

Order F26-72

METRO VANCOUVER REGIONAL DISTRICT

Erika Syrotuck
Adjudicator

August 21, 2026

CanLII Cite: 2026 BCIPC 91

Quicklaw Cite: [2026] B.C.I.P.C.D. No. 91

Summary: Metro Vancouver Regional District asked the Commissioner for permission to disregard an access applicant's access requests under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that the requests were not vexatious, nor would responding to any one of them unreasonably interfere with the public body's operations. The adjudicator found that some of the access applicant's requests are frivolous because the requests were made with the expectation that there would be no responsive records. The adjudicator also found that some of the access requests were an abuse of the right to make a request because they are systematic. The adjudicator authorized Metro Vancouver to disregard some, but not all, of the access requests. In addition, the adjudicator authorized Metro Vancouver to disregard any of the access applicant's future requests over and above two open requests at a time for a period of one year.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 43(a), 43(c)(ii), 43(d)(i).

INTRODUCTION

[1] This inquiry is about an application by the Metro Vancouver Regional District (Metro Vancouver) to disregard five access requests under s. 43 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). Metro Vancouver seeks relief under several different provisions of s. 43.

[2] After the inquiry began, the legislative assembly of British Columbia passed Bill 9 – *Freedom of Information and Protection of Privacy Amendment Act, 2026 (Amendment Act)* which amended FIPPA, including changes to s. 43.¹ I gave the parties an opportunity to make submissions on these changes. Both

¹ *Amendment Act* s. 28.

Metro Vancouver and the respondent made submissions on the effect of the legislative changes on the inquiry.

[3] The parties provided extensive materials in this application. In these reasons, I have only referred to what I have determined is relevant to my decision in the application.

Preliminary Issue – legislative changes

[4] On May 28, 2026, the *Amendment Act* received Royal Assent. Amendments relevant to s. 43 came into force on that same day. Those amendments are as follows:

12 Section 43 is amended

(a) by adding the following paragraph:

(a.1) the behaviour of the applicant is abusive or malicious, and

(b) by striking out "or" at the end of paragraph (b) and by repealing paragraph (c) and substituting the following:

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

(i) the public body, or

(ii) the ministry of the minister responsible for this Act, or

(d) the request is

(i) an abuse of the right to make a request under section 5 or 29 because the request is repetitious or systematic, or

(ii) excessively broad.

Transition – grounds for disregarding a request

27 Section 43 of the Freedom of Information and Protection of Privacy Act, as amended by this Act, applies to requests received before, on or after the date this section comes into force.

[5] In its supplemental submission on the impact of the *Amendment Act*, Metro Vancouver asked that I consider its previous arguments with respect to the new provisions.

[6] The respondent says that the amendments raise a fairness concern because it adds language that did not exist at the time the requests were made. As such, the respondent says that the new language should not be applied casually, after the fact or by implication, especially where Metro Vancouver is asking for an order that would significantly restrict his access rights.

[7] I hear the respondent's concerns about fairness in relation to the timing of the amendments. However, the wording of the transition provision clearly signals that the amendments are intended to be retroactive. This means that the legislative changes set out in s. 12 apply to this inquiry, even though the inquiry began before the changes came into force. As such, the issues and analysis in this order reflect the amended version. I will apply both parties' submissions to the new version of s. 43.

Preliminary issue – scope of the inquiry

[8] The parties have made submissions about Metro Vancouver's duty to assist as set out in s. 6(1) of FIPPA and about whether Metro Vancouver met the timeline for responding as set out in s. 7. Neither s. 6 nor s. 7 are issues listed in the Notice of Inquiry. I have considered these submissions only as they relate to the s. 43 issues.

ISSUES

[9] At this inquiry, I must decide the following issues:

1. Are the requests frivolous or vexatious within the meaning of s. 43(a)?
2. Would responding to the access requests unreasonably interfere with Metro Vancouver's operations under s. 43(c)(i)?
3. Are the requests at issue an abuse of the right to make a request under ss. 5 or 29 because they are repetitious or systematic as in s. 43(d)(i) of FIPPA?
4. If the answer to any of the above questions is yes, what remedy, if any, is appropriate?

[10] FIPPA is silent on the burden of proof with respect to s. 43. However, it is well established from past orders that the burden of proof is on Metro Vancouver to show that s. 43 applies.

DISCUSSION

Background

[11] Metro Vancouver is a regional district.²

² A regional district is a public body under the definitions of "local government body", "local public body" and "public body" in Schedule 1 of FIPPA.

[12] The respondent is the Mayor of Coquitlam.³ The respondent explains that he has been a member of the Board of Directors and various Metro Vancouver committees for two decades.

[13] In 2022, confidential Metro Vancouver documents were accessed by the family member of a City of Coquitlam employee (Employee) without authorization (the Breach). From what I gather from the parties' submissions, the Employee used the respondent's log-in credentials to access the documents. According to the respondent, sharing log-in credentials with municipal staff was an informal, but common, practice.

[14] I gather that Metro Vancouver hired an external investigator later that year to investigate circumstances relating to the Breach (Investigation).

[15] Metro Vancouver says that the respondent raised concerns with the actions taken by Metro Vancouver relating to the Breach and is now involved in confidential settlement negotiations to address concerns on both sides.

