



Order P24-12

SPICE MANAGEMENT GROUP INC.

Allison J. Shamas
Adjudicator

November 19, 2024

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Summary: An individual requested information from Spice Management Group Inc. (Spice) under the Personal Information Protection Act (PIPA). When Spice did not respond, the individual filed a complaint with the Office of the Information and Privacy Commissioner (OIPC) alleging that Spice had failed to respond within the timelines in s. 29(1) (time limit for response) of PIPA. In response, Spice applied for authorization from the OIPC under s. 37 of PIPA to disregard the access request. The adjudicator declined to consider Spice's request to disregard because it was made after the deadline to respond to the access request, and there were no circumstances that warranted considering an overdue request. The adjudicator also determined that Spice failed to meet its obligations under s. 29(1) and ordered Spice to respond to the request in compliance with the requirements of ss. 28 (duty to assist) and 30 (content of response) of PIPA.

Statutes Considered: *Personal Information Protection Act*, SBC 2003, c 63, ss. 28 (b), 29(1), 29(2), 29(3), and 30(1).

INTRODUCTION

[1] Under the *Personal Information Protection Act*¹ (PIPA) individuals have the right to access their personal information under the control of an organization.

[2] Section 29(1) provides that an organization must respond to an access applicant not later than 30 days after receiving the applicant's request.

[3] Section 37 allows an organization to apply to the Office of the Information and Privacy Commissioner (OIPC) for authorization to disregard an access request made where the access request (a) would unreasonably interfere with

¹ SBC 2003, c 6. From this point forward, whenever I refer to section numbers, I am referring to sections of PIPA unless otherwise specified.

the operations of the organization because of the repetitious or systematic nature of the requests, or (b) is frivolous or vexatious.

[4] In this matter, the individual requested access to their personal information from Spice Management Group Inc. (Spice). When Spice did not respond, the individual complained to the OIPC that Spice had failed to respond to their access request within the 30 day time limit established by s. 29. In response to the s. 29 complaint, Spice requested authorization from the OIPC under s. 37 of PIPA to disregard the access request. Given the overlap between the individual's complaint and Spice's s.37 application for authorization to disregard, the OIPC set them down to be heard together in this inquiry.

PRELIMINARY ISSUES

Scope

[5] The parties' relationship is difficult and includes various legal proceedings. Spice's submissions contain detailed information about the parties' history as well as argument about why, in its view, the individual is unlikely to succeed in various legal proceedings. While making clear that he disagrees with Spice's version of events and position about his likelihood of success before other decision-making bodies, the individual argues that these issues are outside the OIPC's jurisdiction

[6] I will not adjudicate the question of who is at fault for the parties' underlying disputes, or the individual's likelihood of success in proceedings before other decision-making bodies because that is outside my jurisdiction. However, some of the information about the parties' history provides context for understanding the PIPA issues before me, and I will refer to that context where it is relevant to my analysis below.

Improper Conduct

[7] During the inquiry, the individual complained that several aspects of Spice's submissions violated the OIPC's statement on improper conduct in its *Instructions for Written Inquiries*.

[8] The OIPC's *Instructions for Written Inquiries* remind participants that they are expected to behave and communicate respectfully, and that failure to do so may result in the OIPC imposing restrictions on a party's continued participation in the proceedings or in the cancellation of an inquiry. Improper conduct includes:

- using rude, inflammatory, derogatory, disrespectful, inappropriate or threatening language in communications with other parties, their representatives or OIPC staff;

- disparaging attacks on the character of other parties, their representatives, or OIPC staff; and
- indiscriminate and unfounded allegations that another party, their representative, or an OIPC staff member is acting in an improper manner.²

[9] After reviewing the individual's correspondence and Spice's submissions, I wrote to Spice to put it on notice that certain aspects of its submissions exceeded the bounds of proper conduct, and to caution it that continued improper conduct may result in sanctions by the OIPC, including the imposition of restrictions on its continued participation in this inquiry and/or in the cancellation of its s. 37 application.³ Spice did not engage in further improper conduct after my notice. Accordingly, I find that no further action is necessary with respect to the individual's request. I will not refer to Spice's improper submissions further.

