



Order F26-35

## VILLAGE OF POUCE COUPE

Rene Kimmett  
Adjudicator

May 1, 2026

CanLII Cite: 2026 BCIPC 45  
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**Summary:** The Village of Pouce Coupe (Village) applied to the Office of the Information and Privacy Commissioner for authorization to disregard part of an access request from a named individual on the basis that this part of the access request is frivolous or vexatious under s. 43(a) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found the Village had not met its burden of proving the access request was frivolous or vexatious and, therefore, denied its application.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 43.

### INTRODUCTION

[1] The Village of Pouce Coupe (Village) applied to the Office of the Information and Privacy Commissioner (OIPC) for authorization to disregard part of an access request from a named individual (applicant) on the basis that this part of the access request is frivolous or vexatious under s. 43(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

### ISSUE AND BURDEN OF PROOF

[2] In this inquiry, I must decide whether the remainder of the applicant's access request is frivolous or vexatious under s. 43(a). The Village has the burden to prove the claims it makes under s. 43.<sup>1</sup>

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<sup>1</sup> Order F17-18, 2017 BCIPC 19 (CanLII) at para 4; Order F18-09, 2018 BCIPC 11 (CanLII) at para 2.

## DISCUSSION

### **Background**

[3] North Wind Wellness Centre (the Centre) is a rehabilitation facility in the Village, operated by a not-for-profit organization and registered charity. The applicant publicly opposed the development of the Centre in 2017. The applicant previously worked in a senior position with the Village.

[4] The applicant made a request for access to all records related to the development of the Centre. She specified several categories of records in which she was particularly interested.

[5] The Village sent a fee estimate to the applicant.<sup>2</sup> The applicant opened a complaint file with the OIPC regarding the fee estimate.<sup>3</sup> The parties engaged in OIPC-led mediation related to this estimate.

[6] During OIPC-led mediation of the fee dispute, the Village informed the applicant that many of the categories of records she specified in her request do not exist.<sup>4</sup> The Village also provided the applicant with one record responsive to her request. The Village then informed the applicant that it would be making a s. 43 application seeking authorization to disregard the remainder of her access request.<sup>5</sup>

[7] When the OIPC received the Village's s. 43 application, it opened the present file. Mediation was unsuccessful in resolving the matter and it proceeded to this inquiry. The applicant's OIPC fee complaint file has been paused pending the outcome of this s. 43 application.

### **Section 43**

[8] Section 43 gives the OIPC the discretion to authorize public bodies to disregard certain access requests. Section 43 is a remedial tool used to curb abuse of the right of access. It is not punitive in nature.<sup>6</sup>

[9] 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>7</sup> However, s. 43 is also “an important part of a

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<sup>2</sup> Village's Document #10.

<sup>3</sup> Village's Document #17. OIPC file F25-01776.

<sup>4</sup> Village's Document #25.

<sup>5</sup> Village's Documents #29 and #30.

<sup>6</sup> *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.

<sup>7</sup> Order F25-44, 2025 BCIPC 52 (CanLII) at para 14.

comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance.”<sup>8</sup>

[10] The Village is only relying on s. 43(a), which reads:

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,

[...]

[11] Frivolous requests include requests that are trivial or not serious, and requests made primarily for a purpose other than gaining access to information.<sup>9</sup>

[12] 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.<sup>10</sup>

[13] The words “frivolous” and “vexatious” must be interpreted objectively. It is not enough that a public body finds an access request bothersome or vexing.<sup>11</sup> Further, 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>12</sup>

*Preliminary matter – interpretation and application of s. 43*

[14] After conducting an initial review of this file, I had questions about the proper interpretation and application of s. 43. I invited the parties to provide submissions on the following questions:

1. Does the Commissioner have the authority, under s. 43, to authorize a public body to disregard part of an access request?
2. Does the Commissioner have the authority, under s. 43, to authorize a public body to disregard part of an access request after the public body has already responded to other parts of the request?
3. Are either of the following factors relevant to the determination of whether to grant relief under s. 43(a): the public body issuing a fee estimate or

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<sup>8</sup> Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57, online: <https://www.oipc.bc.ca/documents/decisions/160> at para 27.

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

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid* at paras 21-22.

<sup>12</sup> Order F26-27, 2026 BCIPC 34 at para 29.

engaging in OIPC-led mediation related to an applicant's request for a fee waiver?

Authority to disregard part of an access request

[15] The Village submits that the Commissioner has the authority, under s. 43 of FIPPA, to authorize a public body to disregard part of an access request, including where the public body has already responded to some of the request. The Village explains its position with reference to case law and OIPC policy.

