



Order F26-36

## CIVIL RESOLUTION TRIBUNAL

David S. Adams  
Adjudicator

May 4, 2026

CanLII Cite: 2026 BCIPC 46  
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**Summary:** An access applicant (the respondent) requested records from the Civil Resolution Tribunal (CRT) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The CRT applied to the Office of the Information and Privacy Commissioner for permission to disregard the request under s. 43 of FIPPA, on the basis that the requested records had already been disclosed to the respondent and/or were accessible to her from another source, and that the request was repetitious and responding to it would unreasonably interfere with the CRT's operations. The adjudicator found that some records responsive to the access request had been disclosed to the respondent and allowed the CRT to disregard the request with respect to those records. However, the adjudicator did not find any other provisions of s. 43 applied and ordered the CRT to respond to the remainder of the access request.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 10, 43(b), 43(c)(ii), 53(2).

## INTRODUCTION

[1] An applicant (the respondent) made a request for records from the BC Civil Resolution Tribunal (CRT), under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The request was as follows:

I am requesting access to all records (including but not limited to emails, letters, internal memos, meeting notes, and other communications or documents) between the Public Service Agency (PSA), the Ministry of Attorney General, and the Civil Resolution Tribunal (CRT), and the British Columbia Government and Service Employees' Union (BCGEU) – specifically involving [several named individuals] and any other BCGEU staff or shop stewards – pertaining to:

[several specified labour grievances or the HRT Complaint]

Date Range for Record Search: February 1, 2020 to June 30, 2022

[2] The CRT applied to the Office of the Information and Privacy Commissioner (OIPC) for permission to disregard the request because it was for records previously disclosed to the respondent or available to the respondent from another source (under s. 43(b) of FIPPA), and responding to the request would unreasonably interfere with the CRT's operations because the request is repetitive (under s. 43(c)(ii)).

[3] Both the CRT and the respondent provided written submissions and supporting documentation for the purposes of this application.

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

[4] The issues before me on this application are:

1. Is the respondent's access request a request for a record that has been disclosed to the respondent or that is accessible by the respondent from another source, under s. 43(b)?
2. Would responding to the respondent's access request unreasonably interfere with the operations of the CRT because the request is repetitive, under s. 43(c)(ii)?
3. If the answer to either of the above questions is yes, what is the appropriate remedy?

[5] The burden is on the CRT to establish that ss. 43(b) or (c) apply.<sup>1</sup>

### **DISCUSSION**

#### **Background**

[6] The CRT is a tribunal, established by statute, which has jurisdiction over small claims and various other matters. The respondent is a former employee of the CRT. During her employment, she was a member of a labour union, the BC General Employees' Union (BCGEU).<sup>2</sup> During and after her employment, she, or the BCGEU acting on her behalf, filed a total of nine labour grievances against the CRT; however, in 2022, the BCGEU withdrew all of these grievances.

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<sup>1</sup> See, e.g., Order F24-38, 2024 BCIPC 46 (CanLII) at para 3.

<sup>2</sup> Before 2021, the BCGEU was known as the British Columbia Government and Services Employees Union.

[7] In 2022, the respondent filed a BC Human Rights Tribunal complaint against the CRT related to her employment (the HRT Complaint). The HRT Complaint is ongoing, and there is some disagreement between the parties about whether document disclosure has been completed.

[8] From 2020 to 2026, the respondent made five access requests to the CRT under FIPPA. The CRT responded to the first four of these. Only the most recent one (Request 5) is at issue in this application.

### **SECTION 43**

[9] Section 43 allows the Commissioner to authorize a public body to disregard an access request in various circumstances. The parts of s. 43 that are relevant to this application say as follows:

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

...

(b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source; or

(c) responding to the request would unreasonably interfere with the operations of the public body because the request

(i) is excessively broad, or

(ii) is repetitious or systematic.

[10] The Commissioner will grant relief under s. 43 only in exceptional cases and after a careful consideration of the circumstances, since a successful application under s. 43 results in a restriction of the public's right to access information under FIPPA. This right must not be restricted lightly. Section 43 is not a mechanism for a public body to avoid its obligations under FIPPA.<sup>3</sup>

### ***The respondent's access requests***

[11] The respondent has made several requests to the CRT under FIPPA. The CRT has responded to all of them except Request 5. Based on the parties' submissions and supporting documents, I have summarized the requests as follows:

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<sup>3</sup> Order F25-75, 2025 BCIPC 88 (CanLII) at para 14; Order F25-60, 2025 BCIPC 69 (CanLII) at para 20; Order F22-08, 2022 BCIPC 8 (CanLII) at para 29.

