



Order F24-92

## TOWNSHIP OF LANGLEY

Elizabeth Vranjkovic  
Adjudicator

October 29, 2024

CanLII Cite: 2024 BCIPC 105  
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 105

**Summary:** The Township of Langley (Township) applied for authorization to disregard part of an outstanding access request. The adjudicator found the outstanding request was excessively broad and responding to it would unreasonably interfere with the Township's operations under s. 43(c)(i) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator authorized the Township to disregard the outstanding request.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 43(c)(i).

### INTRODUCTION

[1] This inquiry is about an application by the Township of Langley (Township) to disregard part of an access request under s. 43(c)(i) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Section 43(c)(i) allows the Commissioner to authorize a public body to disregard an access request if responding to the access request would unreasonably interfere with the operations of the public body because the request is excessively broad.

#### ***Preliminary matter – new issue***

[2] In its inquiry submission, the Township asks for relief under both s. 43(c)(i) and 43(c)(ii) (unreasonable interference with the public body's operations because the request is repetitive or systematic). Whether the Township should be granted relief under s. 43(c)(ii) was not an issue listed in the Notice of Application. Typically, parties must request the Commissioner's permission to add new issues into an inquiry. The Township did not request permission to add s. 43(c)(ii). However, because of my finding below on s. 43(c)(i), I do not need to decide whether to add s. 43(c)(ii) to this inquiry.

## ISSUES

[3] I must decide the following issues in this inquiry:

1. Would responding to the outstanding request unreasonably interfere with the operations of the public body because the request is excessively broad (s. 43(c)(i))?
2. If the answer is yes, what relief, if any, is appropriate?

[4] The burden of proof is on the Township to show that s. 43(c)(i) applies to the outstanding request.<sup>1</sup>

## DISCUSSION

### *Background<sup>2</sup>*

[5] The respondent is an employee of a company (the Company) who has made several access requests to the Township on behalf of the Company. The Company is part of a family-held group of companies (the Group). It has been retained by other companies in the Group to manage the development of certain lands in the Township.

[6] In September 2024, the Group filed a petition for judicial review against the Township in relation to its Community Amenity Contributions (CAC) Policy. Under the CAC Policy, the Township negotiates with developers to assist in paying for community amenities.

[7] On July 3, 2024, the respondent made the follow access request, which is the request at issue, for the period of November 1, 2022 to July 2, 2024 (the outstanding request):

All records, including all internal and external correspondence relating to inquiries, requests, directions, discussions, and correspondence between any [Township] Council member, staff, official or employee with landowners and real estate developers in relation to [CAC] charges and details of [CAC] payments made to the Township from landowners and developers involving rezoning or redevelopment applications;

Details of each area, amenity and development where [CAC] charges are or were imposed for redevelopment applications;

Details of what amenities the [CAC] have been used towards;

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<sup>1</sup> Auth (s. 43) 02-02, [2002] BCIPCD No 57; Order F17-18, 2017 BCIPC 19.

<sup>2</sup> The information in this section is from the public body's s. 43 application, the public body's initial submission and Exhibit B to the Corporate Officer's affidavit.

Details of how much and which persons, entities, programs or amenities received payments [*sic*] [CAC] charges.

All records of considerations used to determine the amounts of [CACs] charged to developers and landowners in relation to rezoning or redevelopment applications;

All records used to determine the [CAC] charges for each of the different types of residential, industrial, employment and commercial developments involving a redevelopment or rezoning application;

All records of any deductions used to determine the amounts charged for [CAC] charges;

All records and details of all [CAC] payments received by the [Township] involving a redevelopment or rezoning application; [duplicated in original request]

Details of all reserve funds in which payments of [CAC] charges are deposited and how all such funds were used;

Records of all collection and use of [CAC] charges including amounts received and expenditures made from the reserve funds [*sic*] any person, organization, corporation, or public authority;

Records of the balance in the [CAC] reserve fund at the start and end of each year, any waivers or reductions, and any in-kind amenity contributions made.<sup>3</sup>

### ***What is the request at issue?***

[8] In his submission, the respondent says that the outstanding request is for records of correspondence between the Township and landowners and real estate developers in relation to CACs.<sup>4</sup>

[9] In my view, the respondent's submission does not accurately describe the outstanding request. The outstanding request as originally written is clearly for "all records." It also includes requests for specific types of records and information that are not correspondence, for example, "records of the balance in the [CAC] reserve fund at the start and end of each year" and "records of all collection and use of [CAC] charges." It is clearly broader than a request for correspondence between the Township and landowners and real estate developers.

[10] I do not think it would be fair to consider whether s. 43 applies to a narrower version of the outstanding request at this point. The breadth of the

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<sup>3</sup> I have added line breaks for ease of reading and corrected obvious typographical errors.