[16] The applicant submits that s. 43 says the Commissioner may only authorize a public body to disregard “a request”, not part of a request. She submits allowing a public body to disregard a partial request would undermine the language and structure of FIPPA and allow public bodies to selectively process requests.

[17] For the reasons below, I conclude that s. 43 of FIPPA grants the Commissioner the authority to authorize a public body to disregard part of an access request, including where the public body has already responded to some of the request.

[18] The meaning of legislation – in this case s. 43 of FIPPA – must be determined by reading the words of an Act in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.<sup>13</sup> It is not as simple as looking at the words “a request” and determining, based only on a plain reading of those words, that s. 43 cannot be applied to disregard part of an access request.

[19] Section 43 must be given “a remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects”.<sup>14</sup> Section 43 is a remedial tool to curb abuse of the right of access, which can waste valuable public resources and undermine the proper functioning of FIPPA.

[20] Section 43 has been interpreted to include remedial actions that are not explicitly outlined in the text of s. 43, such as the ability to provide prospective relief under s. 43 by limiting an applicant's future access requests. On this subject, the BC Supreme Court has found: “the ability of the Commissioner to restrain an abuse of the information access scheme would be largely frustrated if s. 43 could only be applied to pending access requests”.<sup>15</sup>

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<sup>13</sup> R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008) at 1, citing E. A. Driedger, *The Construction of Statutes* (1974) at 67.

<sup>14</sup> *Crocker*, *supra* note 6; *Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC).

<sup>15</sup> *Crocker*, *supra* note 6 at paras 40-43.

[21] I find the same logic applies to permit the Commissioner to authorize a public body to disregard a partial access request, even after a public body has responded to part of the request. Interpreting “a request”, as it appears in s. 43, to mean only a full access request, would undermine the remedial purpose of s. 43 and improperly restrict the Commissioner’s ability to curb abuse of FIPPA.

Relevance of a fee dispute to a s. 43 application

[22] When I asked the parties for supplemental submissions on these questions, I noted I had conducted preliminary research and had come across the following findings in a decision by the Office of the Saskatchewan Information and Privacy Commissioner:

By issuing and receiving payment of a fee estimate, a local authority conveys an important procedural message to an applicant: first, the local authority conveys that it does not require further clarification with respect to the nature of the access request and that the access request is fully understood and the general nature of the request has resulted in a cursory consideration of what records are available and how much time and effort it will cost in meeting the request. The second important message conveyed by the issuance of a fee estimate is that the local authority is prepared to respond and that it believes it can meet the request. This application to disregard was brought after the fact. We can consider that the [Rural Municipality] conducted a preliminary search for documents and a fee estimate was issued to meet that search and the eventual production. This application to disregard was brought late in the process and it is in cross purposes with the procedure already pursued by the [Rural Municipality] in issuing a fee estimate.<sup>16</sup>

[23] I noted that these findings do not bind me in any way and were made under circumstances that differ from the present circumstances.

[24] The applicant agrees with the findings in the Saskatchewan order and submits that the Village issuing a fee estimate and engaging in mediation about the fee dispute is inconsistent with its position that her request is frivolous or vexatious.

[25] The Village submits that restricting a public body’s ability to seek s. 43 relief after a fee estimate has been issued would encourage public bodies to either:

- delay providing fee estimates until later in the access request process; or

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<sup>16</sup> Disregard Decision 363-2025, 2026 CanLII 3043 (SK IPC) at para 33.

- prematurely seek relief under s. 43 before it is clear that such relief is warranted or before exhausting alternative means of managing the request with the applicant.

[26] FIPPA requires public bodies to respond to an access request not later than 30 days after receiving the request, unless the time to respond has been extended under s. 10 of FIPPA.<sup>17</sup> If a public body is going to require an applicant to pay fees for services, it must provide the applicant with a written estimate of the total fees before providing services.<sup>18</sup> It is not clear to me how a public body could delay providing a fee estimate until a later time, as posited by the Village.

[27] A public body making an application to disregard an access request “before it is clear that such relief is warranted” would be an abuse of FIPPA’s processes. Further, the Village has not identified what alternative means may be used to “manage” an access request that is frivolous or vexatious. It is not clear to me that there would be any alternatives, since a request that is frivolous or vexatious is an abuse of FIPPA’s right of access.