	<b>Date of request</b>	<b>Description of request</b>
<b>Request 1</b>	December 9, 2020	All records related to the respondent from December 2018 to December 9, 2020
<b>Request 2</b>	February 27, 2021	All records containing the respondent's personal information from December 9, 2020 to February 27, 2021
<b>Request 3</b>	August 26, 2022	All records containing the respondent's personal information that "informed" either of two specified letters sent to the respondent in 2021
<b>Request 4</b>	September 1, 2022	All records containing the respondent's personal information from December 9, 2020 to December 9, 2021, excluding records sent to or from the respondent
<b>Request 5</b> (the request at issue in this application)	February 6, 2026	All records sent between the CRT, the Public Service Agency, and the Ministry of Attorney General that involve any BCGEU staff or shop stewards, and that relate to:  i) one of several specified labour grievances; or  ii) the HRT Complaint  with a date range of February 1, 2020 to June 30, 2022

***A record disclosed to the applicant or accessible from another source – s. 43(b)***

[12] Section 43(b) allows the Commissioner to authorize a public body to disregard an access request if the request is for a record that has been disclosed to the access applicant or is accessible from another source. The CRT says the records requested by the respondent have been disclosed to her and/or are accessible by her from another source; the respondent denies this is so.

*A record that has been disclosed to an applicant*

[13] The CRT says many of the records responsive to Request 5 have been disclosed in response to Requests 1 through 4, and that all the records responsive to Request 5 have been disclosed through the disclosure process in the HRT Complaint.

Disclosure under FIPPA

[14] The CRT says it has disclosed “most of” the records responsive to Request 5 in response to the respondent’s previous FIPPA requests. It explains that the respondent’s previous requests overlap significantly with Request 5 because they are all requests for the respondent’s personal information, and Request 5 is for a narrower subset of records containing her personal information. It says that as a result, all the records responsive to Request 5 from February 1, 2020 to December 9, 2021 have been disclosed to the respondent under FIPPA (subject to the withholding of certain information under various provisions of FIPPA, which the CRT says the respondent did not challenge).<sup>4</sup>

[15] The respondent says Request 5 is not coextensive with any of her previous requests. She says the CRT’s previous disclosures under FIPPA were incomplete because the CRT withheld information from them under various provisions of FIPPA. She says this means the records responsive to her previous access requests were not “fully disclosed”, such that some records responsive to those requests remain outstanding.<sup>5</sup>

[16] In reply, the CRT says it should not be required to search through records it has already disclosed in order to find the subset of them that are responsive to Request 5. It says if it were required to do so, it would make the same redactions under FIPPA as it made in response to previous requests. It says that for each of its responses to the previous requests, it identified the bases on which it withheld information.<sup>6</sup>

[17] While I agree with the respondent that Request 5 and her previous requests under FIPPA are not “coextensive”, there is significant overlap between them. Request 1 was for all records related to the respondent from December 18 to December 9, 2020. Request 2 was for all records containing the respondent’s personal information from December 9, 2020 to February 27, 2021. Request 4 was for all records containing the respondent’s personal information from December 9, 2020 to December 9, 2021. On this basis, it seems obvious that the records responsive to Request 5 dated from February 1, 2020 to December 9, 2021 would already have been disclosed under FIPPA, since any records relating to one of the labour grievances or to the HRT Complaint would necessarily relate to the respondent and contain the respondent’s personal information. In other words, I agree with the CRT that, at least for these dates, the records that would be responsive to Request 5 are a subset of those disclosed in response to Requests 1, 2, and 4.

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<sup>4</sup> CRT’s initial submission at 4-6.

<sup>5</sup> Respondent’s submission at paras 13 and 25-29.

<sup>6</sup> CRT’s reply submission at paras 3-12.

[18] As for the respondent's argument that the CRT's responses to her previous requests have been deficient or "remain outstanding", I am not persuaded that this is a relevant consideration. On this application, the issue of whether the CRT's previous responses were complete or deficient is not before me. If the respondent took the position that the CRT's previous responses were deficient – that the CRT did not adequately search for responsive records, or that the CRT unlawfully redacted portions of the records it disclosed to her – she could have requested that the OIPC review those responses. The comments she attached to Request 3 ("You have 30 days to respond failing which this matter will be escalated to the OIPC." and "Do you want me to now advance as a complaint to the OIPC, the failure of the CRT to acknowledge and respond to the correction request of August 25, 2021 or would you like me to agree to an extension to give you an opportunity to respond now?") demonstrate that she was aware of the possibility of requesting a review or making a complaint. In addition, the CRT's responses to Requests 1 through 4 expressly invite the respondent to contact the OIPC if she had any concerns about them.<sup>7</sup> In any event, those responses are not at issue on this application. Even if they were, nothing about what the applicant says about the CRT's responses to her previous access requests persuades me that there is some reason to doubt their completeness or the validity of the CRT's reliance on provisions of FIPPA to withhold information.