ISSUES

[10] There are two issues in this inquiry:

1. Whether Spice responded to the individual's access request in accordance with the timelines set out in s. 29(1) of PIPA.
2. Whether Spice may disregard the individual's access request under ss. 37(a) and/or 37(b) of PIPA.

[11] PIPA does not assign a burden of proof under either ss. 29 or 37. In previous orders dealing with s. 29, the OIPC has stated that as a practical matter, each party should submit arguments and evidence to support its position under these provisions.⁴ Previous orders dealing with s. 37 have established that the organization bears the evidentiary burden to demonstrate that s. 37(a) or s. 37(b) applies and that the relief it seeks is appropriate.⁵

BACKGROUND

[12] Spice is a property management company that managed Andras Place Co-op (the Co-op) from June 1, 2015 until August 1, 2022. The individual was a resident and member of the Co-op. While the parties did not provide me with

² *Instructions for Written Inquiries* available on the OIPC's website:

<https://www.oipc.bc.ca/resources/guidance-documents/>.

³ Letter dated November 12, 2024.

⁴ Order P09-02, 2009 CanLII 67292 at para 4; Order P21-03, 2021 BCIPC 11 at para 30; and Order P23-10, 2023 BCIPC 86 at para 9.

⁵ Order P24-04, 2024 BCIPC 18 (CanLII) at para 6; Order P22-01, 2022 BCIPC 12 (CanLII) at para 3, citing Order P14-01, 2014 BCIPC 5 (CanLII) para 2; and Order P10-01, 2010 BCIPC 21 (CanLII) at para 9.

a specific date it is clear that the individual's residency and membership in the Co-op ceased during that period.

[13] Both parties made submissions about the individual's history of access requests and proceedings against Spice and the Co-op. Based on those submissions, I find that this history is as follows.⁶

[14] In 2020 the individual obtained a consent order against the Co-op from the Civil Resolution Tribunal of British Columbia (CRT).⁷ Spice was the Co-op's property manager at the time.

[15] In 2021 the individual made an access request to the Co-op.⁸ There is no suggestion from either party that the 2021 access request was brought to the OIPC by way of a complaint or request for review. Spice was the Co-op's property manager at the time.

[16] In 2024 the individual began enforcement proceedings with respect to the CRT order.⁹ Spice was no longer the Co-op's property manager by 2024.

[17] The individual made the access request that is the subject of this inquiry on April 10, 2024.¹⁰ He requested correspondence, conversation logs, and social media posts about him in the custody and control of Spice.

[18] Spice did not respond to the access request, and on May 14, 2024 the individual complained to the OIPC that Spice had failed to respond to his access request within the 30 day time limit established by s. 29 of PIPA.¹¹

[19] The OIPC investigated the complaint, and when the investigation did not resolve the complaint, the OIPC referred it to inquiry.

⁶ At various points in its submissions, Spice refers to the Access Request as a new request filed in response to a finding by an OIPC investigator that an access request was unfounded. It did not, however, provide any information whatsoever, about any previous access request (other than the 2021 access request made to the Co-op). Absent any information about another access request, I do not accept that the individual made more than one access request to Spice.

⁷ The individual provided a copy of the CRT Order with his response submission, and Spice describes the CRT order in its submissions.

⁸ Both parties discuss the 2021 access request in their submissions.

⁹ The individual provided a copy of the CRT Order that was filed with the BC Supreme Court and a demand letter dated April 11, 2024, in which he requested that the Co-op comply with the terms of the CRT Order.

¹⁰ The access request is dated April 10, 2024 and Spice did not assert that it was delivered other than on that date.

¹¹ While the complaint form is not dated, the individual provided copies of "read receipts" that confirm that he emailed the complaint form to Spice on May 14, 2024.

[20] Spice applied for authorization to disregard the access request on July 30, 2024.¹²

TIME LIMIT FOR RESPONSE - S. 29

[21] Section 29 requires an organization to respond to an access applicant not later than 30 days after receiving the applicant's request, unless certain conditions described in s. 29 apply. The relevant parts of s. 29 provide:

29 (1) Subject to this section, an organization must respond to an applicant not later than

(a) 30 days after receiving the applicant's request, or

(b) the end of an extended time period if the time period is extended under section 31.