[28] There may be situations in which a public body only realizes that it needs to seek relief under s. 43 after it has issued a fee estimate. However, I find that, in issuing a fee estimate, a public body signals to the applicant that it understands the access request, has a basic idea of the time and effort required to respond to the request, is prepared to respond to the request, and does not think it needs relief under s. 43 to disregard the request. As a result, in most cases a public body should consider whether it needs to seek relief under s. 43 as part of the process of preparing its fee estimate, if applicable, and not after it has already issued the estimate.

[29] In this case, I conclude the Village’s claim that the applicant’s access request should be disregarded because it is frivolous or vexatious is undermined by the Village previously signalling that it was prepared to respond to her request by issuing a fee estimate and engaging in mediation about the fee dispute. The Village submits that it only realized the applicant’s access request was frivolous or vexatious after the fee estimate was issued. For reasons I explain later in this order, I do not find this argument persuasive.

[30] The fee dispute between the Village and the applicant is only one factor relevant to this matter. It has not barred the Village from making a s. 43 application and it is not determinative of the question of whether the Village should be granted relief under s. 43(a).

[31] I will now consider the arguments the parties raised during the initial submission schedule.

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<sup>17</sup> FIPPA, ss. 7 and 10.

<sup>18</sup> FIPPA, s. 75(4)(a).

*Village's position – s. 43(a)*

[32] The Village submits the applicant's access request is vexatious because the applicant has been pressing the Village to take certain actions, such as halting development, and expressing displeasure with the Village and its actions.<sup>19</sup> The Village provides several examples, which I have divided into three categories:

1) the applicant's communications with the Village:

- a couple of weeks after her original access request, the applicant sent two emails, one to Village staff and the other to the Village Council, explaining why she believes the development of the Centre "appears to contravene several key planning bylaws, and may lack legally required public engagement."<sup>20</sup>
- phone calls between Village staff and the applicant in which she is critical of the Centre and presses the Village to take certain actions, including one call in which the applicant stated "I will go to the news if I don't get what I want" in relation to the Centre.<sup>21</sup>
- the applicant including what appears to be a note to self or a direction from a third party in her correspondence with the Village. In one instance: "You might as well keep pushing them"<sup>22</sup> and in another: "Attach this to your objection letter to strengthen your legal arguments".<sup>23</sup>
- the applicant sending an email to all the lawyers at the law firm the Village hired to process her FIPPA access request and including the following note to self or direction from a third party "BCC all of them so she won't know who received this email and let the other layers [*sic*] ask her about it".<sup>24</sup>

2) the applicant's engagement with the media expressing displeasure with the Village's fee estimate for processing her access request.<sup>25</sup>

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<sup>19</sup> Village's initial submission at paras 43 and 44.

<sup>20</sup> Village's Documents #2 and #3. In these emails, the applicant also asked for various records related to the development of the Centre. However, the Village viewed these records as already subject to her June 23, 2025 access request. See Village's initial submission at para 12.

<sup>21</sup> Affidavit #1 of the Village's Interim Chief Administrative Officer at paras 8 and 9.

<sup>22</sup> Village's Document #27.

<sup>23</sup> Village's Document #3.

<sup>24</sup> Village's Documents #7 and #8. The Village submits that a duplicate of this email was sent a second time moments apart but only provided one email (and its attachment) as evidence in support of its application.

<sup>25</sup> Village's initial submission at para 24.

3) the way the applicant has been using FIPPA:

- the applicant requesting records that are available online, specifically the Council meetings and resolutions.<sup>26</sup>
- the applicant knowingly requesting records that do not exist.<sup>27</sup>
- the applicant threatening to complain to the OIPC if the Village does not respond within FIPPA's mandated timelines or does not reconsider its decision denying her request for a fee waiver.<sup>28</sup>
- the applicant's complaint to the OIPC about the Village's fee estimate saying:

“I am very disappointed in the Ministry, giving the go ahead for the Reb Centre. This info was sent to the Village and I received a responds from Village Lawyer to pay \$600.00 for the information. First of all there was a petition that fell on deaf ears. Can you tell me how a drug addicts can property heal in this facility when it directly by the highway? This Rehab centre needs to be on land where they can properly heal. Nature is the way to go where they can work with Animals and have gardens. We have lots of crown land it could go on.”

- the applicant narrowing the scope of her access request and then re-broadening her request during mediation of the fee dispute.<sup>29</sup>
- The applicant's submissions in response to this application.<sup>30</sup>

[33] The Village argues that the applicant is primarily motivated by her discontent with the Centre, and the Village for permitting it, and not by a genuine or serious desire to access the requested information. It submits the applicant's actions indicate her access request was made primarily for these ulterior purposes, rather than for the purpose of gaining access to information.<sup>31</sup>

[34] The Village submits that any genuine interest the applicant may have is residual and secondary to her primary motivation of criticizing and pressuring the Village about the Centre.<sup>32</sup>

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<sup>26</sup> *Ibid* para 48.

