the public is paying for personal calls or texts...

I expect a quick reply in 2 Business days if you are providing the documents for which you have had 3 months but it appears I'll need to go to the ombudsmen [sic] to wake you up again

...

Sincerely [respondent's name]

And Good Luck<sup>50</sup>

*Respondent's response submission*

[50] The respondent says that the purpose of his February 28, 2023 request was to obtain information about the City's investigation into his unauthorized disclosure complaint. He says that the City disclosed his personal information to his former spouse and that the disclosure caused him “financial costs” and “personal costs.”<sup>51</sup> He says that the City's investigation into his complaint was biased and flawed and that the City failed to conduct interviews and contact or

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<sup>49</sup> City's initial submission at para 56(a)-(h).

<sup>50</sup> City Clerk's affidavit, Exhibit R.

<sup>51</sup> Respondent's response submission at p 3.

search the records of staff employed at the relevant times.<sup>52</sup> He says that the City is trying to “hide their flawed investigation.”<sup>53</sup>

[51] Regarding his June 13, 2023 request for communications between staff involved in the s. 43 application, the respondent says he requested those records because they are “centered around [himself].”<sup>54</sup>

[52] Regarding his June 13, 2023 request for employee performance reviews, call and text logs, and other information, the respondent says that he is aware of time theft and misappropriation of equipment by City staff and he requested this information to “further substantiate a secondary investigation [he is] performing.”<sup>55</sup>

[53] Regarding his July 14, 2023 request for copies of his own FOI requests, the respondent says that he believes that there may be “a third FOI request which the City has refused.” He says he wants to verify the access requests he has submitted are correct and there are no others that have been ignored.<sup>56</sup>

[54] Regarding his July 19, 2023 request for copies of billing and communication between the City and its lawyers, the respondent says that the City’s expenditures are a matter of public interest. He says the City is needlessly hiring a law firm “when at no cost” they could respond to his request.<sup>57</sup>

[55] Finally, the respondent says he has never threatened City staff in any physical way.<sup>58</sup>

#### *City’s reply submission*

[56] The City denies that its investigation into the respondent’s complaint about the unauthorized disclosure of his personal information was biased and flawed. It disputes that the respondent has an earnest interest in the issue of time theft or misappropriation of equipment.<sup>59</sup> It also says it is not wastefully expending resources.<sup>60</sup>

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<sup>52</sup> Respondent’s response submission at p 2.

<sup>53</sup> Respondent’s response submission at p 3.

<sup>54</sup> Respondent’s response submission at p 2.

<sup>55</sup> Respondent’s response submission at p 2.

<sup>56</sup> Respondent’s response submission at p 2.

<sup>57</sup> Respondent’s response submission at p 2.

<sup>58</sup> Respondent’s response submission at p 2.

<sup>59</sup> City’s reply submission at para 9.

<sup>60</sup> City’s reply submission at para 12.

### *Analysis and findings*

[57] The respondent is clearly very unhappy about the results of the City's investigation into his unauthorized disclosure complaint. Based on the respondent's communications with City staff and his submissions, I am satisfied that he sincerely believes that his personal information was improperly disclosed to his former spouse. The respondent's submissions focus largely on his suspicions about the investigation and the reasons for his February 28, 2023 request. It is clear to me that he made the February 28, 2023 request for the purpose of accessing records he is genuinely interested in. However, I conclude those are the only records that the respondent has a genuine interest in. For the reasons that follow, I find that the respondent only made the outstanding requests because he was unhappy about the City failing to respond to his February 28, 2023 request and making this s. 43 application. I will consider each of the outstanding requests in turn below.

#### June 13, 2023 requests

[58] The respondent made two access requests on June 13, 2023 within one hour of receiving notice about the City's s. 43 application.

[59] The first request made on June 13, 2023 was for internal communications about the respondent exchanged between all employees involved in the s. 43 application in a specified period. The respondent did not explain in his submission why he requested this information, other than to say the information is about himself.

[60] The second request was made fifteen minutes after the first request. It was for performance reviews and other work-related information about the employees who were involved in processing his previous access requests and making this s. 43 application, including call log, text log, and billing information for their City-supplied cell phones. The respondent says that he requested this information because he is investigating the City for time theft and misappropriation of equipment.

[61] The respondent did not sufficiently explain why he made his two requests within minutes of each other and so quickly after receiving notice of the s. 43 application or why he focused on the employees involved in the City's s. 43 application. Absent any satisfactory explanation from the respondent, I find the timing and content of the two requests strongly indicates the respondent made the requests for reasons other than a legitimate interest in the requested information.<sup>61</sup>

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<sup>61</sup> For similar reasoning, see Order F22-61, 2022 BCIPC 69 at paras 50-51.

[62] The respondent's prior communications with City employees also indicate the June 13, 2023 requests were made for ulterior purposes. For example, in the respondent's June 10, 2023 email to the City, he expresses his anger about the City's failure to respond to his February 28, 2023 request and he tells the City that he intends to make more access requests for all post-investigation communications. He also indicates that he will request billing information and call and text details for staff cell phones. He tells the City that it is not too late for it to admit that his personal information was disclosed. He closes the email by saying that he expects the City to provide the records responsive to his February 28, 2023 request within two days. In my view, the respondent was warning the City that, if it did not admit to disclosing his personal information or respond to his February 28, 2023 request, he would make the access requests described in his email. When the City did not do what he wanted, the respondent then promptly followed through on his promise by making the June 13, 2023 requests.