(2) If an organization asks the commissioner under section 37 for authorization to disregard a request, the 30 days referred to in subsection (1) of this section does not include the period from the start of the day the request is made under section 37 to the end of the day a decision is made by the commissioner with respect to that application.

[22] Spice received the access request on April 10, 2024. Thirty days from April 10, 2024 is May 14, 2024.¹³

[23] While s. 29(2) operates to suspend the 30 day time period when an organization has requested authorization to disregard an access request, that suspension operates only from the day the s. 37 application is made to the day the OIPC issues a decision about it. In this case, Spice did apply for relief under s. 37 until July 31, 2024 – well after the 30 day time period had expired. Therefore, I find that the 30 day time period for Spice to respond to the access request was not suspended, and that Spice was required to respond on May 14, 2024.

[24] Neither party suggests that Spice responded to the access request on or before May 14, 2024, and in its submission, Spice admits that it deliberately did not respond to the access request.¹⁴ Specifically, Spice states that it “did not respond to [the individual’s] most recent FOI request, because he had already received all documentation that the lawyer for the Co-op and Co-op’s

¹² Spice’s request for authorization to disregard the access request is a letter dated July 30, 2024, and was received by the OIPC on August 6, 2024. The difference between July 30, 2024 and August 6, 2024 is not material to the issues before me. For the purposes of this inquiry I will treat the July 30, 2024 as the date Spice made the request.

¹³ PIPA defines “day” to exclude holidays and Saturdays.

¹⁴ Spice’s initial submission at page 4.

Management Company had previously determined he was entitled to.”¹⁵
I understand this statement to mean that Spice decided not to respond to the access request based on its opinion about the individual’s entitlement under PIPA.

[25] Compliance with PIPA’s provisions is not optional. An organization cannot avoid its obligations under PIPA because of its own views about the merits of an access request. I find that Spice failed to respond to the individuals’ access request in compliance with the time limits under s. 29(1).

REQUEST FOR AUTHORIZATION TO DISREGARD – S. 37

[26] Section 37 of PIPA provides:

If asked by an organization, the commissioner may authorize the organization to disregard [access] requests ... that

- (a) would unreasonably interfere with the operations of the organization because of the repetitious or systematic nature of the requests, or
- (b) are frivolous or vexatious.

[27] Section 37 of PIPA gives the OIPC a broad discretion to consider an application authorization to disregard an access request. However, the OIPC has repeatedly made clear that authorization to disregard an access request is an “extraordinary remedy”¹⁶ that should only be granted after careful consideration and in exceptional cases.¹⁷ Owing to the extraordinary nature of the relief, the OIPC uses its discretion under s. 37 judiciously, particularly when the application to disregard is “overdue” – that is, when the organization applies for authorization to disregard an access request after the deadline imposed by s. 29 for it to respond to that same access request.

[28] In this case, Spice was required to respond to the access request by May 14, 2024.¹⁸ However, Spice did not apply for authorization to disregard the access request until July 30, 2024, nearly three months after the deadline for it to respond. Spice’s application to disregard the access request was therefore overdue. Accordingly, I must decide whether the OIPC should exercise its discretion to consider Spice’s overdue s. 37 application.

¹⁵ Spice initial submission at page 1.

¹⁶ Order F23-37, 2023 BCIPC 44 (CanLII) at para 13.

¹⁷ Order F22-08, 2022 BCIPC 8 (CanLII) para. 29; and Order F23-37, 2023 BCIPC 44 (CanLII) at para 13.

¹⁸ PIPA defines “day” to exclude holidays and Saturdays.

Parties' Arguments

[29] The parties' submissions did not expressly address the issue of whether the OIPC should consider an overdue application to disregard an access request. During the inquiry, I wrote to the parties to identify this issue and to seek submissions about it.¹⁹ Neither party provided further submissions. In determining whether to consider Spice's application, I have considered all the materials provided by the parties to determine what the materials reveal about why Spice's application to disregard the access request was overdue.