<sup>27</sup> *Ibid* at para 17 and Document #17.

<sup>28</sup> *Ibid* at para 61.

<sup>29</sup> *Ibid* at para 47.

<sup>30</sup> Village's reply submission at para 15.

<sup>31</sup> Village's initial submission at para 46.

<sup>32</sup> Village's reply submission at para 13.

*Applicant's position – s. 43(a)*

[35] The applicant submits that s. 43 is an extraordinary, discretionary remedy with a high evidentiary burden.<sup>33</sup>

[36] The applicant submits that opposition to government action, public criticism, or advocacy does not establish bad faith or vexatious intent. She submits that FIPPA does not require neutrality as a condition of access and that there is no evidence of harassment, spite, or ulterior motive.<sup>34</sup> She submits that her request for information related to the Centre serves a legitimate purpose.<sup>35</sup>

[37] The applicant makes other submissions, which I find are not relevant to the Village's application to disregard made under s. 43(a), so I will not outline them here.

*Analysis – s. 43(a)*

[38] The Village has already responded to much of the applicant's access request by either providing responsive records or informing the applicant that there are no responsive records. The remaining parts of the applicant's access request are for access to Council resolutions and minutes and internal Village records that mention the Centre. For the reasons below, I find the remaining parts of the applicant's access request are not frivolous or vexatious.

The applicant's communications with the Village:

[39] I agree with the Village that the applicant clearly opposes the Centre. However, I find that her opposition to the Centre is happening concurrently to her access request and is not evidence that she made her access request without a genuine or serious desire to access the requested information. The applicant is allowed to discuss her opposition to the Centre with the Village and also make an access request related to the Centre. Her taking both of these actions does not mean that her access request is frivolous or vexatious.

[40] The Village has not adequately explained why the applicant including notes to self or directions from third parties in her correspondence with the Village demonstrates that her request is frivolous or vexatious. I find that it does not. I find the applicant copying all the lawyers at the law firm was poor judgement and was intended to be vexing. However, I do not find that it supports a finding that her request itself was made in bad faith or for an ulterior purpose.

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<sup>33</sup> Applicant's submission at paras 2-3.

<sup>34</sup> *Ibid* at paras 34-35.

<sup>35</sup> *Ibid* at paras 22-23.

### The applicant's engagement with the media

[41] The Village points to a news article in which the applicant expresses displeasure with the Village's fee estimate. The Village has not adequately explained how the applicant giving a media interview about its fee estimate supports its position that her access request is trivial or not serious or was made in bad faith or for ulterior motives. I find that it does not.

### The applicant's use of FIPPA

#### *Publicly available records*

[42] The Village submits the applicant is requesting records that are available on its website, specifically the Council meetings and Council resolutions referencing the Centre, and, therefore, her request is frivolous or vexatious.

[43] In Order F17-18, an adjudicator found an access request to be frivolous:

In one [access request], the respondent asks for a copy of a video of a City council meeting posted two years earlier. Apparently, the video was available on the City's website, but as the link to the video was broken on the day that respondent looked, he made an access request. The website link was fixed the next day. The City told the respondent that the computer company retained to handle such matters said that there were technical issues the day he tried to use the link. The City's materials do not say if the respondent still wants access to a copy of the video now that the website link has been repaired. However, given that the City is seeking relief under s. 43 for this request, I assume that the respondent has not withdrawn this request. I find that this request for a video that is accessible on the City's public website is frivolous.<sup>36</sup>

[44] Subsequent OIPC orders have said that Order F17-18 "found that a request was frivolous when it was for information that was publicly available".<sup>37</sup> I find the conclusions in Order F17-18 are narrower and more specific than the summary provided in subsequent orders. In Order F17-18, the applicant had access to the single link to the record they wanted to access and that link happened to be broken. Once the public body fixed the link, the applicant had direct access to the record and the access request was, therefore, frivolous.

[45] Here, the applicant would need to manually comb through years of Council minutes and resolutions to find ones that reference the Centre. Further, the Village's public database may not cover all the years relevant to the applicant's access request. Based on the evidence before me, I find this is not a situation in which the applicant already has direct access to the records and is

<sup>36</sup> Order F17-18, 2017 BCIPC 19 (CanLII) at para 23.