[19] Likewise, the applicant referred to no authority (and I am not aware of any) for the proposition that records previously disclosed by a public body in response to an access request do not count as "disclosed" for the purposes of s. 43(b) if information in them has been withheld under FIPPA. In my view, it would defeat the purpose of s. 43(b) (and the provisions of s. 53 prescribing a limited window of time in which to challenge a public body's refusal of access to information) to allow access applicants to impugn the validity of a public body's previous response by challenging the public body's application of FIPPA after the time allowed to the applicant to do so has expired.

[20] Taking the above into account, I find that records that would be responsive to Request 5 from February 1, 2020 to December 9, 2021 have been disclosed to the respondent under FIPPA, and have therefore been "disclosed to the applicant" for the purposes of s. 43(b). I will not consider that subset of already-disclosed records responsive to Request 5 any further in this order.

[21] On the other hand, I find that records responsive to Request 5 which are dated December 10, 2021 to June 30, 2022 have not been disclosed to the respondent under FIPPA, because none of the respondent's previous access requests have covered that date range. I next turn to consider whether this subset of Request 5 has been disclosed in another way.

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<sup>7</sup> CRT's Exhibits C, E, and H.

*Disclosure in the HRT Complaint*

[22] The CRT says it has disclosed all records responsive to Request 5 in the HRT's discovery process. It suggests that the reason the respondent made Request 5 is so that the CRT would be required to "organize" the respondent's evidence for the purposes of the HRT Complaint.<sup>8</sup>

[23] The respondent disputes that all records responsive to Request 5 were disclosed in the HRT Complaint. She also says the HRT's disclosure process is not the same as disclosure under FIPPA, since it does not provide the respondent with unrestricted access to the responsive records. She says FIPPA's right of access operates independently of disclosure processes in other proceedings, and that it would defeat FIPPA's purposes to allow a public body to rely on "partial and constrained" disclosure in other proceedings to evade its obligations under FIPPA.<sup>9</sup> In reply, the CRT says its disclosure in the HRT Complaint has been thorough, and encompasses all disclosable records sought in Request 5.<sup>10</sup>

[24] Assuming, for the sake of argument, that all records responsive to Request 5 were disclosed in the HRT Complaint (although I do not make such a finding), in my view that would not count as "disclosure" for the purposes of s. 43(b). The OIPC's orders have consistently rejected the proposition that court or tribunal discovery processes displace the right of access granted by FIPPA.<sup>11</sup> Records disclosed in those processes may be subject to undertakings or other restrictions on their use, whereas disclosure under FIPPA is not subject to any such restriction. Nothing in the CRT's submissions persuades me that disclosure made in an HRT proceeding is equivalent to a right of access under FIPPA.

[25] I therefore find that records responsive to Request 5 from December 10, 2021 to June 30, 2022 have not been disclosed to the respondent for the purposes of s. 43(b).

*A record accessible from another source*

[26] The CRT says the records responsive to Request 5 are accessible by the respondent from another source: the disclosure the CRT has already made in the HRT Complaint.<sup>12</sup>

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<sup>8</sup> CRT's initial submission at 6.

<sup>9</sup> Respondent's submission at paras 44-52.

<sup>10</sup> CRT's reply submission at paras 14-16.

<sup>11</sup> Order F24-98, 2024 BCIPC 112 (CanLII) at para 30; Order P24-04, 2024 BCIPC 18 (CanLII) at para 27; Order F17-40, 2017 BCIPC 44 (CanLII) at para 4.

<sup>12</sup> CRT's initial submission at 6.

[27] The respondent says the CRT's disclosure in the HRT Complaint has been incomplete, and that even if it had been complete, s. 43(b) requires that "the requested records be reasonably accessible in a meaningful and practical way": the "other source" must provide access that is "substantially equivalent in scope, timeliness, and control to a request under FIPPA".<sup>13</sup> In reply, the CRT says the fact that the respondent has made requests to the HRT that it order the CRT to disclose additional records is an acknowledgement that the records are available from another source.<sup>14</sup>

[28] In my view, the same line of reasoning I followed in relation to records that have already been disclosed applies equally to the consideration of whether records are accessible from another source: the accessibility of records in another proceeding, which may be subject to restrictions, cannot take the place of FIPPA's right of access. As a result, I am not persuaded that the records responsive to Request 5 from December 10, 2021 to June 30, 2022 are accessible by the respondent from another source.

