



Order F25-14

UNIVERSITY OF VICTORIA

Jay Fedorak
Adjudicator

March 4, 2025

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Summary: The University of Victoria (UVIC) requested authorization to disregard future requests from the respondent under s. 43(a) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that UVIC had not established that previous requests were frivolous or vexatious, under s. 43(a). The adjudicator declined to provide UVIC with authorization to disregard future duplicate requests.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, s. 43(a); *Court of Appeal Act*, RSBC 1996, c. 77, s. 29.

INTRODUCTION

[1] This inquiry decides an application by the University of Victoria (UVIC) under s. 43(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) for authorization to disregard access requests made by an individual (the respondent). UVIC submits that the respondent made more than one request under FIPPA for her personal information contained in records related to a research study in which she participated. It also submits that the respondent has engaged in continued correspondence that is frivolous and vexatious. UVIC asks the Office of the Information and Privacy Commissioner (OIPC) for authorization under s. 43(a) to disregard any future requests from the respondent for records related to the research study in which the respondent participated.

ISSUE

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

1. Whether the respondent's access requests were frivolous or vexatious, for the purposes of s. 43(a);

2. If the answer is yes, what relief, if any, is appropriate?

[3] FIPPA does not assign a burden of proof in cases where public bodies request relief under s. 43(a). Past orders and decisions on s. 43 have placed the burden of proof on the public body.¹

DISCUSSION

[4] **Background** – The respondent participated in a research study at UVIC that asked individuals who had suffered brain injuries to test a cognitive training tool. The tests were standardized neuropsychological assessments. The respondent had suffered a brain injury as the result of a motor vehicle accident, and this is the reason she was selected for the study. The purpose of the tests was to evaluate the tool, rather than to provide diagnostic information about the participant.

[5] I have read what the parties say about the respondent's access requests and communication with UVIC. I find the following to be the basic facts about the requests.

[6] On July 2, 2024 the respondent asked UVIC for access to her personal information contained in the test results that the researchers collected from her as part of the study. UVIC responded to the July 2, 2024 request, denying access in accordance with s. 3(3)(i)(i) of FIPPA on the grounds that the records were excluded from the access provisions in FIPPA because they contained the research materials of a faculty member at a post secondary educational body. In a spirit of helpfulness, UVIC access and privacy staff contacted the researchers to determine whether they could provide the applicant with access to the information, despite the fact that FIPPA did not apply. UVIC learned that once the researchers had collated the results from the study participants, they destroyed all of the individually identifiable data, in accordance with the requirements of the human research ethics board overseeing the study. UVIC explained this to the respondent.

[7] The respondent was dissatisfied with UVIC's response to her July 2, 2024 request and requested a review by the OIPC. The OIPC opened a file and, in due course, commenced work on that matter.

[8] On August 13, 2024, the respondent complained to UVIC about UVIC's failure to respond to her previous request. She also made another access request, this time for policies, procedures and guidelines regarding (1) the administration of FIPPA by UVIC, (2) research involving human subjects, and (3) records retention schedules and destruction of records.

¹ For example, Order F24-38, 2024 BCIPC 46 (CanLII), para. 3.

[9] UVIC considered the correspondence of August 13, 2024 to be a duplicate request for information that she had previously requested. UVIC says it did not respond to the August 13, 2024 correspondence because the OIPC was already reviewing UVIC's response to the July 2, 2024 request and because it asserts that the new information that she requested is publicly available.² I note that UVIC has not asked for authorization under s. 43 to disregard the August 13, 2024 request for copies of policies, procedures, guidelines and retention schedules.³

[10] On September 10, 2024 the OIPC issued its decision regarding the respondent's request for review of UVIC's response to her July 2, 2024 request. The OIPC determined that UVIC had complied with FIPPA, and it discontinued the review.⁴

[11] On December 5, 2024, the respondent again asked UVIC for access to her personal information contained in the test results that the researchers collected from her as part of the study. UVIC responded by providing the same decision and reasons it gave in its response to her July 2, 2024 request and told her it considered this to be a duplicate of her earlier requests.⁵ UVIC then applied to the OIPC for relief under s. 43(a).

