OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-07

Workers' Compensation Appeal Tribunal

Alexander R. Lonergan
Adjudicator

January 27, 2025

CanLII Cite: 2025 BCIPC 7
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 7

Summary: An individual requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records about himself, his worker's compensation claims, and his appeals from decisions made about his claims. The individual directed his request to the Workers' Compensation Appeal Tribunal (WCAT). WCAT applied, under ss. 43 (a) and (b), of FIPPA, for authorization to disregard the request because it is vexatious and because the information is accessible by the individual from another source. The adjudicator determined that the individual's request was not vexatious and the information at issue is not accessible by the individual from another source. The adjudicator declined to authorize WCAT to disregard the individual's access request.

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

INTRODUCTION

[1] The Workers' Compensation Appeal Tribunal (WCAT) and the Workers' Compensation Board (WorkSafe) are statutory bodies established under the *Workers Compensation Act*.[1] WorkSafe oversees a no-fault insurance system for workplace injuries and diseases in BC. WCAT adjudicates appeals of decisions made by WorkSafe. WorkSafe and WCAT are both listed as distinct public bodies in Schedule 2 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] For the reasons given in Order F24-65, the OIPC authorized WorkSafe to disregard an access request that an individual (respondent) sent to WorkSafe, because the request was vexatious. The OIPC additionally placed a one-year restriction on the respondent's ability to request information from WorkSafe under FIPPA. The request at issue in F24-65 was for records about WorkSafe's

[1] *Workers Compensation Act*, RSBC 2019, c 1, ss. 278 and 316.

imposition of contact restrictions on the respondent. WCAT was not a party to WorkSafe's application in F24-65, and WorkSafe is not a party to this present application.

[3] In the present matter, the respondent requested that WCAT provide him with all records about the respondent contained in a database named the "Claims Management System" (the CMS). The CMS is a repository of records that both WorkSafe and WCAT may access. The respondent agreed to exclude any records in the CMS that have already been disclosed to him as part of a "Claim File Disclosure", which is a package of records provided to participants within WorkSafe and WCAT proceedings.[2]

[4] After receiving the respondent's access request, WCAT applied to the Office of the Information and Privacy Commissioner (OIPC) for authorization to disregard it under ss. 43(a) (frivolous or vexatious request) and (b) (information previously disclosed or accessible from another source) of FIPPA.[3]

Preliminary Matters

New Issues

[5] The respondent requested permission to add multiple issues respecting WCAT's compliance with its duties under FIPPA.[4] An OIPC adjudicator declined to add any additional issues to this application, because they determined it was premature to add the requested issues before WCAT provides a response to the respondent's access request.[5]

[6] Despite the adjudicator's decision, the respondent again raises various matters in his submission, and WCAT responds to some of them (including, providing affidavit evidence to support its responses). Although these matters are related to the outstanding FIPPA issues between the parties, they are not relevant to this s. 43 application.

[7] I am not persuaded that I should interfere with the adjudicator's decision to not add any new issues to this application. While I have reviewed everything that the parties included in their submissions, I will refer only to the arguments and evidence that are relevant to the s. 43 issues in this application.

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[2] Respondent's access request dated July 18, 2024.
[3] WCAT's letter, August 29, 2024; All subsequent sectional references refer to FIPPA unless otherwise indicated.
[4] Respondent's letter, October 17, 2024.
[5] Adjudicator's letter, November 14, 2024.

Mediation Material

[8] The OIPC's *Instructions for Written Inquiries* explains that "mediation material" refers generally to communications that relate to offers or attempts to resolve the matter during mediation.[6] This document further explains that a party may not, without the written consent of the other parties, refer to or include in their submissions any mediation materials, including any opinions or recommendations that an investigator expressed during mediation.

[9] With his submission, the respondent included copies of emails that he exchanged with an OIPC investigator before this matter reached the adjudication stage. The respondent says that it would be procedurally unfair for me to decide this s. 43 application without considering these emails. He says that his communications with the investigator are not "mediation material" because, he argues, there was no mediation process at all.

[10] While the OIPC's investigator-led process may not precisely fit the respondent's view of what a mediation process should be, that process does entail a without-prejudice discussion with the goal of a consensual resolution. Therefore, I find that investigator-led mediation did occur before this application advanced to adjudication.

[11] The respondent was free to re-submit the arguments and evidence that he provided to the investigator with his submission at adjudication. While he asserts that it is unfair for me to not also consider his communications with the OIPC investigator, he does not provide any clear reason why those communications are necessary for me to fairly adjudicate WCAT's s. 43 application. I am not persuaded that they are.

