



Order F26-27

## Board of Education of School District 73 (Kamloops/Thompson)

Carol Pakkala  
Adjudicator

April 15, 2026

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Quicklaw Cite: [2026] B.C.I.P.C.D. No. 34

**Summary:** The Board of Education of School District 73 (District) applied for authorization to disregard a single access request under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The request was for records related to the tender process for publicly funded school projects. The District applied under ss. 43(a) (vexatious) and 43(c)(ii) (repetitious and systematic). The adjudicator found the request was not vexatious, repetitious or systematic. The adjudicator declined to authorize the District to disregard the access request.

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

### INTRODUCTION

[1] The Board of Education of School District 73 (District) applied to the Office of the Information and Privacy Commissioner (OIPC) for authorization to disregard an access request from an individual (respondent). The District applied under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).<sup>1</sup>

[2] The District says the request is vexatious in accordance with s. 43(a). The District also says that responding to the request would unreasonably interfere with its operations because the request is repetitious and systematic under s. 43(c)(ii).

### BACKGROUND

[3] The respondent is the president of an electrical installation service company involved in the public tendering process for the construction of District

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<sup>1</sup> From this point forward, unless otherwise specified, where I refer to section numbers, I am referring to sections of FIPPA.

schools. The respondent's company was initially selected as a subcontractor in the tendering process. A general contractor subsequently changed its bid form and selected a different company as a subcontractor instead of the respondent's company.

[4] The District previously applied to the OIPC under s. 43 to disregard a single access request from the same respondent dated February 18, 2025. That access request was for records related to the sound systems in two school construction projects. That matter was adjudicated by the OIPC in Order F25-44<sup>2</sup> and the District's application to disregard was denied. The District did not file an application for judicial review of Order F25-44.

[5] On February 15, 2026, the respondent filed an access request for records about product and contractor substitution submissions in the tender process for school construction projects. This request is the one that the District now seeks authorization to disregard (the "outstanding request").<sup>3</sup>

[6] Both parties provided written inquiry submissions.<sup>4</sup>

### **ISSUES AND BURDEN OF PROOF**

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

1. Is the respondent's outstanding request vexatious under s. 43(a)?
2. Would responding to the respondent's outstanding request unreasonably interfere with the operations of the District because the request is repetitious or systematic under s. 43(c)(ii)?
3. If the answer to either 1 or 2 above is yes, what remedy, if any, is appropriate?

[8] As the party applying for relief under s. 43, the District bears the burden of proof to show that ss. 43(a) and 43(c)(ii) apply to the outstanding access request.<sup>5</sup>

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<sup>2</sup> Order F25-44, 2025 BCIPC 52.

<sup>3</sup> District's s. 43 application is dated March 2, 2026.

<sup>4</sup> The District submitted an initial submission, and the respondent submitted a response submission. The District chose not to file a reply submission. As such, my references to the District's submission are to its initial submission.

<sup>5</sup> Order F18-09, 2018 BCIPC 11 (CanLII) at para 2; Order F17-18, 2017 BCIPC 19 at para 4; and Auth. (s. 43) 02-02, [2002] BCIPCD No 57 available at <https://www.oipc.bc.ca/documents/decisions/160>.

## Preliminary Matters

### *Order F25-44*

[9] The District refers to its previous s. 43 application leading to Order F25-44 extensively in its submissions. For example, the District reiterates points it made in that inquiry, identifies and responds to specific paragraphs in that order, and says it would be “legally incorrect” to not consider a key aspect of its position rejected in its previous application.<sup>6</sup> The District describes parts of Order F25-44 as confusing, troubling, and problematic.<sup>7</sup>

[10] I am unclear about why the District devotes time in its submission to critiquing Order F25-44. If a public body disagrees with a final decision issued by the OIPC, the recourse available is a judicial review of that decision. The District did not file an application for judicial review of Order F25-44. I will consider this current matter on its merits, not review the findings in Order F25-44.