*Conclusion on s. 43(b)*

[29] To summarize, I find that some of the records responsive to Request 5 (those from February 1, 2020 to December 9, 2021) have been disclosed to the respondent in response to her previous FIPPA requests. Section 43(b) therefore applies to those records. I have decided to grant the CRT relief with respect to them and will discuss that relief below.

[30] The remaining records (those from December 10, 2021 to June 30, 2022) have not been disclosed to the respondent and are not available from another source. Section 43(b) does not apply to them. I will go on to consider whether the CRT is entitled to relief under s. 43(c) with respect to them.

***Unreasonable interference with operations because the request is repetitious or systematic – s. 43(c)***

[31] I will next consider whether to authorize the CRT to disregard the remainder of Request 5 under s. 43(c)(ii) for the reason that responding to it would unreasonably interfere with the CRT's operations because it is repetitious.

*Unreasonable interference with the CRT's operations*

[32] The CRT says responding to Request 5 would unreasonably interfere with its operations. It explains that in the past four years, the number of disputes coming to it have increased by 60%, but its number of full-time staff has increased by only 30%, leading to "overwhelming backlogs at every stage of its

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<sup>13</sup> Respondent's submission at paras 35-42.

<sup>14</sup> CRT's reply submission at para 15.

dispute resolution process”. It says responding to Request 5 would take a full-time staff member three to four weeks to review an estimated 2,888 potentially responsive records. It says responding to requests such as Request 5 would interfere with its statutory mandate, which is to provide speedy dispute resolution, and unfairly affect other members of the public who are awaiting resolution of their matters.<sup>15</sup>

[33] The respondent says the CRT’s estimate of the time it would take to respond to Request 5 does not establish unreasonable interference. She says responding to the request is a “defined and finite task” that “reflects the ordinary administrative effort associated with processing access requests of this nature”. She says further that the CRT’s estimate, in the absence of evidence about the CRT’s resources, staffing constraints, or workload, is insufficient to establish unreasonable interference.<sup>16</sup>

[34] The CRT did not provide any evidence supporting its very general assertions about the potential disruption of its operations that would result from its being required to respond to Request 5. The CRT has the burden of establishing the facts supporting a finding of unreasonable interference under s. 43(c). In the absence of any evidence on this point, I cannot make such a finding.

#### *Repetitious*

[35] Since I have found that the CRT has not established that responding to Request 5 for the period December 10, 2021 to June 30, 2022 would unreasonably interfere with its operations, there is no need to consider whether Request 5 is repetitious.

#### *Conclusion on s. 43(c)*

[36] For the reasons given above, I conclude that s. 43(c) does not apply.

#### ***What relief, if any, is appropriate?***

[37] I found above that s. 43(b) applies to records that would be responsive to Request 5 dated from February 1, 2020 to December 9, 2021 because they have been disclosed to the respondent. I am persuaded that some relief with respect to this portion of Request 5 is appropriate, and I authorize the CRT to disregard it.

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<sup>15</sup> CRT’s initial submission at 6-7.

<sup>16</sup> Respondent’s submission at paras 75-83.

[38] As for the remainder of Request 5 (i.e., the date range from December 10, 2021 to June 30, 2022), I did not find that any provision of s. 43 applies, and am not persuaded that any relief is appropriate with respect to it.

[39] The CRT also asks that if I do not approve its request to disregard Request 5, I grant it a 60-day extension of time to fulfill the request.<sup>17</sup> However, in the absence of any evidence about the CRT's operations or the anticipated impact on them of responding to Request 5, I am not persuaded that such an order is appropriate. Moreover, I have allowed the CRT to disregard a large portion of the date range contemplated by Request 5, which should substantially reduce the time and effort required to respond to it. I also note that s. 10 of FIPPA provides various mechanisms for a public body to extend the time it may take to respond to a request.

## **CONCLUSION**

[40] For the reasons given above, I make the following order under s. 58 of FIPPA:

1. The CRT is authorized to disregard the portions of Request 5 covering the date range from February 1, 2020 to December 9, 2021.
2. The CRT is not authorized to disregard the portion of Request 5 covering the date range December 10, 2021 to June 30, 2022, and must respond to it.

May 4, 2026

### **ORIGINAL SIGNED BY**

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David S. Adams, Adjudicator

OIPC File No.: F26-00883

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<sup>17</sup> CRT's initial submission at 7.