[16] In addition to the five access requests that are the subject of this application, the respondent has made eight other access requests to Metro Vancouver since 2024.

The requests at issue

[17] Metro Vancouver is asking the Commissioner for authorization to disregard all five access requests. The respondent made these requests in January and February 2026. The requests generally seek records related to Metro Vancouver's actions relating to the Breach, including the Investigation.

[18] The first request is an eight-part request for records relating to various topics such as: a specific memo; a consent order; the Metro Vancouver Chief Administrative Officer's conflicts of interest, oaths taken and earned time off; human resource policies and documents; and documents related to a forensic expert's report (First Request).⁴

[19] The second request is for all records relating to any other investigation (by Metro Vancouver or anyone else) of:

- the Breach,
- the accuracy and correctness of the Investigation,
- any perceived procedural failures by Metro Vancouver regarding the Investigation, and

³ The respondent agreed to be identified in this way.

⁴ Request 2026-007.

- the treatment of the respondent.

(Second Request)⁵

[20] The third request is for:

- All investigation(s), review(s), or communication(s) by Metro Vancouver (including the [Greater Vancouver Sewer & Drainage District] and its other entities) into the actions of those other Board Members who had shared log-in credentials and/or Closed Metro [Vancouver] reports with their municipal staff January 1, 2015 to December 31, 2023, including those Board Members who have acknowledged doing so.
- Any communications in Metro [Vancouver]'s possession from Metro [Vancouver] staff to one or more Board Members between January 1, 2015 to October 5, 2022, instructing Board Members to cease sharing Closed agendas or log-in credentials with their municipal staff, or similar communications to a municipal staff person on the same subject, and any response(s).
- Any records in Metro [Vancouver]'s possession aimed at ascertaining which Board Members were sharing Closed materials with any of their municipal staff, January 1, 2015 to February 24, 2026.
- To the extent not covered above, and only for those Board Members who sought log-in credentials for one of their municipal staff after the implementation of the Confidentiality Framework, any records indicating that a Director's assistant, whatever their job title may be, who signed an NDA under the new program was privy to effectively the same or similar access under the previous policy, November 16, 2022 to February 24, 2026.

(Third Request).⁶

[21] The fourth request is for all records of:

- Metro Vancouver or its Board asking a member of local government to not appoint a specific local government elected official (its Mayor or a specific Councillor) as Board member, since the year 2000.
- Metro Vancouver or its Board expressing to a member of local government Metro's or the Board's preference regarding Board member appointments.
- Metro Vancouver refusing to abide by, or attempting to fetter, the choice by a Local Government of its Metro [Vancouver] representative(s) to the Board.

⁵ Request 2026-012.

⁶ Request 2026-014.

- Communications between the Chair and Metro [Vancouver] staff regarding the appointment of elected officials in the region to Committees, or the recommendation or rejection of a candidate for appointment to a committee.

(Fourth Request)⁷

[22] The fifth request is for all fee estimates provided to FOI applicants since January 2015 (Fifth Request).⁸

[23] As I previously mentioned, the respondent made eight past requests. I find that seven of these past requests were also related to the same general topics of the Breach and the Investigation. Many parts of these requests are for specific correspondence, and there are also requests for meeting minutes, agendas, and records relating to the Metro Vancouver's Chief Administrative Officer (CAO), among other things.⁹

Section 43

[24] Section 43 gives the commissioner the power to grant the extraordinary remedy of authorizing a public body to disregard an access request. This provision says:

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

- (a) the request is frivolous or vexatious,
 - (a.1) the behaviour of the applicant is abusive or malicious,
- (b) the request is for a record that has been disclosed to the applicant or that is accessible by the applicant from another source,
- (c) responding to the request would unreasonably interfere with the operations of
 - (i) the public body, or
 - (ii) the ministry of the minister responsible for this Act, or
- (d) the request is

⁷ Request 2026-015, date ranges omitted.

⁸ Request 2026-019.

⁹ Metro Vancouver provided me with a copy of each request and its response in Appendices B through I to its initial submissions.

- (i) an abuse of the right to make a request under section 5 or 29 because the request is repetitious or systematic, or
- (ii) excessively broad.

[25] Public bodies do not have the authority under FIPPA to disregard access requests on their own. Authorizing a public body to disregard an access request is part of the Commissioner's oversight function.¹⁰

[26] Given that relief under s. 43 curtails or eliminates the right to access information, s. 43 applications must be carefully considered.¹¹ Granting s. 43 applications should be the "exception" and not a mechanism for public bodies to avoid their obligations under FIPPA.¹²

[27] However, s. 43 serves an important purpose. It exists to guard against the abuse of the right of access.¹³ It recognizes that when an individual overburdens a public body with access requests, it interferes with the ability of others to legitimately exercise their rights under FIPPA.¹⁴ In this way, s. 43 is "an important remedial tool in the Commissioner's armory to curb abuse of the right of access."¹⁵

[28] Relief under s. 43 is at the Commissioner's discretion.¹⁶

Section 43(a) – frivolous or vexatious

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

[30] 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.

[31] Frivolous requests include requests that are trivial or not serious.¹⁷ For example, a past OIPC order found that a request was frivolous because the respondent cancelled a large access request after the public body had spent significant time processing the request.¹⁸

¹⁰ Order F18-25, 2018 BCIPC 28 (CanLII) at para 14.