[12] I have reviewed the respondent's requests, and I can see that the July 2 and December 5, 2024 requests were for the same information. However, the August 13, 2024 request, is not a duplicate of those two requests. Rather it merely voices the respondent's view that UVIC has not responded properly to her earlier request, and it asks for additional, but different, information, including policies, procedures and guidelines. I also note that this request is not for records of the research study in which she participated and includes records that go beyond the subject of research generally.

SECTION 43

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

² UVIC's initial submission, p. 3.

³ It seems that UVIC's response to the request for policies, procedures, guidelines and retention schedules does not comply with s. 7(1), which requires a public body to respond no later than 30 days after receiving a request for access to records. Section 7(3) provides an exception to that, but only when a s. 43 application is made regarding the request. I will not decide whether UVIC complied with the time limits in s. 7 because that issue is not formally before me. However, UVIC's failure to respond to the request for this new information appears to be grounds for a s. 7 complaint.

⁴ OIPC's September 10, 2024 discontinue decision and October 7, 2024 reconsideration decision.

⁵ UVIC's initial submission, UVIC to Respondent, 6 December 2024.

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

(a) The request is frivolous or vexatious

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

[14] 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.

Are the requests frivolous or vexatious?

[15] Frivolous requests include requests that are trivial or not serious. Circumstances where past orders have found that a request was frivolous include when the requested information was obviously publicly available, the request was for documents that the respondent authored and sent to the public body, and the respondent cancelled a large request after the public body had spent significant time processing the request.⁷

[16] 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.⁸ Past orders have found requests to be vexatious for the following reasons:

- 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.⁹

⁶ Order F22-08, 2022 BCIPC 8 (CanLII), para. 29.

⁷ Order F22-08, supra, para. 82; Auth (s.43) 02-02, 2002 BCIPC 57 (CanLII), para. 27; Order F17-18, 2017 BCIPC 19 (CanLII), para. 23; Order F13-18, 2013 BCIPC 25 (CanLII), para. 34; Order F18-09, 2018 BCIPC 11 (CanLII), para. 29.

⁸ Order F22-08, supra, para. 83.

⁹ Auth (s.43) 02-02 supra, para. 27; Decision F08-10, 2008 BCIPC 33 (CanLII), paras. 38-39; Order 13-16, 2013 BCIPC 20, para. 20; Order 13-18, 2013 BCIPC 25 (CanLII), para. 36; Decision F10-11, 2010 BCIPC 51 (CanLII) ; Order F16-24, 2016 BCIPC 20 (CanLII), para. 40; Order F20-25, 2020 BCIPC 33 (CanLII), para. 33; Order 19-44, 2019 BCIPC 50 (CanLII), para. 33.

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

[18] UVIC summarizes its arguments as follows:

1. It is plain and obvious that the records requested by the respondent fall outside the scope of FIPPA.
2. The respondent's actions meet most of the test qualifications for frivolous and vexatious, as established in Order F19-25.
3. The definition of vexatious in Order F19-25 is too narrow and should also consider requests that are not likely to lead to a practical result.
4. That the Commissioner should consider the broader implications of the request, including FIPPA requirements around records retention, the Commissioner's advocacy for a duty to document, and the respondent's repeated appeals of the University's responses.¹⁰

[19] While UVIC submits that the respondent's behaviour is both frivolous and vexatious, it does not make any specific arguments that this behaviour is frivolous. Its submissions only describe her behaviour as vexatious. Moreover, I cannot find anywhere in its submissions where it explicitly identifies particular requests as being vexatious. Instead, its submissions address her overall behaviour.