[12] Finally, I also understand the respondent to be arguing that by excluding the investigator-led communications from the adjudicator's consideration, his requests to the investigator to add new issues to the inquiry would be considered late and unfairly rejected on that basis. This concern is unfounded. As noted above, an adjudicator considered the respondent's request to add new issues and rejected that request on its merits. The request was not rejected because it was late.

[13] For these reasons, I will not consider any mediation material that the respondent provided with his submission. I find that it is fair for me exclude such material from the analysis below.

[6] Available online at: https://www.oipc.bc.ca/documents/guidance-documents/1658.

Conflict of interest and bias

[14] The respondent submits the OIPC is biased and cannot decide this application fairly because the OIPC has, in the past, retained the services of a law firm that also represented a party adverse to the respondent's position in "certain matters that affect [him]".[7] The respondent did not specify what those matters are, but F24-65 indicates that the law firm in question represented WorkSafe in that inquiry.

[15] To determine whether there is a reasonable apprehension of bias on the part of a decision maker, the Supreme Court of Canada has said the test is, what would an informed person, viewing the matter realistically and practically, and having thought the matter through, conclude? Would they think that it is more likely than not that the decision-maker, whether consciously or unconsciously, would not decide fairly? [8]

[16] I reject the respondent's allegation that there is a reasonable apprehension that the OIPC is biased and cannot decide this inquiry fairly. WorkSafe and the law firm in question are not participating in the present inquiry in any way. The fact that the OIPC and WorkSafe may have used lawyers employed by the same law firm for other matters does not raise a reasonable apprehension of bias in the present inquiry. In my view, an informed person, viewing the matter realistically and practically, and having thought the matter through, would not conclude the OIPC could not fairly decide WCAT's current s. 43 application.

Further Submissions

[17] WCAT's reply submission included a nine-page *Memorandum of Understanding* in response to what the respondent said about information-sharing agreements between WorkSafe and WCAT. The respondent requests permission to provide a further written submission in response to that document.[9] The respondent argues that he should have an opportunity to discuss the *Memorandum of Understanding* on the grounds of fairness and says that the significance of this document is not immediately obvious.[10]

[18] WCAT refers to the *Memorandum of Understanding* only once in its reply submission but does not explain whether or how it is relevant to its application under s. 43. The only significance of the *Memorandum of Understanding* in this

[7] Respondent's submission at 2-3.
[8] *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at para. 20, citing *Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369, at 394.
[9] Respondent's letter to Registrar of Inquiries, December 5, 2024.
[10] Respondent's email to Registrar of Inquiries, December 24, 2024.

matter is that it confirms that WCAT accesses information and records through WorkSafe's databases. Given what he says in his submission, I can see that the respondent already knew this before WCAT provided its reply submission and the *Memorandum of Understanding*, and it is not a fact that is in dispute.

[19] Most of the respondent's arguments about information-sharing between WCAT and WorkSafe are not relevant to the s. 43 issues in this application. For instance, whether the *Memorandum of Understanding* is generally sufficient for both public bodies to discharge their independent duties under FIPPA is not relevant to the question of whether WCAT should be permitted to disregard the respondent's access request.

[20] After reviewing the text of the *Memorandum of Understanding*, I draw no conclusions from it apart from the fact that WCAT may currently access information and records contained in WorkSafe's databases, despite the two being distinct public bodies. Again, this point is not in dispute.

[21] In light of the very limited relevance of the *Memorandum of Understanding* to the s. 43 issues before me, I can see no purpose in permitting the respondent to provide further written submissions about it. Therefore, his request to make a further submission is denied.

ISSUES AND BURDEN OF PROOF

[22] The issues I must decide in this application are as follows:

1. Is the respondent's request frivolous or vexatious under s. 43(a)?
2. Under s. 43(b), is the respondent's request for a record that has been disclosed to the respondent or that is accessible by the respondent from another source?
3. If the answer to either 1 or 2 above is yes, then what is an appropriate remedy?

[23] As the public body applying for relief under s. 43, WCAT has the burden to prove that s. 43 applies.[11]

[11] Order F17-18, 2017 BCIPC 19 (CanLII) at para 4; Order F18-09, 2018 BCIPC 11 (CanLII) at para 2.

DISCUSSION

Background[12]

[24] The respondent is an injured worker who has multiple claims with WorkSafe. The respondent has appealed some of WorkSafe's decisions about his claims to WCAT. In the past, the respondent made multiple access requests under FIPPA to WorkSafe for information about his claims. Additionally, the respondent has requested that the OIPC review some of WorkSafe's responses to those access requests.