¹¹ Auth (s. 43) 99-01 Available at <https://www.oipc.bc.ca/decisions/170> at page 3.

¹² Auth (s. 43) (19 December 1997), available at <https://www.oipc.bc.ca/decisions/168> at page 1.

¹³ Auth (s. 43) 99-01. Available at <https://www.oipc.bc.ca/decisions/170> at page 7.

¹⁴ Auth (s. 43) 99-01. Available at <https://www.oipc.bc.ca/decisions/170> at page 7.

¹⁵ *Crocker v British Columbia (Information and Privacy Commissioner)* 1997 CanLII 4406 [Crocker] at para 33.

¹⁶ Order F22-61, 2022 BCIPC 69 (CanLII) at para 56.

¹⁷ Auth (s. 43) 02-02 [2002] BCIPCD No. 57 at para 27.

¹⁸ Order F18-09, 2018 BCIPC 11 (CanLII) at para 29.

[32] 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.¹⁹ Past orders have found requests to be vexatious because:

- The purpose of the requests was to pressure the public body into changing a decision or taking an action;²⁰
- The respondent was motivated by a desire to harass the public body;²¹
- The intent of the requests was to express displeasure with the public body or to criticize the public body's actions;²² and
- The request was intended to be punitive and to cause hardship to an employee of a public body.²³

[33] In Auth (s. 43) 02-02, Commissioner Loukidelis said that the fact that one or more requests are repetitive may also support a finding that a specific request is frivolous or vexatious.²⁴

Are the requests frivolous?

[34] Metro Vancouver submits that the requests at issue are frivolous because they appear to be related to the respondent's efforts to gather evidence to support the respondent's perception that he has been singled out or treated unfairly by Metro Vancouver. On this basis, Metro Vancouver says the requests are not a genuine exercise of the right to access information.

[35] The respondent says that the primary purpose of the requests was to seek information related to concerns he has about the actions of Metro Vancouver and of key administrative staff.

[36] Metro Vancouver says that, in several instances in the respondent's submission, the respondent affirms that he has made a request in anticipation of receiving no records. It points to the following examples:

¹⁹ Auth (s. 43) 02-02 [2002] BCIPCD No. 57 at para 27.

²⁰ Decision F08-10, 2008 CanLII 57362 (BC IPC) at paras 38-39; Order F13-16, 2013 BCIPC 20 at para 20.

²¹ Order F13-18, 2013 BCIPC 25 (CanLII) at para 36.

²² Decision F10-11, 2010 BCIPC 51 (CanLII); Order F16-24, 2016 BCIPC 20 (CanLII) at para 40; F20-15, 2020 BCIPC 17 (CanLII) at para 33.

²³ Order F19-44, 2019 BCIPC 50 (CanLII) at para 33.

²⁴ Auth (s. 43) 02-02 [2002] BCIPCD No. 57, at para 27.

- The respondent says that he expects the answer to the Second Request to be “no responsive records.”²⁵
- The respondent says that the Third Request seeks to determine if staff conducted any investigations or other enforcement into any other Directors whom Metro Vancouver was aware shared log-in credentials with their staff and suspects the answer will be no.²⁶
- With respect to the Fourth Request, the respondent says that he truly expects there to be no records because he expects that Metro Vancouver has never controlled or fettered member municipalities’ independent choice of Board Members, but if records were located, he would be interested to see the context.²⁷

[37] Metro Vancouver says that the fact that the respondent does not expect there to be records in relation to several of his requests shows that he does not have a genuine interest in those records.

[38] The respondent says that since he was informed that he could not make access requests predicated on a question, he was required to frame the request as a request for the record itself, even if he believed it didn’t exist.

[39] I am not persuaded that the requests are frivolous because they may be made in an effort to show the respondent was treated unfairly.

[40] However, I am persuaded that an access request made with the expectation that there are no responsive records is frivolous. In my view, making such a request indicates that the request is not a serious exercise of the right to request records under FIPPA.

[41] While I hear the respondent’s concerns about the format of his access requests, it is worth noting that the scheme of access to information in Part 2 of FIPPA is built around the right of access to records. That is the mechanism by which FIPPA aims to make public bodies more accountable to the public.²⁸

[42] I find that the respondent’s submissions leave little doubt that he believes there will be no responsive records to the Second and Fourth Requests. The respondent has said so in his submissions. That he would be interested in records, should they exist, does not change the fact that the respondent clearly believes there are no responsive records.

²⁵ Respondent’s response submission, page 21.

²⁶ Respondent’s response submission, page 17.

²⁷ Respondent’s response submissions, page 13.

²⁸ See FIPPA, s. 2.

[43] I make a different decision with respect to the Third Request. In my view, suspecting that there may be no records is not the same as making an access request with a clear expectation that there will be no records.

[44] Based on the above, I have found that the Second and Fourth Requests are frivolous. I will consider whether the non-frivolous requests are vexatious.

Are the requests vexatious?

[45] Metro Vancouver submits that the requests at issue are vexatious because they were made in bad faith and/or for a reason other than a genuine interest in seeking information.