[20] UVIC submits that her repeated correspondence about her request is vexatious because it is plain and obvious that the requested records are not subject to FIPPA, in accordance with s. 3(3)(i)(i). UVIC does not dispute the right of the respondent to make her initial July 2, 2024 request. Nor does it deny that the records sought may have value to the respondent. Nevertheless, it submits that "repeated, lengthy, and argumentative correspondence; copying individuals from across the institution; and demanding a response when one has already been given on a matter that is plain and obvious, becomes abusive."¹¹

[21] UVIC also characterizes the approach that previous orders have taken in defining the term "vexatious" as too narrow. UVIC submits that *Black's Law Dictionary* defines a vexatious proceeding as including a proceeding that "is not calculated to lead to any practical result." UVIC concludes from this definition that the term "vexatious" includes an action where it is obvious that such action cannot succeed or is unlikely to lead to a practical result.

[22] UVIC submits that this definition of vexatious was confirmed in *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017

¹⁰ UVIC's initial submission, p. 5.

¹¹ UVIC's initial submission, p. 6.

BCCA 91. In that case, the court held that the non-exhaustive list of characteristics that make litigation vexatious include where it is obvious that an action cannot succeed, where issues tend to be rolled forward to subsequent actions and repeated, and where a respondent persistently makes unsuccessful appeals.¹² It is on this broader definition of vexatious that the University makes its argument.¹³

[23] UVIC also submits that the expressed intent of the respondent that she will continue pursuing this matter “to the highest court in the land” must be included in the review of the totality of circumstances of this application for relief.¹⁴

[24] The submissions of the respondent do not address the issue of whether her requests are frivolous or vexatious. She merely expresses concern that UVIC has refused to protect FIPPA access rights for live subjects used in research studies.¹⁵

Analysis

[25] First, I will address UVIC’s assertion that the criteria for determining whether requests are vexatious should include the definition in *Black’s Law Dictionary* and the approach taken in *Backhoe Services*. As mentioned above, previous orders have considered a list of criteria when deciding if the request at issue were vexatious. This list is not exhaustive, and it does not preclude that additional criteria could be relevant in other circumstances and cases such as this. I accept the general argument that a respondent who repeatedly and persistently perseveres in actions that they understand cannot succeed would be acting in a vexatious manner.

[26] In this case, the respondent has made only two identical requests on July 2 and December 5, 2024, and I see evidence of only one request for review (or “appeal” in the words of UVIC) to the OIPC. The request of August 13, 2024 is for completely different records. It does not appear reasonable to me to conclude that a respondent who has made only two requests for the same information has reached the threshold of “vexatious” as contemplated in *Backhoe Services*. While she has indicated that she will continue to pursue this matter, that does not mean necessarily that she intends to make more duplicate requests under FIPPA or complaints to the OIPC. I also note that all applicants have a legitimate right to pursue the standard judicial avenues of review of decisions under FIPPA. Moreover, it is clear that the approach of both *Black’s Law Dictionary* and *Backhoe Services* presume that the respondent is conscious of

¹² *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91.

¹³ UVIC’s initial submission at pp. 7-8.

¹⁴ UVIC’s initial submission, p. 9.

¹⁵ Email of respondent to OIPC, 22 January 2025, inquiry binder p. 228.

the fact that their actions cannot succeed. That is the reason that their actions would be considered to be vexatious.

[27] The issue before me is solely whether the respondent's *requests* are vexatious. The general behaviour of the respondent (e.g., repeated correspondence copying multiple officials, etc.) is relevant only in the context that it may be evidence of the respondent having a vexatious intent in making her requests.

[28] UVIC does not state explicitly that any of the respondent's requests are in fact vexatious. I have reviewed the three requests. The first is for the applicant's personal information gathered as part of the research study. UVIC acknowledges that there was nothing vexatious about this request. The request of August 13 was for different records. It was not a duplicate of the first request. UVIC has not explained how this second request was vexatious, other than to point out that the requested records are available on the internet. I note also that UVIC's argument in the context of the term "vexatious" include reference to the records being outside the scope of FIPPA in accordance with s. 3(3)(i)(i). This consideration does not apply to the second request. Therefore, I fail to see how the second request could be considered vexatious.