[25] As mentioned above, in F24-65 the OIPC authorized WorkSafe (but not WCAT) to disregard one of the respondent's access requests and to disregard any other access request made by the respondent under s. 5 of FIPPA, for a period of one year.[13] The authorization was made under s. 43(a) on the basis that the respondent's request was vexatious, and that the respondent's previous requests had demonstrated a consistent pattern of vexatiousness that warranted future relief. The access request at issue in F24-65 is not a request for the same records requested of WCAT in the present matter.

[26] WCAT's present application is for authorization to disregard the respondent's request. The request at issue is for all records of information about the respondent that are contained in the CMS database, excluding any records that were already disclosed to him through the disclosure processes of his injured worker claims and appeals.[14]

[27] The CMS is a repository of records and information relating to injured workers' claims, such as medical records, submissions, and notes of telephone calls. These records are originally created and stored on the CMS when an injured worker's claim is initially processed by WorkSafe. If a worker appeals a decision by WorkSafe to WCAT, WCAT may access the relevant records directly from the CMS.

[28] WCAT says it has read-only access to the records on the CMS with no independent ability to add or remove records from it. While WCAT does not expressly say so, I can infer from what WCAT and the respondent say, that WCAT also maintains its own administrative records generated during an appeal

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[12] The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.
[13] Order F24-65, 2024 BCIPC 75 (CanLII).
[14] In his access request, the respondent acknowledges that WCAT may be unable to access some records on the CMS, and he provides further narrowing criteria if that is true (for example, date ranges and file numbers). Given that WCAT has not yet provided a response to the access request, for the purposes of this s. 43 application I will consider the access request in its broadest form without the additional narrowing criteria.

in a separate system that is beyond the scope of the respondent's current access request.

Application to disregard an access request – s. 43

[29] Section 43 gives the OIPC the discretion to authorize public bodies to disregard certain access requests.

[30] In making its application, WCAT relies on the following parts of s. 43 of FIPPA:

> **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,[15]
>
> . . .

[31] Section 43 is a remedial tool used to curb abuse of the right of access. It is not punitive in nature.[16] In addition, s. 43 applications require careful consideration because relief under that section curtails or eliminates the rights of access to information granted by the Legislature under FIPPA.[17]

Frivolous or vexatious – s. 43(a)

[32] Under s. 43(a), the OIPC may authorize a public body to disregard an access request that is frivolous or vexatious.

[33] In its s. 43 application letter to the OIPC, WCAT says that the respondent's access request is frivolous and vexatious.[18] However, all of WCAT's arguments under s. 43(a) discuss whether the request is vexatious. WCAT provides no submissions that discuss whether the request is frivolous. Therefore, I will only consider whether the request is vexatious.

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[15] For clarity, s. 43 refers to an "applicant", which in this case is the respondent who applied for access to records from WCAT. In this matter, I refer to WCAT as the applicant because WCAT is applying for relief from the OIPC under s. 43.
[16] *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at paras 32-33; Order F19-34, 2019 BCIPC 37 (CanLII) at para 14.
[17] Decision-Auth (s. 43) 99-01 (December 22, 1999) at 3. Available on the OIPC website at https://www.oipc.bc.ca/documents/decisions/158.
[18] WCAT's s. 43 Application, at 2.

[34] Vexatious requests include those made in bad faith, such as for a malicious purpose or for the purpose of harassing or obstructing the public body. Past orders have found requests to be vexatious in the following circumstances:

- 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.[19]

[35] Hostility or ill will between an access applicant and a public body is insufficient, without more, to establish that an access request is vexatious.[20]

[36] WCAT argues that the respondent's request is vexatious because he is attempting to circumvent the effect of F24-65 by directing his access request to WCAT rather than WorkSafe. The respondent disagrees with WCAT's position and argues that there is no evidence that his request is vexatious.[21]

[37] Throughout its submission, WCAT relies on the finding in F24-65 that the respondent's access request to WorkSafe was vexatious. WCAT says that the respondent would have submitted this request to WorkSafe instead if he was not prevented from doing so by F24-65.[22]

[38] To support its position, WCAT points to the fact that the CMS is maintained by WorkSafe whereas WCAT can only access the information in the CMS with no ability to add, change, or delete information without WorkSafe's technical support. Therefore, WCAT says that responding to the request would "very likely" require direct assistance from WorkSafe which, it argues, would defeat the purpose of the current OIPC-imposed restriction on the respondent's ability to request information from WorkSafe.[23]

[39] For the reasons that follow, I am not persuaded that responding to the current access request would circumvent or defeat the purpose of F24-65 or that the current request is vexatious on that basis.