[30] Having considered Spice's submissions, the only two lines of argument that I can connect to the issue of whether the OIPC should consider Spice's overdue application are Spice's arguments about the individual's past proceedings and conduct.

[31] With respect to the individual's past proceedings, referring to proceedings at the CRT and under PIPA,²⁰ Spice asserts that the individual's "constant abuses of free processes"²¹ cost it in wasted time.

[32] Regarding the individual's conduct, Spice states that the individual has repeatedly harassed, intimidated, and threatened it, and that Spice finds his obsessive behavior frightening. In support of its position Spice:

- points to the individual's history of proceedings against it and the Co-op,
- states that the individual threatened it with application to the Human Rights Tribunal and/or the CRT,²² and under the *Co-operative Associations Act*,²³
- states that the individual refused to accept a decision by an OIPC investigator that his access request was unfounded and filed a new access request,²⁴
- states that it directed its lawyer to cease communicating with the individual and blocked communications from him,²⁵ and
- states the individual "will not stop" and that his communications to Spice are tied to the full moon.²⁶

¹⁹ My correspondence to the parties dated October 10, 2024.

²⁰ Spice's initial submission at page 4.

²¹ Spice's initial submission at page 4.

²² Spice initial submission at page 4. While in its submission Spice refers to the Civil Rights Tribunal, I understand this to be a typographical error, and I conclude that Spice intended to refer to the Civil Resolution Tribunal.

²³ Spice submission dated Nov 5, 2024 at page 3.

²⁴ Spice's initial submission at page 3, Spice's submission dated November 5, 2024 at page 1.

²⁵ Spice's initial submission at page 3.

²⁶ Spice's initial submissions at pages 2 and 3.

[33] The individual denies these allegations, and in responding to the allegations about past proceedings, draws a distinction between Spice and the Co-op.

Findings and Analysis

[34] While making clear that each inquiry will turn on the specific circumstances of the case,²⁷ in past orders, the OIPC has generally declined to exercise its discretion to consider overdue s. 37 applications except in circumstances where:

- a) the access applicant was responsible for contributing to the public body or organization'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
- b) there was no evidence that the public body or organization had deliberately neglected the overdue request.²⁸

For the reasons below, I am not persuaded that there are any extenuating circumstances that would warrant considering Spice's overdue s. 37 application.

The individual was not responsible for contributing to Spice's inability to respond on time

[35] I find that the individual made a single access request to Spice – the April 10, 2024 access request that is the subject of this inquiry. Whatever involvement Spice may have had in responding to the 2021 access request, that earlier request was made to the Co-op, not Spice. Furthermore, Spice has not demonstrated that the individual contacted Spice about any matters between April 10, 2024 when the individual made the access request, and May 14, 2024 when Spice was required to respond to the access request. I do not accept that a single access request contributed to Spice's inability to respond to the access request in time.

²⁷ Orders F23-90, 2023 BCIPC 106 (CanLII) at para 19; and P24-04, 2024 BCIPC 18 (CanLII) at para 23.

²⁸ Order F23-90, 2023 BCIPC 106 (CanLII) at para 19. In Decision F06-03, 2006 CanLII 13535 (BC IPC) at para 30; Decision F06-12, 2006 CanLII 42644 (BCIPC) at paras 25-26; and Order F20-15, 2020 BCIPC 17 paras 9-11 the OIPC decided to consider overdue requests because the volume of the access applicants' requests had overwhelmed and overburdened the public bodies and there was no evidence the public bodies had deliberately neglected the requests. Conversely, in Orders F23-90, 2023 BCIPC 106 (CanLII) at para 19; and P24-04, 2024 BCIPC 18 (CanLII) at paras 23 – 26 the OIPC declined to consider overdue requests when it found that none of these factors were not present and that there were no other relevant factors that would justify considering an overdue request to disregard the access requests.