[63] Considering all of the above, I am not persuaded the respondent had a legitimate interest in the information he requested. Instead, I find the respondent intended to express his frustration and punish the City for its failure to respond to his February 28, 2023 request and for making this s. 43 application. As a result, I conclude the respondent made both of the June 13, 2023 requests for a purpose other than a good faith desire to access the requested records, and, therefore, the requests are vexatious for the purposes of s. 43(a).

#### July 14, 2023 request

[64] The respondent's request dated July 14, 2023 was for copies of all the access requests he has made since 2021. I do not accept the respondent's submission that he wants to verify the access requests he has submitted are correct and to make certain that there are no others that have been ignored. The respondent gave no indication that he no longer has copies of his access requests, all of which he sent to the City via email. It is not plausible that he made this request in a good faith attempt to access the requested records. I find this request is frivolous under s. 43(a).<sup>62</sup>

#### July 19, 2023 request

[65] The respondent's request dated July 19, 2023 was for billing and communication between the City and its legal counsel. The respondent says he is interested in this information to hold the City accountable for its spending of public funds on this s. 43 application.

[66] In other circumstances, I might accept that the respondent is genuinely interested in holding the City accountable for its spending; however, based on

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<sup>62</sup> For a similar finding, see Order F13-18, 2013 BCIPC 25 at para 34; Order F13-16, 2013 BCIPC 20 at para 21; and Order F20-15, 2020 BCIPC 17 at para 28(7).

the facts here, I am not persuaded that was the true motivation behind this request. The respondent made this request shortly after learning that the City's legal counsel was assisting it with this s. 43 application. The respondent only mentions this request very briefly in his submission, saying that the City needlessly hired legal counsel when it could have responded to his February 28, 2023 request at no cost.

[67] Based on the respondent's previous communications with City staff and his prior vexatious and frivolous requests, I can see that he is very frustrated with the City for failing to respond to his February 28, 2023 request and for making this s. 43 application. Considered alongside his previous requests and communications, the fact that the respondent made this request so quickly after learning that the City's legal counsel was involved in this s. 43 application, and the fact that he made such a limited submission about it, satisfies me that he made the request to express his frustration and criticize the City for hiring legal counsel to assist with this application. I conclude that this request is vexatious under s. 43(a).

[68] For the reasons given above, I find the respondent's four outstanding requests made on June 13, July 14, and July 19, 2023 are frivolous or vexatious under s. 43(a).

[69] Given that finding, it is not necessary to decide if s. 43(c)(ii) also applies, so I decline to do so.

### ***Appropriate remedy***

[70] Section 43(a) gives the Commissioner or their delegate the discretion to authorize a public body to disregard requests that are frivolous or vexatious. The Commissioner also 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.<sup>63</sup> Any remedy under s. 43 must be proportional to the harm inflicted and must bear in mind the objectives of s. 43, which in this case is to avoid requests that are frivolous or vexatious.<sup>64</sup>

[71] I find it is appropriate to authorize the City to disregard the respondent's four outstanding requests made on June 13, July 14, and July 19, 2023 because they are frivolous or vexatious under s. 43(a).

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<sup>63</sup> *Crocker*, *supra* note 33 at paras 40-41.

<sup>64</sup> *Ibid* at para 45; Order F22-61, 2022 BCIPC 69 at para 57.



[72] The City is also requesting authorization to disregard any future requests from the respondent for two years following the date of this order.<sup>65</sup>

[73] In my view, the future relief requested by the City is too drastic. However, for the reasons that follow, I do find that some future relief is warranted in this case.

[74] The respondent made the four frivolous or vexatious requests at issue in a short period of time. I found above that the respondent made all four requests in order to express his frustration about the City failing to respond to his February 28, 2023 request and making this s. 43 application. The respondent believes the City disclosed his personal information without his consent and that the records responsive to his February 28, 2023 request will prove that. After this decision, activity on the respondent's February 28, 2023 access request and the related unauthorized disclosure complaint will resume. Since those matters were triggers for the respondent's frivolous and vexatious requests, it is reasonable to conclude that, unless I impose some limitations, the respondent's behaviour will continue until those matters are settled to his satisfaction.

[75] In my view, limiting the respondent's access requests to one open request at a time for a period of one year is the most appropriate remedy in this case. This will preserve the respondent's right to access records but cause him to stop and seriously consider the nature of each request before he makes it. The objective of this remedy is to stop the flow of the respondent's frivolous and vexatious requests and lessen the burden on the City as it carries out its duties under FIPPA.

## **CONCLUSION**

[76] For the reasons given above, I make the following authorizations under s. 43 of FIPPA:

1. The City is authorized to disregard both of the respondent's June 13, 2023 requests, the July 14, 2023 request, and the July 19, 2023 request.
2. For a period of one year from the date of this order, the City is authorized to disregard any access request made by, or on behalf of, the respondent over and above one open access request at a time. An "open access request" is a request for records under s. 5 of FIPPA to which the City has not yet responded under s. 8 of FIPPA.

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<sup>65</sup> City's initial submission at para 7(c). I note that the City requested several other types of future relief in its June 9, 2023 application to the OIPC, but it did not mention those types of relief in its July 19, 2023 letter to the respondent or in its inquiry submissions. I conclude it is no longer seeking the types of future relief listed in the June 9, 2023 application, so I will not consider them.

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October 26, 2023

**ORIGINAL SIGNED BY**

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Emily Kraft, Adjudicator

OIPC File No.: F23-93412