[40] First, WCAT has not clearly explained why WorkSafe must help WCAT respond to the access request, and more importantly, why that level of

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[19] Order F22-08, 2022 BCIPC 8 (CanLII), at paras 81-83, and the decisions cited therein.
[20] Order F21-34, 2021 BCIPC 42 (CanLII) at para 56.
[21] Respondent's submission at 21-23.
[22] WCAT's reply submission at 4.
[23] WCAT's initial submission at 2.

assistance circumvents F24-65. WCAT says that it does not have the technical permissions to run reports or extract all the necessary information from the CMS.[24] However, I consider it obvious that a request for enhanced permissions would only require superficial assistance from WorkSafe. I am not persuaded that this level of support is so substantial that it defeats the relief granted to WorkSafe by F24-65.

[41] Secondly, I do not read F24-65 as broadly as WCAT's arguments imply. F24-65 did not consider access requests made to WCAT or any other public body that retrieves information from databases maintained by WorkSafe. The purpose of F24-65 was to prevent an abuse of the respondent's access rights by narrowly and temporarily curtailing his use of those rights vis-à-vis WorkSafe. Requiring WCAT to respond to an access request for information stored on a shared database does not, in my view, fit within the relief granted by that order.

[42] Finally, WCAT has not established that the circumstances which led to the findings in F24-65 are also present in this matter. For example, there is no evidence before me that the respondent is using his access rights to criticize WCAT or its employees, to make accusations of impropriety, or to express displeasure with WCAT.[25] The material included in the parties' submissions does not reveal any basis independent of F24-65 to find that the current request to WCAT is vexatious.

[43] In summary, I am not persuaded by WCAT's argument that the current request is vexatious because responding to it would circumvent or defeat the relief granted to WorkSafe under F24-65.

Conclusion, s. 43(a)

[44] I find that WCAT has not established that the respondent's request is frivolous or vexatious. Therefore, I find that no relief under s. 43(a) is warranted.

Already disclosed or accessible from another source – s. 43(b)

[45] Under s. 43(b), the Commissioner may authorize a public body to disregard an access request if the request is for a record that has been disclosed to the respondent, or that is accessible by the respondent from another source.

[46] WCAT does not argue that the information at issue has already been provided to the respondent. Instead, WCAT argues that the respondent could access the requested information from WorkSafe but that he cannot currently obtain it from that source due to the effect of F24-65.[26]

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[24] *Ibid.*
[25] Order F24-65, 2024 BCIPC 75 (CanLII), at paras 29-31.
[26] WCAT's initial submission at 2.

[47] The respondent argues that the information at issue is not accessible by him from another source. He explains that the WorkSafe and WCAT disclosure processes have failed to produce the information he seeks and that F24-65 bars him from submitting the current access request to WorkSafe, although he acknowledges that WorkSafe should be able to produce the requested information.[27] Additionally, the respondent says he was unable to obtain these records through the courts during his appeal of at least one of WCAT's decisions.

[48] In reply, WCAT says that, but for the respondent's behaviour that led to F24-65, the records that the respondent currently seeks would be accessible from WorkSafe, which WCAT says is the most appropriate public body to provide them.[28]

[49] Both parties acknowledge that the respondent cannot currently access the records from WorkSafe, which is the only other source WCAT identifies. The essence of WCAT's argument is that I should not conclude the records are "inaccessible" by the respondent from WorkSafe because the respondent's own behaviour is what led to the restrictions imposed by F24-65.

[50] For the reasons that follow, I do not agree with WCAT's position.

[51] There is no language in s. 43(b) that that requires me to consider the reasons why a record is inaccessible from another source or who is at fault for that inaccessibility. Section 43(b) only requires me to decide whether a record is accessible from another source or not.

[52] On the other hand, once it is shown that a record cannot be accessed by the respondent from another source, I do not see any discretion in the language of s. 43 to add more conditions before deciding whether s. 43(b) applies. WCAT raises no authority (nor am I aware of any) to show that I may add further conditions to s. 43(b). Therefore, I find that the records and information sought from WCAT are not accessible by the respondent from WorkSafe.

Conclusion, s. 43(b)

[53] I find that the records and information sought from WCAT are not accessible by the respondent from another source. Therefore, I find that s. 43(b) does not apply and I decline to grant WCAT relief on that basis.

[27] Respondent's submission at 23-24.
[28] WCAT's initial submission at 2; WCAT's reply submission at 4.

CONCLUSION

[54] For the reasons given above, I do not authorize WCAT to disregard the access request at issue under s. 43 of FIPPA.

January 27, 2025

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F24-98179