[46] Metro Vancouver says that part of the First Request relates to the Supreme Court proceedings related to the Breach and the other parts appear to be about performance management and compensation documents about Metro Vancouver's CAO. Metro Vancouver says that, while this request does not appear vexatious on its face, the request builds on earlier requests and appears to be aimed at finding instances of malfeasance or misconduct by the CAO or that show that the CAO is not qualified to hold his position, in order to bolster the respondent's case against Metro Vancouver. Metro Vancouver says that this is not a genuine effort to seek information.

[47] Metro Vancouver says that the Third Request is vexatious because it is related to the substance of the respondent's dispute with Metro Vancouver external to the freedom of information process.

[48] Metro Vancouver says that the Fifth Request is vexatious because it appears to be made for the purpose of auditing fees charged by Metro Vancouver, not out of a genuine effort to seek information. It says that this request is similar to a prior request (not at issue in this application) where the applicant seemed to be seeking to vet the validity of Metro Vancouver's FOI processes rather than genuinely seeking information. Metro Vancouver provided me with a copy of this prior request and its response.²⁹

[49] The respondent says that Metro Vancouver provides no evidence that the requests were made in bad faith or to harass. The respondent says that the bulk of the requests are focused on Metro Vancouver's handling of the Breach, which is exactly the kind of thing that access to information laws are meant for. The respondent says that Metro Vancouver seems to be treating the context of the requests as vexatious rather than the requests themselves.

²⁹ Metro Vancouver's initial submission, Appendix I.

[50] Further, the respondent says that he has not used any materials he has secured through the freedom of information process to publicly criticize Metro Vancouver and he has been diligent in trying to protect Metro Vancouver from harm. The respondent says that he has no interest in showing that Metro Vancouver's CAO is not qualified to hold his position or in challenging his qualifications; particularly as the respondent was involved in hiring the CAO.

[51] With respect to the Fifth Request, the respondent says that he made the request to learn when the per-page fee was implemented and to confirm that Metro Vancouver's fee structure is consistent with FIPPA and with Metro Vancouver's own bylaw. The respondent says that that he was genuinely seeking information in his role as a Board member of Metro Vancouver.

[52] The respondent says that past OIPC orders show that requests are not vexatious just because the access applicant's actions are adverse to the public body's interests. The respondent says that Metro Vancouver presents no rationale for its suggestion that the respondent is not interested in the requested information. Rather, the respondent says that Metro Vancouver's main argument shows that there is a valid reason he wants the information, but Metro Vancouver does not like the reason.

[53] The respondent says that past OIPC orders confirm that an applicant involved in court processes is still able to use FIPPA for access to information.³⁰ I understand the respondent to be saying that the ongoing legal circumstances between him and Metro Vancouver are not a bar to his access requests.

[54] In reply, Metro Vancouver says that it is not making this application because the respondent is adverse in interests. Rather, it says the respondent appears to be seeking evidence to support his preconceived notion that he has been singled out or treated unfairly.

[55] Metro Vancouver also says that the respondent's assertion that his "hope throughout this was that Metro Vancouver would simply acknowledge several 'mistakes'" in the CAO's affidavits shows that the respondent is using access requests under FIPPA to pressure the public body into changing a decision or taking an action.³¹

[56] The respondent admits that he did hope that Metro Vancouver would acknowledge mistakes relating to the CAO's affidavits but says that his hope was not related to the access requests at issue. The respondent points to the fact that the requests at issue were made years after the affidavits were filed.

³⁰ The respondent cites Orders F17-40, 2017 BCIPC 44 (CanLII) and F14-24, 2014 BCIPC 27 (CanLII).

³¹ Metro Vancouver refers to the respondent's submission, page 9.

[57] Based on the submissions of the parties, I am not persuaded that the purpose of making the requests was to harass, burden or criticize the public body.

[58] Regarding the Fifth Request, I am not persuaded that, even if the request is an attempt to audit the fees, that this is vexatious in the way that past orders have interpreted this term. I am also not persuaded that the Third Request is vexatious because it may be connected to the ongoing dispute between the parties.

[59] With respect to the First Request, Metro Vancouver has alleged that the respondent's purpose in making the request is to find instances of malfeasance or misconduct by the CAO. I am not persuaded that using access requests to uncover wrongdoing is vexatious. Further, I take the respondent's point with respect to the timing of the requests in relation to the affidavits. I accept that the request came years after the affidavits and that for this reason, they are unlikely to be related in the way Metro Vancouver says.

[60] In sum, Metro Vancouver has not persuaded me that the requests at issue are vexatious within the meaning of s. 43(a) of FIPPA.

Section 43(c)(i) - unreasonable interference with the public body's operations

[61] Section 43(c)(i), which was introduced through the *Amendment Act* allows the Commissioner to authorize a public body to disregard an access request because responding to the request would unreasonably interfere with the operations of the public body.

[62] This provision is similar to the previous s. 43(c), which allowed the Commissioner to authorize a public body to disregard an access request because responding to the request would unreasonably interfere with the operations of the public body because the request was repetitious or systematic, or excessively broad.

[63] The effect of the change is that the question of whether responding to the access request would unreasonably interfere with the public body's operations is now its own ground for the Commissioner to authorize a public body to disregard an access request.