<sup>37</sup> Order F22-59, 2022 BCIPC 67 (CanLII) at para 17.

asking the Village to conduct a needless search to waste Village resources or harass Village staff.

[46] The Village has not pointed me to, and I have not found, any other OIPC orders that find an access request is frivolous or vexatious simply because it asks for records that may be available in an online repository.

[47] As a final point on this subject, I note that s. 43(b) of FIPPA allows a public body to ask the commissioner to authorize it to disregard an access request if “the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source”. However, the Village has not made submissions regarding s. 43(b) and instead is relying only on s. 43(a). I find that the Village has had ample opportunity to make submissions on s. 43(b) and has failed to do so. For example, in its reply submission the Village quotes the entirety of s. 43 and states “section 43 of FIPPA reads in full as follows (with section 43(a) underlined for emphasis, as this is the only ground argued by the Village in this [application])”.<sup>38</sup> For these reasons, I have not considered whether to authorize the Village to disregard the applicant’s access request on the basis that the records requested are accessible from another source.

#### *Records that do not exist*

[48] The Village submits that the applicant requested records that she knew did not exist and that this shows she made the request for a purpose other than obtaining information. Depending on the circumstances, this can be an indicator that a request is frivolous or vexatious.<sup>39</sup> In this case, it is possible that the applicant knew, or at least suspected, that some of the records she requested did not exist.<sup>40</sup> However, the Village already responded to these portions of the applicant’s access request saying that these records do not exist and, therefore, these portions do not form part of its request to disregard the applicant’s access request.

#### *Complaints to the OIPC*

[49] I find that the applicant did not threaten to complain to the OIPC and instead simply stated she has the option to make a complaint to the OIPC if the Village does not respond in the mandated timeframe or does not reconsider its denial of her request for a fee waiver. These are factual statements that do not support a finding that the access request is frivolous or vexatious.

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<sup>38</sup> Village’s reply submission at para 7.

<sup>39</sup> Order F17-18, 2017 BCIPC 19 (CanLII) at para 21 provides an example of how an applicant may ask, in a rhetorical way, for records they know do not exist in order to prove their point that the public body has not done what the applicant thinks it should have done.

<sup>40</sup> In Village’s Document #4 the applicant states: “I am assuming my request will not be filled as this information is not available.” However, it is not clear to me what “information” the applicant was referring to when she made this statement.

[50] The Village takes issue with the way the applicant's complaint to the OIPC raises her concerns about the Centre and a ministry's role in apparently approving the Centre. I agree with the Village that these remarks are irrelevant to the applicant's fee complaint. However, I find this one instance of the applicant including irrelevant content in a fee complaint is not enough to conclude that the applicant's access request was frivolous or vexatious.

*Narrowing and broadening the access request*

[51] The Village submits the applicant narrowing and re-broadening her request, during mediation of her fee dispute, is a "clear indicator" that the applicant's access request is frivolous or vexatious. The Village has not cited anything to support this assertion or adequately explained this position. I find that the applicant's actions indicate that she narrowed her request in an attempt to lower the fee estimate and then re-broadening her request because she decided she wanted access to all the records in her original request. While the Village may have found this backtracking annoying, it does not lead me to find that the access request is frivolous or vexatious.

*Response submissions*

[52] The Village submits that the applicant's submissions in this s. 43 process demonstrates that her primary motivation in making her request is voicing displeasure with the Centre. I find that the applicant's submissions are intended to explain why she has a genuine interest in accessing the records and why she views her request as serious and not trivial. In other words, I find the applicant's submissions are on topic and do not merely voice displeasure about the Centre or the Village's role in approving the Centre. As a result, I reject the Village's argument on this subject.

**Conclusion**

[53] In conclusion, I find the Village made this s. 43 application not because the applicant's behaviour indicated she did not have a genuine interest in the records, but because the Village found her behaviour bothersome or vexing.

[54] I find the Village has not established that the applicant's access request is frivolous or vexatious and, therefore, I do not authorize it to disregard the request under s. 43(a). Since s. 43(a) is the only ground raised by the Village, I do not authorize the Village to disregard the applicant's access request for any other reason under s. 43.

**CONCLUSION**

[55] For the reasons given above, I deny the Village's request to disregard the applicant's access request under s. 43 of FIPPA. The Village is required to

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respond to the remainder of the applicant's access request in accordance with FIPPA. The applicant's OIPC fee complaint file will resume.

May 1, 2026

**ORIGINAL SIGNED BY**

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Rene Kimmett, Adjudicator

OIPC File No.: F25-02905