### *Sharing of information with other school districts*

[11] The district says it would be “legally incorrect for OIPC to decide this matter without due consideration to the [respondent’s] pattern of behaviour with other school districts.”<sup>8</sup>

[12] The burden of proof in this inquiry is on the District; and the standard of proof is the balance of probabilities. The burden of proof means the District must demonstrate that the preponderance of evidence is in support of their position and prove that the proposition advanced is more likely than not.<sup>9</sup>

[13] If the District wants the OIPC to look at any materials it believes are necessary to prove its case, it should have put them forward in its inquiry submission. I will not consider materials not provided in the submissions and evidence the parties provided.<sup>10</sup>

### *Matters outside the Commissioner’s jurisdiction*

[14] The respondent alleges certain irregularities in the tendering process for publicly funded projects.<sup>11</sup> The respondent’s submission includes tender documents related to school construction projects.

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<sup>6</sup> District’s submission, p. 1.

<sup>7</sup> District’s submission, p. 2.

<sup>8</sup> The District says Adjudicator Hwang was legally incorrect in his decision on this same request in Order F25-44. District’s submission, p. 4.

<sup>9</sup> See *Kolesnykov v. ICBC*, 2004 BCSC 173 (CanLII) at para 31, citing *Bevacqua v. I.C.B.C.* (1999), 1999 BCCA 553 (CanLII).

<sup>10</sup> Order F25-44, 2025 BCIPC 52 at footnote 10.

<sup>11</sup> Respondent’s submission, p. 1.

[15] This inquiry is not about the tendering process. I do not have the statutory authority to make findings in this inquiry about that process. For that reason, although I have reviewed the respondent's entire submission, I will consider and comment only on those portions relevant to the FIPPA issues.

## **DISCUSSION**

### ***Outstanding request***

[16] The outstanding request is found in an email dated February 15, 2026. The relevant portions of that email setting out the details of the request are as follows:

...access to all internal and external communications, including but limited to text, phone records, emails, meeting minutes, and pdf documentation correspondence, in the possession or control of the public body pertaining to [named company] and or [named company], involving School Districts [other named districts], 73, from January 1, 2020 to present, relating to Product or Contractor Substitutions within Publicly Funded School Projects

....

This includes, but is not limited to, communications (in native file formats (e.g., .MSG, .TXT, .JPEG, .JSON) to ensure metadata integrity and transparency for the following:

1. Any and all Division 26, 27, and 28 Sole Sourced "No Alternates" equipment, suppliers, or speciality contractors requested by or to the public body with [named companies] including any and all justification
2. Any and all Division 26, 27, and 28 Product or Contractor Substitution submissions per the tender requirements (EG Section 01 25 00 and Section 01 25 01)
3. Any and all Division 26, 27, and 28 Product or Contractor Substitutions approvals
4. Any and all Division 26, 27, and 28 Product or Contractor Substitutions reviews and recommendations by [named company]

### ***Section 43***

[17] Section 43 allows the Commissioner to grant the extraordinary remedy of limiting a respondent's right to access information under FIPPA. Public bodies do not have discretion to disregard access requests on their own; they must obtain permission to do so from the Commissioner.<sup>12</sup>

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<sup>12</sup> Order F18-25, 2018 BCIPC 28 at para 14.

[18] Sections 43(a) and 43(c)(ii) state:

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.

[19] Section 43 is remedial, not punitive in nature.<sup>13</sup> It is not a mechanism for public bodies to avoid their obligations under FIPPA. Section 43 applications require careful consideration because granting this relief curtails or eliminates the rights of access to information granted by the Legislature under FIPPA.<sup>14</sup>

**Vexatious, s. 43(a)**

[20] Section 43(a) allows the Commissioner to authorize a public body to disregard an access request because the request is frivolous or vexatious. Here the District says the outstanding request is vexatious.

[21] 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.<sup>15</sup>

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<sup>13</sup> *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC) at para 32.

<sup>14</sup> Decision Auth (s. 43) 99-01 (December 22, 1999) at para 4.3. Available on the OIPC website at <https://www.oipc.bc.ca/documents/decisions/158>.

<sup>15</sup> Order F22-08, 2022 BCIPC 8 (CanLII), at paras 81-83, and the decisions cited therein.