[64] Past orders interpreting the previous s. 43(c) have said that what constitutes unreasonable interference with a public body's operations rests on an objective assessment of the facts and that it will vary depending on the size and nature of the public body's operation.³² In determining whether a request

³² Crocker, *supra* note 15 para 37.

unreasonably interferes with the operations of the public body, past orders have considered the impact of responding to the relevant requests on the rights of other access applicants.³³ Nothing in the *Amendment Act* or the materials before me persuades me to depart from this interpretation.

[65] Metro Vancouver says that the respondent's requests create a disproportionate burden relative to other requests received by Metro Vancouver at nearly all stages of processing the requests. Specifically, it says that:

- six of the respondent's 13 requests required at least some clarification;
- five of the requests have five or more parts;
- 11 of the 13 requests have some overlap in focus which makes the process of determining overlap within each request as well as among requests especially time consuming;
- five requests have required time extensions under s. 10(1)(b) of FIPPA due to the volume of records requested and searched;
- on average, the respondent's closed requests have returned 983 pages of records gathered internally for processing, which is higher than the average of 356 pages across all requests it receives; and
- the respondent has received 4,494 pages of responsive records, an average of 562 pages per closed request, which is higher than the average of 113 pages across all closed requests in 2024-2026.

[66] Regarding the requests at issue, Metro Vancouver says that three past requests of a similar size have required an average of 28.2 hours of time from employees other than those who work on its dedicated FOI team. It estimates that responding to the First, Second, Third and Fourth Requests would take roughly 113 hours of time from employees other than those in its FOI department.

[67] Metro Vancouver says that the First Request is lengthy and overlapping and notes that it has 32 parts and sub parts. Metro Vancouver provided a fee estimate for the First Request, estimating that responding to the request would take 28.85 hours.

[68] Metro Vancouver also says that responding to nearly all the respondent's requests requires the Corporate Solicitor, the Director of Legal Services, the CAO and/or the Corporate Officer to locate, retrieve and produce records that are potentially responsive.

[69] The respondent says the following about his communications with Metro Vancouver:

³³ Order F17-18, 2017 BCIPC 19 at para 40; Order F13-18, 2013 BCIPC 25 at para 31.

- some of the communications he received were asking if he was still interested in continuing with the request;
- he asked repeatedly for advice on how to make his requests easier to respond to;
- two or three of his “clarifications” resulted in narrowing the request;
- in one case, he sent three reminder emails about one of his requests which were ignored; it took five months to get the remaining responsive records, 108 days late; and
- Metro Vancouver could have reduced its own workload with respect to three requests because more than half the pages the respondent received were non-responsive to those requests.

[70] The respondent says that whether responding to the access requests is time-consuming is different than whether responding to the access requests would unreasonably interfere with a public body’s operations.

[71] The respondent also says that he filed his first ever request in August 2024.³⁴ The respondent explains that he made some assumptions about how Metro Vancouver would interpret the request that led to him receiving more records than he expected. He says that 3,500 of the 4,494 pages that Metro Vancouver has provided were in response to this request. The respondent says that since that request, he was worked to refine his requests and that the requests since then represent a lower average workload. I understand the respondent to be saying that his first ever request was an outlier and is not representative of the average workload of responding to his requests.

[72] I take the respondent’s point with respect to his first request being somewhat of an outlier. I accept that his subsequent requests generated far fewer pages of responsive records.

[73] I also find Metro Vancouver’s submissions about the average number of hours spent on similar requests somewhat hard to accept. It estimated that responding to three past access requests would take 29.75 hours, 49.75 hours and 5.5 hours, respectively.³⁵ This is such a wide variation that I do not find Metro Vancouver’s submission that the First through Fourth Requests are comparable to the three prior requests especially helpful.

[74] While I accept that Metro Vancouver would spend 28.85 hours on responding to the First Request, it seems to me that the Second, Third and Fourth requests are considerably narrower in scope than the First Request. They

³⁴ Requests 2024-082 and 2024-083. The respondent says that the public body split the request in two on its own accord. Appendix C, page 3 to Metro Vancouver’s initial submissions confirms that the public body treated it as two requests.

³⁵ Fee estimates in Metro Vancouver’s initial submissions, Appendix C, page 44-45; Appendix E pages 31-32; and Appendix G, pages 12-13.

are not lengthy multipart requests. They appear to me to be of average complexity, and Metro Vancouver has not provided sufficient information indicating otherwise.

[75] All of this is to say that I do not find that responding to any one of the respondent's access requests would unreasonably interfere with Metro Vancouver's operations. Given my other findings in this application, I will address unreasonable interference with respect to relief, below.

Section 43(d)(i) – abuse of the right to make a request because the request is systematic or repetitious

[76] As I mentioned above, s. 43(d)(i) is a new provision as a result of the *Amendment Act*. This provision gives the commissioner discretion to authorize a public body to disregard an access request because:

(d) the request is

(i) an abuse of the right to make a request under section 5 or 29 because the request is repetitious or systematic, or

[77] The result of the change is that s. 43(d)(i) separates unreasonable interference from whether the request is systematic or repetitious. Metro Vancouver has only made arguments with respect to systematic, rather than repetitious requests.

Is the request an abuse of the right to make a request because the request is systematic?