[30] The request of December 5 is clearly a duplicate of the July 2 request. I acknowledge that some respondents would understand that once the OIPC had concluded its review regarding the respondent's July 2, 2024 access request, that the only avenue of recourse would be through judicial review. In such cases, it would be reasonable to conclude that the respondent would be aware that making the duplicate December 5, 2024 request could not succeed.

[31] Nevertheless, I see nothing in the submissions that could lead me to conclude that the respondent in this case has such an understanding. I also note that the communications from the OIPC do not explicitly state anything regarding avenues of recourse. Therefore, I cannot conclude that at the time she made the December 5, 2024 request for the same information, the respondent was conscious that it would necessarily result in the same outcome.

[32] The question then turns on whether respondent, having made only two identical requests over the period of five months, had reached the standard threshold for the second request to be characterized as vexatious. I determine it to be relevant that the submissions of both parties indicate that the respondent genuinely believes that UVIC continues to possess the requested information and is refusing to provide it to her. She appears to be acting persistently but in good faith for what she believes to be a reasonable purpose, which is to exercise her right to request her personal information under FIPPA.

[33] The concept of the respondent's intent is central to the case law regarding applications for relief under s. 43(a) of FIPPA. The request must be vexatious in the sense that the purpose of the request is to vex the public body rather than to seek access to the information.

[34] I can see nothing to indicate that in making the December 5, 2024 request she is trying to cause UVIC to suffer an unnecessary load of work; trying to punish or harass UVIC; or to pressure it into taking particular actions other than merely responding to the request. In addition, there is nothing in the December 5, 2024 request to suggest that she is using it to express displeasure with UVIC.

[35] Therefore, I find that the respondent's December 5, 2024 request is not vexatious and s. 43(a) does not apply. Further, I am not persuaded by UVIC's assertion that any of her requests are frivolous under s. 43(a) because UVIC provided no argument or evidence about that.

[36] UVIC's basis for requesting authorization to disregard the respondent's future requests is that her past requests were vexatious and frivolous. As I have found that not to be the case, I can see no sound reason to authorize it to disregard any requests she may make in the future. Nevertheless, I have decided to note a few observations about the remedy UVIC seeks.

Remedy

[37] Previous orders have found seeking relief under s. 43 is unnecessary in cases where an individual makes repeated requests for the same information and has already received a response. The proper approach in these cases is for the public body to provide a brief reply to the applicant pointing back to the decision letter the public body sent in response to the first request. UVIC did so in response to the December 5 request.

[38] UVIC submits that even providing a brief communication to the applicant referring her back to the decision letter UVIC already sent would constitute an "administrative burden". It argues that s. 31 of FIPPA would require it to retain this information for at least one year, which would require it to establish record keeping procedures to deal with these brief responses.

[39] UVIC has not explained why it would have to create new record keeping procedures for these brief responses. It is reasonable to conclude that UVIC has a filing system for access requests under FIPPA. I do not see why UVIC could not simply file future requests for the same information in the same file that already contains the documentation of the original access request.

[40] UVIC also raises concerns about public statements made by the Commissioner in support of legislative amendments to require public bodies to document key actions and decisions. UVIC says that meeting this expectation of

the Commissioner would exacerbate the administrative burden imposed by responding to the repeated requests.¹⁶ I do not see how the public advocacy of the Commissioner for a legislative duty to document is relevant to this case.

[41] I also note that, even had I granted relief under s. 43(a), that relief would apply only to the statutory requirement to respond to requests under Part 2 of FIPPA. The respondent's persistent related communications with various departments at UVIC, including the board of governors, are not FIPPA access requests, so they are outside the scope of FIPPA. This means that any relief under s. 43(a) would not apply to any such communications or any other proceedings outside of responding to requests under FIPPA.

CONCLUSION

[42] For the reasons given above, under s. 58 of FIPPA, I find that UVIC has not proven that the respondent's requests were frivolous or vexatious in accordance with s. 43(a). Therefore, s. 43(a) does not apply and I do not authorize UVIC to disregard future requests from the respondent, under this provision.

March 4, 2025

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

OIPC File No.: F24-98848

¹⁶ UVIC's initial submission, p. 9.