<sup>4</sup> Respondent's response submission at pages 1 and 2.

outstanding request is a central issue in this s. 43 application. The parties had the opportunity to discuss and revise the scope of the outstanding request prior to this inquiry. Changing the scope of the s. 43 application at such a late point circumvents and undermines the investigation and mediation phase of the FIPPA review process. Therefore, in my analysis, I will consider whether s. 43 applies to the outstanding request as originally written.

### **Section 43**

[11] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting an individual's right to access information under FIPPA. Public bodies do not have discretion to disregard access requests on their own; they must obtain permission from the Commissioner.<sup>5</sup>

[12] Section 43 allows the Commissioner to authorize a public body to disregard a request, including because:

...

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

(i) is excessively broad ...

[13] Given that relief under this section curtails or eliminates the rights to access information, s. 43 applications must be carefully considered.<sup>6</sup> According to former Commissioner Flaherty, granting s. 43 applications should be the "exception" and not a mechanism for public bodies "to avoid their obligations under FIPPA."<sup>7</sup>

[14] However, s. 43 serves an important purpose. It exists to guard against abuse of the right of access.<sup>8</sup> It recognizes that when an individual overburdens a public body with access requests, it interferes with the ability of others to legitimately exercise their rights under FIPPA.<sup>9</sup> In this way, s. 43 is "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."<sup>10</sup>

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<sup>5</sup> Order F18-25, 2018 BCIPC 28 at para 14.

<sup>6</sup> Auth (s. 43) 99-01 at page 3. Available at <https://www.oipc.bc.ca/decisions/170>.

<sup>7</sup> Auth (s. 43) (19 December 1997) at page 1. Available at <https://www.oipc.bc.ca/decisions/168>.

<sup>8</sup> Auth (s. 43) 99-01, *supra* note 6 at page 7.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Crocker v British Columbia (Information and Privacy Commissioner)*, 1997 CanLI 4406 at para 33 [*Crocker*].

***Unreasonable interference with the public body’s operations because the request is excessively broad, s. 43(c)(i)***

[15] Under s. 43(c)(i), the Commissioner may authorize a public body to disregard a request that would unreasonably interfere with the operations of the public body because the request is excessively broad.

[16] Section 43(c)(i) has two parts and the Township must prove both. First, the request must be excessively broad. Second, responding to the request must unreasonably interfere with the Township’s operations.<sup>11</sup>

*Is the outstanding request excessively broad?*

[17] The question is whether the *request itself* is likely to result in an excessive volume of responsive records. A request is excessively broad if it would result in an “overwhelming” or “inordinate” volume of responsive records.<sup>12</sup>

[18] “Excessively broad” does not refer to the volume of records that may need to be searched to find responsive records. The amount of time and effort required to search for responsive records goes to whether responding to the request would unreasonably interfere with a public body’s operations, which is the second part of the test.<sup>13</sup> I will consider the Township’s submissions on this point in the second part of my s. 43(c)(i) analysis.

[19] The Township says that the outstanding request is excessively broad because it asks for all types of records stored in multiple forms, includes any record that contains the key word “Community Amenity Contribution” and is not limited to correspondence sent or received by specific individuals.<sup>14</sup>

[20] The Township says that a preliminary search of its Outlook and SharePoint systems for the terms “CAC” and “community amenity contribution” returned 73,239 “items” plus an additional 136,911 “partially indexed items.”<sup>15</sup>

[21] The respondent says that the outstanding request is not excessively broad because it is limited in time and in scope. Specifically, the respondent says that the scope of the request is for correspondence between the Township and landowners and real estate developers in relation to CACs.<sup>16</sup>

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<sup>11</sup> Order F22-08, 2022 BCIPC 8 at para 35.

<sup>12</sup> Order F23-98, 2023 BCIPC 114 at paras 37 and 39. See also 2024 BCIPC 21 at paras 30-32.

<sup>13</sup> Order F23-98, 2023 BCIPC 114 at para 42.

<sup>14</sup> Public body’s submission at para 16.

<sup>15</sup> Public body’s submission at para 18 and the Corporate Officer’s affidavit at para 11(c). The Township does not explain what it means by “partially indexed items.”

<sup>16</sup> Respondent’s response submission at pages 1 and 2.

[22] I accept the Township’s evidence that searching its Outlook and SharePoint databases returned 72,239 items and 136,911 partially indexed items. I find that this is an “overwhelming” and “inordinate” number of records so the request is excessively broad.

[23] I turn now to whether responding to the outstanding request would unreasonably interfere with the Township’s operations.