[78] The OIPC has long defined systematic requests as requests made according to a method or plan of acting that is organized and carried out according to a set of rules or principles.³⁶ In line with this, past orders identified the following characteristics of systematic requests:

- 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;
- revisiting 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 OIPC;

³⁶ Auth. (s. 43) 99-01, <http://www.oipc.bc.ca/decisions/170> at page 3.

- behavior 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; and
- an increase in frequency of requests over time.³⁷

[79] Past orders also provide that in order to determine whether the request(s) at issue are an abuse of the right of access because they are systematic, the whole pattern of requests including previous requests may be relevant.³⁸ I see no reason to depart from these principles.

[80] However, as I noted above, the *Amendment Act* introduced the language of “abuse of the right to make a request” to preface “because the request is systematic or repetitious.”

[81] In determining how this addition of the words “abuse of the right to make a request” should inform the analysis under s. 43(d)(i), it is important to consider the purpose of the provision and how it fits into FIPPA.

[82] As set out in s. 2(1), one of the purposes of FIPPA is to make public bodies more accountable to the public. Giving the public a right to records is one of the mechanisms under FIPPA which serves these purposes.³⁹

[83] However, this right is not unlimited. As I said above, s. 43 exists to guard against abuse of the right to make a request. What the provisions of s. 43 share is that they all seek to provide relief for misuse, in one way or another, of the right to make a request. That includes requests made without a genuine desire to access the requested records, records that are available from another source or for requests that would use an unfair share of a public body’s resources.

[84] I have also considered how this office has determined whether an applicant is abusing FIPPA’s processes. In my view, the concepts are linked because making an access request is a process under FIPPA. Past OIPC orders have defined an abuse of process as “using a legal process for a purpose other than which is intended by law” or any circumstance in which a legal proceeding is used for an improper purpose.⁴⁰

[85] In my view, the addition of the language “abuse of the right to make a request” recognizes that not every request made in accordance with a system is an abuse of the right to make a request. Rather, an abuse occurs when there is

³⁷ For example, Order F18-37, 2018 BCIPC 40 at paras 27-28.

³⁸ Auth. (s. 43) 02-01 at para 24 [Auth. (s. 43) 02-01]. Available at <https://www.oipc.bc.ca/documents/decisions/159>.

³⁹ Section 2(1)(a) of FIPPA.

⁴⁰ Order F26-32, 2026 BCIPC 40 (CanLII) at para 27, citing Decision F10-07, 2010 BCIPC 37 (CanLII) at para 17 and Order F23-23, 2023 BCIPC 27 (CanLII) at paras 38-39.

an underlying pattern that is itself indicative of a misuse of the right to make a request.

[86] Ultimately, what constitutes an abuse of the right to make a request because it is systematic is open-ended and depends on the specific facts and circumstances of each case. The focus should be on the nature and magnitude of the pattern of requests. Accordingly, in considering whether the requests before me are an abuse of the right to make a request because they are systematic, I will consider whether:

- The request is made according to a method or plan of acting that is organized and carried out according to a set of rules or principles;⁴¹ and
- The pattern of requests indicates a misuse of the right to make a request, some indicia of which may include, but are not limited to:
 - using information received in response to an access request to make future access requests or complaints to prolong the dispute with a public body;⁴²
 - revisiting earlier access requests;
 - an increase in volume or frequency of the requests over time;
 - 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; and
 - routinely 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.

[87] Finally, in order to determine whether the request(s) at issue are an abuse of the right of access because they are systematic, I must look at the whole pattern of requests including previous requests and the requests I have found to be frivolous, above.

Parties' submissions

[88] Metro Vancouver says that the requests at issue are part of a pattern of requesting more records based on what the respondent sees in records already received or combing over records deliberately in order to identify further issues. It provided examples. Metro Vancouver also says that, in some cases, the

⁴¹ Auth. (s. 43) 99-01, <http://www.oipc.bc.ca/decisions/170> at page 3.

⁴² This factor has been expressed in previous orders both as “a pattern of requesting more records, based on what the respondent sees in records already received” and as “combing over records deliberately in order to identify further issues.” Considering how these factors have been approached in those past orders, it is my view that this restatement more accurately captures the way they have been applied in those orders.

respondent has reframed earlier requests, such as the Third Request. It says that the Second Request revisits an earlier request.

[89] Metro Vancouver says that it has responded to eight of the respondent's access requests and that the respondent has requested OIPC review six times in relation to four different files. It also says that the respondent has challenged its responses in instances that did not result in an OIPC review.

[90] Metro Vancouver says that all but two of the respondent's 13 access requests relate to one or more of three themes:

- the Breach and the investigation related to it;
- employment terms for the CAO; and
- a perception of unfair treatment of the respondent in his official capacity.

[91] Metro Vancouver says that, while the requests have escalated in specificity, they do not relate to substantially new topics. With respect to an increase in frequency over time, Metro Vancouver also says that the respondent submitted four of the five requests in a seven-day period; three of which were submitted in two days.

[92] The respondent says that he made the access requests to inform his colleagues on the Board of Directors and the member municipalities across the region about matters that Metro Vancouver has withheld from them, inaccurate information that Metro Vancouver has given to them, actions taken contrary to Board direction and contrary to the interests of the region, and actions taken by Metro Vancouver that have fettered and usurped the Board's governance authority.