[22] Additionally, in Auth (s. 43) 02-02, former Commissioner Loukidelis said that the fact that one or more requests are repetitive may support a finding that a specific request is frivolous or vexatious.<sup>16</sup>

### *Parties' submissions*

[23] The District says the outstanding request is vexatious. The District repeats many of the same reasons for claiming this request is vexatious as those cited in Order F25-44.<sup>17</sup> The root of the District's argument is the same here, i.e., that "we can reasonably expect this same pattern of behaviour to repeat, unless and until OIPC rejects this as abuse of the right of access."<sup>18</sup>

[24] The District identifies multiple access requests and OIPC complaints by the respondent since December 2, 2024. Additionally, the District says the respondent has sent it a significant volume of emails.<sup>19</sup> The District says that in these emails the respondent makes baseless allegations about misconduct involving tendering and procurement, and threatening litigation that he has not followed through on.

[25] The District says the respondent:

continues to harass under the guise of freedom of information, presumably because it does not cost anything or come with any risk, and because it has "gotten results". At least, it has gotten results if the purpose is to harass. It has not gotten any results if the purpose is as the [respondent] claims, to uncover a conspiracy of unlawful tendering and procurement practices between school districts, and in particular those involving [the two named companies].<sup>20</sup>

[26] The respondent says Order F25-44 sets a precedent that his requests are legitimate unless proven otherwise.<sup>21</sup> I understand the respondent's position to be that the outstanding request is not vexatious.

### *Analysis and findings*

[27] For the reasons that follow, I find the outstanding access request is not vexatious.

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<sup>16</sup> Auth. (s. 43) 02-02, (November 8, 2002), at pp 4-8.

<sup>17</sup> Order F25-44, 2025 BCIPC 52 at para 18.

<sup>18</sup> District's submission, p. 5.

<sup>19</sup> The District attaches 10 emails to its submissions from the respondent dating back to July 2025. One of the emails is the February 15, 2026 access request. Most of the other emails were about clarifications and narrowing the scope of other access requests.

<sup>20</sup> District's submission, p. 2.

<sup>21</sup> Respondent's submission, p. 4.

[28] In my view, the respondent's behaviours as outlined by the District do not support its assertion that the respondent "continues to harass under the guise of freedom of information."

[29] The District's argument about the respondent's behaviours is relevant where it provides evidence of the respondent's intent. Intent is central to applications for relief under s. 43(a). If the intent of an access request is to vex a public body rather than to seek access to the information, s. 43 relief is available.<sup>22</sup> Hostility or ill will between an access applicant and a public body is insufficient, without more, to establish that an access request itself is vexatious.<sup>23</sup>

[30] The District seems to be saying the respondent's behaviour is vexatious because he sent follow up emails and went to the OIPC for assistance. I can see exchanges of emails clarifying and narrowing the scope of two access requests made in August 2025. These emails were not about the outstanding request.

[31] In the email exchanges provided by the District, I can see comments about the respondent's dissatisfaction with the tendering process and with the District's freedom of information practices. There are no emails since September of 2025, and no emails about the outstanding request.

[32] I considered whether the emails provided by the District demonstrate an aggressive, confrontational, sarcastic or rude tone on the part of the respondent. Tone is one indicator of vexatious requests that previous s. 43(a) orders have recognized.<sup>24</sup> In my view, the respondent's tone in the emails is professional in nature.

[33] I am not persuaded by the District's suggestion that exercising a statutory right to request the OIPC review a public body's access decision is vexatious behaviour. In addition, there is nothing in the respondent's emails that persuades me that his intention for making the outstanding request is vexatious rather than a desire to access the requested records. To the contrary, I am persuaded that the respondent's intention is in line with FIPPA's objective of making public bodies more accountable to the public.<sup>25</sup>

[34] Finally, I do not find anything in the outstanding request itself that indicates that its purpose is to pressure the District into changing a decision or taking an action, to be punitive or cause hardship to a District employee, or to express displeasure with the District.

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<sup>22</sup> Order F25-44, 2025 BCIPC 52 at para 28 citing Order F25-14, 2025 BCIPC 17 (CanLII) at para 33.