[36] Furthermore, while Spice seeks to characterize the individual's history of proceedings against it and the Co-op as oppressive, the only evidence of past proceedings before me are the following:

- In 2020, the individual obtained an order from the CRT against the Co-op.²⁹
- In 2021 the individual made an access request to the Co-op.³⁰
- In 2024 the individual began enforcement proceedings with respect to the CRT order.³¹
- Also, in 2024 the individual made the access request and s. 29 complaint that are the subject of this inquiry.³²

[37] There is no information before me to suggest that any of these proceedings (other than the access request itself) were ongoing during the period between when the individual made the access request and when Spice was required to respond to it. I can see no connection between the other proceedings and Spice's ability to respond in time to the access request, and I do not accept that this history is in any way responsible for Spice's inability to respond in time.

Spice deliberately neglected the overdue request

[38] Spice own submission satisfies me that it deliberately chose not to respond to the access request because, as discussed above, in Spice's opinion, the individual had already received all information to which he was legally entitled under PIPA.³³ Based on this submission, I find that this is a case where the organization deliberately neglected the overdue request.

There are no other circumstances that favour considering Spice's overdue application

[39] I am also not persuaded that Spice's statements about threats, harassment, and fear provide a sufficient basis on which to exercise the OIPC's discretion to consider Spice's overdue application for authorization to disregard the access request. While Spice's feelings about the individual are clear, its submissions lack the material facts to support or explain these allegations and feelings. Spice's submissions on these points amount to the fact that the individual has and continues to initiate administrative proceedings against the Co-op and Spice, and its assertion that it is troubled by the volume and nature of the individual's communications. Spice does not, however, provide any information about the volume or content of these communications that would allow me to form my own independent opinion about them. For this reason, I find

²⁹ The individual provided a copy of the CRT Order with his response submission, and Spice describes the CRT order in its submissions.

³⁰ Both parties discuss the 2021 access request in their submissions.

³¹ *Supra* note 9.

³² *Supra* note 10.

³³ Spice initial submission at page 1.

that Spice has not provided a sufficient evidentiary basis to support its allegations in this regard, and as a result, I find that these circumstances do not provide a basis to exercise the OIPC's discretion to consider Spice's overdue application.

[40] I can see no other circumstances that are relevant to the issue of whether the OIPC should exercise its discretion to consider Spice's overdue s. 37 application, and Spice has not identified any.

Conclusion

[41] To summarise, I find that Spice applied for authorization to disregard the access request under s. 37 three months after the deadline imposed by s. 29 for it to respond to the access request. Spice's s. 37 application is therefore overdue. Furthermore, there are no considerations that persuade me that this is an appropriate circumstance in which to consider Spice's overdue application to disregard the access request. For these reasons, I decline to consider Spice's s. 37 application.

WHAT IS THE APPROPRIATE REMEDY?

[42] In cases where an organization has failed to perform its duty under s. 29 the usual remedy is to order the organization to respond to the access request, in accordance with ss. 28 and 30 of PIPA, by a particular date.

[43] Sections 28 and 30 of PIPA establish what is required of an organization when responding to a request from an applicant. In addition to s. 28(c), which requires organizations to provide applicants with the requested personal information, s. 28(b) requires organizations "to respond to each applicant as accurately and completely as reasonably possible." Furthermore, the requirements of s. 28(b) are informed by s. 30(1), which reads as follows:

30 (1) In a response under section 28, if access to all or part of the personal information requested by the applicant is refused, the organization must tell the applicant

- (a) the reasons for the refusal and the provision of this Act on which the refusal is based,
- (b) the name, position title, business address and business telephone number of an officer or employee of the organization who can answer the applicant's questions about the refusal, and
- (c) that the applicant may ask for a review under section 47 within 30 days of being notified of the refusal.

[44] I find that there is no basis to depart from the usual remedy, and accordingly, I find that the appropriate remedy in this case is to require Spice to

respond to the April 10, 2024 access request, in compliance with ss. 28 and 30, by January 6, 2025.

CONCLUSION

[45] For the reasons given above, I make the following order under ss. 52(3), 52(4) and 53(1) of PIPA.

1. I require Spice to respond to the individual's request by **January 6, 2025**. In doing so, Spice must comply with ss. 28 and 30 of PIPA.
2. I require Spice to copy the OIPC registrar of inquiries on its cover letter to the individual, together with a copy of the response described at item 1.

November 19, 2024

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File Nos.: P24-97537 and P24-97880