[93] The respondent disputes Metro Vancouver's characterization of his requests as a pattern of requesting records based on what he has already received. The respondent says that Metro Vancouver has drawn connections between access requests where there are none and says that Metro Vancouver's submissions are based on assumptions, guesses or conjecture, as evidenced by phrases like "potentially based on." The respondent admits that one request was connected to a previous access request but says that one does not make a pattern.⁴³

[94] The respondent says that, in some cases, Metro Vancouver suggested that he make some of the access requests. Further, the respondent says that he resubmitted parts of a request only because he was told by Metro Vancouver that they could not be processed as is.

⁴³ The respondent admits that part 4 of the First Request relates to 2025-058.

[95] The respondent also disputes that he made requests by combing over records in order to identify further issues. With respect to the Third Request, the respondent disputes that it is a reframing of an earlier request. He says he recognizes that there is some overlap in his requests, but he tried hard to avoid this and sought guidance from Metro Vancouver.

[96] With respect to seeking OIPC review, the respondent says that each of his requests for OIPC review is justified due to blanket redactions. The respondent provided examples.

[97] The respondent says that he intends to stop the flow of requests. He says he is working toward solutions to governance issues and the tension between Metro Vancouver Board and staff. He says he is nearing concluding that work. The respondent says that his term is almost complete, he is not running for re-election and he wants to ensure the Board has the information it needs to advance some governance solutions.

[98] Further, the respondent says that he regrets that the timing of the requests was less spaced out than he would have liked due to his health issues. The respondent says that he has offered to forgo the Fifth Request, as it is not urgent. In any case, the respondent submits that the volume and frequency alone are not sufficient indicators that the requests are systematic.⁴⁴

[99] Finally, the respondent says that his overall pattern of conduct “reflects an applicant attempting to cooperate with the public body, clarify ambiguity, refine requests where appropriate, and obtain information relevant to identifiable governance concerns” and is therefore “fundamentally inconsistent with an abuse of the statutory right of access.”⁴⁵

Analysis and findings

[100] For the reasons that follow, I find that some of the respondent’s requests are an abuse of the right to make a request because they are systematic.

[101] I accept that the respondent’s purpose in making the access requests, past and present, is to seek to hold Metro Vancouver accountable for the way it responded to the Breach. This can be seen from the fact that 11 of the respondent’s 13 access requests (the First through Fourth Requests, and seven of his prior requests) relate to the Breach, the Investigation and/or the CAO. I am persuaded that the respondent has acted in accordance with a plan to use FIPPA access requests to gather information related to these topics. More specifically, I find that the respondent methodically used FIPPA access requests to conduct his

⁴⁴ The respondent relies on Order F23-37 for this proposition.

⁴⁵ The respondent’s supplemental submission on the Amendment Act, page 12.

own governance review of Metro Vancouver's actions relating to the Breach. I am therefore persuaded that the first part of the test is satisfied.

[102] Further, I find that the respondent's pattern of making access requests indicates a misuse of the right to make requests. More specifically, I find that the respondent has a pattern of using access requests to return to the same specific records, communications, people and/or events. For example, the respondent has circled back to Metro Vancouver's response to a prior access request, has made overlapping requests and has made access requests based on information that has been previously released to him.

[103] For example, I find that the Second Request revisits a previous request.⁴⁶ The covering email to the Second Request indicates that the respondent is following up on a request made about a year and half earlier. In the email, the respondent says that he is concerned that an element from the past request may have been missed.⁴⁷ I find the respondent's explanation for why he revisited the request to be confusing and it seems to me that revisiting the request did have the effect of prolonging the dispute.

[104] Further, I find that the respondent has made overlapping requests. For example:

- The Third Request is for records related to any investigations about sharing log-in credentials including "any records in Metro [Vancouver]'s possession aimed at ascertaining which Board Members were sharing Closed materials with any of their municipal staff." I find that the request overlaps with a past request related to sharing log-in credentials.⁴⁸
- The Fourth Request includes a request for "all records" of "communications between the Chair and Metro [Vancouver] staff regarding the appointment of elected officials in the region to Committees, or the recommendation or rejection of a candidate for appointment to a committee" since 2014. I find this request overlaps with a past request for "all records regarding Metro [Vancouver]'s appointments to Committees for 2022, 2023 and 2024."⁴⁹

⁴⁶ Request 2024-082.

⁴⁷ Metro Vancouver's initial submissions, Appendix K, page 2.

⁴⁸ Request 2024-083, part 9 was for any records or correspondence with Metro Vancouver's corporate officer about the practice of sharing log-in credentials. I find it relevant that, on page 17 of his response submissions, the respondent says that the purpose of the Third Request is to determine whether the corporate officer (or others) conducted any investigations about sharing log-in credentials. In my view, this would have been captured by part 9 of Request 2024-083.

⁴⁹ Request 2024-083.

- In a past request, the respondent asked for “all expenses” submitted by Metro Vancouver’s CAO from 2018 to present.⁵⁰ I find that this overlaps with a prior request for “all travel records/costs” for the CAO since May 2022.⁵¹
- A past request includes a request for “all records of communication” between specific parties regarding Metro Vancouver’s CAO’s employment contract or salary/benefits.⁵² In my view, this overlaps with another past request for “all records associated with changes to and/or renegotiation of [the CAO’s] remuneration, benefits, etc.”⁵³

[105] In my view, these overlapping requests demonstrate that the respondent is using access requests to return to the same specific records.