<sup>23</sup> Order F25-44, 2025 BCIPC 52 at para 28 citing Order F21-34, 2021 BCIPC 42 (CanLII) at para 56.

<sup>24</sup> See for example, Order F19-44, 2019 BCIPC 50 at para 32.

<sup>25</sup> Section 2.

[35] The District says the respondent's purpose in making the outstanding request is to pressure it into not hiring the companies named in the request because it is not worth the continued harassment by the respondent.<sup>26</sup>

[36] While I can see that the respondent did name specific companies, I am not persuaded that the respondent's intent was to harass the District into not hiring those companies. I find it more likely that the respondent seeks to hold the District accountable for its decision to hire those companies through the public tendering process.

[37] I find that the outstanding request is not vexatious and s. 43(a) does not apply.

***Unreasonable interference, s. 43(c)***

[38] Under s. 43(c)(ii), the Commissioner may authorize a public body to disregard a request if responding to it would unreasonably interfere with the operations of the public body because it is repetitious or systematic.

[39] Section 43(c)(ii) has two parts, and the District must prove both. First, it must show that the request is repetitious or systematic. Second, the District must show that responding to the requests would unreasonably interfere with its operations.<sup>27</sup>

*Is the request repetitious under s. 43(c)(ii)?*

[40] Repetitious requests are requests made more than once.<sup>28</sup> The fact that an applicant makes numerous requests does not mean that the requests are repetitious, as long as they are not requesting essentially the same information.<sup>29</sup>

[41] The District says the respondent's outstanding request is repetitive of previous requests made prior to and since its previous s. 43 application.

[42] The District provides a history of its email correspondence with the respondent but does not clearly outline any access requests it claims the outstanding request repeats.

[43] The respondent says Order F25-44 sets a precedent that his requests are legitimate unless proven otherwise.<sup>30</sup> I understand the respondent's position to be that the outstanding request is not repetitious.

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<sup>26</sup> District's submission, p. 3.

<sup>27</sup> Order F22-59, 2022 BCIPC 67 (CanLII) at para 42.

<sup>28</sup> Decision F12-01, 2012 CanLII 22871 (BC IPC) at para 5.

<sup>29</sup> Order F23-37, 2023 BCIPC 44 (CanLII) at para 45.

<sup>30</sup> Respondent's submission, p. 4.

[44] From the evidence before me, the applicant previously made access requests to the District in August 2025. After some back and forth communications about those requests, the parties agreed on narrowing them. The District does not say, and I cannot see, how the outstanding request repeats either those requests or the two considered in Order F25-44.

[45] The outstanding request is for all communications from January 1, 2020 to February 15, 2026, relating to Product or Contractor Substitutions within Publicly Funded School Projects. This request is clearly for communications about substitutions, which I understand to mean something other than what was explicitly specified in the tender process.

[46] Other than having the common theme of being about the tendering process, the District does not say, and I cannot see, how the outstanding request repeats any of the previous requests.

[47] The question under s. 43(c)(ii) is not whether there is an overlap regarding the subject matter of the requests. Instead, the question is whether the applicant is seeking access to the same records.

[48] The outstanding request is specific to communications about product or contractor substitutions. I do not see any earlier request for those specific records. The District does not sufficiently explain how it is that the outstanding request is “repetitious” and the respondent is seeking access to the same records for a second time.

[49] The District says the repetitive nature of the respondent’s behaviour cannot be denied after ten FIPPA requests and six OIPC complaints in the previous 15 months.<sup>31</sup>

[50] The issue before me is not whether the respondent has repetitively requested the assistance of the OIPC. The issue is whether the outstanding access request repeats a request for essentially the same information. Here, the outstanding request is not for the same information previously requested, so I conclude it is not repetitious.

*Is the request systematic under s. 43(c)(ii)?*

[51] Systematic requests are requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles.<sup>32</sup> Some characteristics of systematic requests may be:

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<sup>31</sup> District’s submission, p. 3.

<sup>32</sup> Order F13-18, 2013 BCIPC 25 at para 23.