*Would responding to the outstanding request unreasonably interfere with the Township’s operations?*

[24] Whether responding to an access request will unreasonably interfere with a public body’s operations rests on an objective assessment of the facts; it will vary depending on the size and nature of the operation.<sup>17</sup> When assessing this issue, past orders have considered the impact of responding to the request on the rights of other access applicants.<sup>18</sup>

[25] The Township says that three of its full-time staff members are responsible for reviewing and responding to access requests under FIPPA, in addition to other responsibilities.<sup>19</sup> It also says that on average, each access request it received in 2024 required four hours to respond.<sup>20</sup>

[26] The Township estimates that responding to the outstanding request will take approximately 7,690 hours, or approximately 1,098 staff days, broken down as follows:

- 1,400 hours to review 203 development applications for responsive records, including reviewing documents to determine what redactions are necessary to protect the commercial interests of other developers; and
- 5,800 hours to review 73,239 items and 136,911 partially indexed items in the Township’s Outlook and SharePoint systems.<sup>21</sup>

[27] The Township submits that reviewing more than 210,150 files, copying 73,239 files, and taking up more than 7,690 hours of personnel time to respond to the outstanding request would unreasonably interfere with its operations.<sup>22</sup>

[28] Combining the two components of the Township’s estimate, I arrive at an estimate of 7,200 hours. The Township has not explained how it arrived at an estimate of over 7,690 hours. In the absence of explanation, my analysis below is

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<sup>17</sup> *Crocker, supra* note 10 at para 37.

<sup>18</sup> Order F17-18, 2018 BCIPC 19 at para 40; Order F13-18, 2013 BCIPC 25 at para 31.

<sup>19</sup> Public body’s submission at para 24 and the Corporate Officer’s affidavit at para 5.

<sup>20</sup> Public body’s submission at para 24 and the Corporate Officer’s affidavit at para 6.

<sup>21</sup> Corporate Officer’s affidavit at para 11.

<sup>22</sup> Public body’s submission at para 24.

based on an estimate of 7,200 hours because that is what the Township's affidavit evidence supports.

[29] The respondent submits that the Township has regularly overestimated the amount of time required to respond to his access requests. In support of his position, the respondent provided emails from Township staff which include the estimated response time and actual response time for four of his access requests. I can see that in those four instances, the Township overestimated the required response time. Neither party provided me with the Township's estimated response time for the respondent's five other access requests in 2024.<sup>23</sup>

[30] While I take the respondent's point the Township has overestimated the response time for some of his previous access requests, the evidence does not establish that the Township overestimated the response time for this particular matter.

[31] Additionally, I find that the Township's estimated response time is consistent with the broad, multi-part nature of the outstanding request, the number of development applications to be reviewed and the large number of responsive items in its Outlook and SharePoint systems. I can see how searching for records, reviewing the relevant items and preparing them for disclosure would take a significant amount of the Township's limited staff resources. I am mindful that the time and resources available to respond to access requests is finite and the respondent is not the only access applicant requiring the Township's attention. In my view, responding to the outstanding request would have a negative impact on the rights of other access applicants and would unreasonably interfere with the Township's operations.

### ***What is the appropriate relief?***

[32] Section 43 can be used to authorize a public body to disregard present and future FIPPA requests.<sup>24</sup> In this case, the Township seeks only to disregard the outstanding request. However, the Township says it will provide documents "which contain the core information relating to CACs" and disregard the balance of the outstanding request.<sup>25</sup>

[33] The respondent says that the information the Township proposes to disclose is not acceptable.<sup>26</sup> The respondent says that if the outstanding request is too broad, he agrees to amend the request to correspondence relating to CAC charges sent to or from 11 named individuals.<sup>27</sup>

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<sup>23</sup> Exhibit C to the Corporate Officer's affidavit.

<sup>24</sup> *Crocker, supra* note 10 at paras 40-43; *Mazhero v British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 at para 15.

<sup>25</sup> Public body's submission at para 1 and the Corporate Officer's affidavit at para 12.

<sup>26</sup> Respondent's response submission at page 3.

<sup>27</sup> Respondent's response submission at pages 1-2.

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[34] Because I find the outstanding request is excessively broad and responding to it would unreasonably interfere with the Township's operations, I authorize the Township to disregard the outstanding request. I appreciate that the parties are willing to offer alternative solutions, but my task in this inquiry is to decide whether to relieve the Township of responding to the outstanding access request, as it is written. For that reason, I do not think it is appropriate for me to make an order based on either party's proposal.

[35] Having said that, my authorization to disregard the outstanding request does not prevent the Township from providing the respondent with the documents it proposed to disclose. It also does not prevent the respondent from making a narrower access request as proposed in his submission.

### **CONCLUSION**

[36] For the reasons given above, under s. 43 of FIPPA, I authorize the Township to disregard the outstanding request.

October 29, 2024

### **ORIGINAL SIGNED BY**

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Elizabeth Vranjkovic, Adjudicator

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