- A pattern of requesting more records, based on what the respondent sees in records already received;
- Combing over records deliberately in order to identify further issues;
- Revising earlier freedom of information requests;
- Systematically raising issues with the public body about their responses to freedom of information requests, and then often taking those issues to review by the OIPC; and
- Behaviour suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events.<sup>33</sup>

[52] The District says that the respondent is waging an ongoing campaign of unceasing requests.<sup>34</sup>

[53] The respondent says Order F25-44 sets a precedent that his requests are legitimate unless proven otherwise.<sup>35</sup> I understand the respondent's position to be that the outstanding request is not systematic

[54] For the reasons that follow, I find that the District has not provided sufficient evidence that the outstanding request is systematic.

[55] The volume and frequency of access requests can be a relevant indicator of whether requests are systematic.<sup>36</sup> In this case, there is only one outstanding request at issue. This request was made in February 2026. I can see that two, previous access requests were consolidated into one and the District responded to them in September of 2025.

[56] I also turned my attention to whether the outstanding request that led to Order F25-44 and the prior request considered therein are suggestive of a systematic approach. Those requests were in December of 2024 and in February of 2025. In broad strokes, those requests were for tender documents and communications about sound systems respectively.

[57] In my view, piecing the above picture together, I am not persuaded that together the requests can be characterized as high volume or high frequency. Further, I am not persuaded by what is before me that the access requests reveal a method or plan of acting that is organized and carried out according to a set of rules or principles, in the way previous orders have said is systematic.

[58] In my view, the District's arguments about why it thinks the outstanding request is part of a systematic pattern are primarily about what it says is the

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<sup>33</sup> Order F18-37, 2018 BCIPC 40 at para 26.

<sup>34</sup> District's submission, p. 5.

<sup>35</sup> Respondent's submission, p. 4.

<sup>36</sup> Order F23-37, 2023 BCIPC 44 (CanLII) at para 54.

respondent's motivation for the access request. The District says the respondent is motivated to harass and pressure it into not hiring specific contractors for construction projects.<sup>37</sup> I am not persuaded by this argument.

[59] I can see that the respondent is concerned about what he perceives to be irregularities in the tendering process for publicly funded projects. In my view, he is motivated by this concern, and it is a legitimate motive for seeking access to information. This concern clearly relates to the accountability of the District for its procurement practices. One of the purposes of FIPPA is to make public bodies more accountable to the public.<sup>38</sup>

[60] I find that, on balance, the District's submissions have not clearly established that the respondent's outstanding request is systematic, in accordance with s. 43(c)(ii).

[61] Given the District has not established that the outstanding request is repetitious or systematic under s. 43(c)(ii), I do not need to decide whether responding to it would unreasonably interfere with the District's operations.

[62] For the sake of completeness, however, I note the District provided no evidence to support its claim about unreasonable interference with its operations. This is despite the District saying it is generally familiar with the OIPC's reported decisions pursuant to s. 43.<sup>39</sup>

[63] Previous decisions provide clarity on the type of detailed evidence and argument needed to demonstrate unreasonable interference with a public body's operations. For instance, in cases that have found unreasonable interference with a public body's operations, there was evidence about the public body's size and resources, what staff resources are used to respond to FIPPA access requests, the distribution of labour within the public body, how long it expects it would take to process the outstanding requests, and roughly how much that might cost, or how processing the request would affect its other priorities.

[64] The District provided no evidence of the type described above. The District merely comments in passing about its legal costs related to the respondent's previous requests and "the costs of having its Director of Facilities spend significant time,"<sup>40</sup>

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<sup>37</sup> District's submission, p. 3.

<sup>38</sup> Section 2.

<sup>39</sup> District's submission, p. 2.

<sup>40</sup> District's submission, p. 4.

[65] I conclude the District has provided insufficient evidence to demonstrate that responding to the outstanding request would unreasonably interfere with its operations.

***Conclusion, s. 43***

[66] For the reasons above, I find the District has not established that the February 15, 2026 outstanding request is vexatious under s. 43(a) or repetitious or systematic under s. 43(c)(ii). Therefore, the District is not authorized to disregard the request.

April 15, 2026

**ORIGINAL SIGNED BY**

Carol Pakkala  
Adjudicator

OIPC File No.: F26-00684