[106] I can see that the respondent asked Metro Vancouver for input on narrowing his requests. He seems to suggest that this is a defence against having made overlapping requests. However, I find that the ultimate responsibility not to make overlapping access requests rests with an access applicant.

[107] Further, I can see that the respondent has used a response to a previous access request as the basis for some of the First Request. Namely, part 2 of the First Request includes a request for:

- Any communication regarding when it was that Metro [Vancouver] located the document (the date), pursuant to FOI 2025-101.
- Any communications related to the severing of the record prior to the Nov 17 FOI response to FOI 2025-101.

[108] In my view, this is a troubling example because it is a request for records that could only exist because of an earlier access request.

[109] I can also see that there are some instances where the respondent is using what he has received in access requests to request more records. For example:

- Part 3 of the First Request is for the CAO’s disclosure of conflicts of interests pursuant to a specific section of his employment contract. The Respondent previously requested and received the CAO’s employment contract.⁵⁴

⁵⁰ Request 2025-058.

⁵¹ Request 2025-043.

⁵² Request 2025-058.

⁵³ Request 2025-043.

⁵⁴ Request 2025-058.

- Part 4 of the First Request expressly states that the request is for a benefit summary referenced in a document provided in response to a past request.⁵⁵

[110] I also think that Parts 5 (a request for all records related to the CAO's earned time off) and 7 (for any oaths taken by the CAO) of the First Request are closely tied to the respondent's previous requests about the CAO's employment contract, salary and benefits.

[111] There are also some examples where the respondent has asked for records and then followed up with a request for more information about or related to those records. For example;

- Part 1 of the First Request is a request for information about a memo such as who wrote it, any drafts of it, discussions about to whom it should be sent, and who it was actually sent to, and any discussions about the level of confidentiality of it. The respondent previously asked for and received the same memo.⁵⁶
- In a past request the respondent asked for the Board resolution that restricts him from having access to the agenda and minutes of a specific meeting.⁵⁷ In a later request, he asked for the agenda, reports and minutes of that same meeting.⁵⁸

[112] On their own, the examples in the three paragraphs above would not necessarily be troubling, but combined with the other indicia, I find they indicate a pattern of returning to the same specific records, communications, people and/or events.

[113] With respect to the timing of the access requests at issue, I can see that they were made in a relatively short period of time, and the respondent acknowledges this. I accept that the respondent could not make requests for a time due to his health. However, the respondent was still ultimately in control of the spacing of his requests. I find that the requests at issue represent an increase in the frequency of requests over time.

[114] I accept that the respondent has not personally conducted himself in an abusive manner when dealing with Metro Vancouver and its FOI staff. For instance, the respondent's emails to Metro Vancouver are polite and cooperative. He did repeatedly ask for and accept Metro Vancouver's suggestions on how to formulate his access requests. His communications certainly do not demonstrate abusive behaviour. However, I am not persuaded that polite behaviour precludes

⁵⁵ Request 2025-058.

⁵⁶ Request 2025-101.

⁵⁷ Request 2024-082.

⁵⁸ Request 2024-137.

a finding that a request falls under s. 43(d)(i). The analysis is about whether a *request* is an abuse of the right to make a request because it is systematic, not whether an access applicant's behaviour is abusive.⁵⁹

[115] I also do not think that all of the characteristics that Metro Vancouver has identified support that there is a pattern of misuse.

[116] For example, I also do not see the resubmitted request as evidence of an abuse of the right to make a request. The respondent made a multipart request. In response, Metro Vancouver set out which parts of the request it was not able to process and why.⁶⁰ The respondent then said he would re-word the requests that could not proceed.⁶¹ I do not see how resubmitting a request in this context is evidence of a pattern of making requests that are an abuse of the right to make a request.

[117] With respect to the respondent's behaviour in seeking review of Metro Vancouver's responses, it does not seem to me that the respondent's requests for review to the OIPC are rote or indiscriminate. The respondent's complaints to the OIPC are clear and specific. My sense is that this is evidence of persistence, not abuse.

[118] On balance, I find that there are sufficient indicia of a pattern of making requests that are a misuse of the right to make a request because they are systematic. More specifically, I find that the respondent has a consistent pattern of using FIPPA access requests to return to the same specific records, communications, people and events. I think that this indicates that the respondent is, on some level, unwilling to accept that the information he is searching for may not exist. Accordingly, I am persuaded that parts 1 through 5 and 7 of the First Request, as well as the Second, Third and Fourth Requests are an abuse of the right to make a request because they are systematic.

[119] In my opinion, the remaining parts of the First Request are not part of the pattern of systematic requests that are an abuse of the right to make a request. As such, I find that it is appropriate to make a different decision with respect to these requests. I find that these parts are not an abuse of the right to make a request because they are systematic.

[120] I turn to the issue of relief.

⁵⁹ The *Amendment Act* introduced "whether the behaviour of the applicant is abusive or malicious" as separate category of relief under s. 43 (a.1).

⁶⁰ As set out in Metro Vancouver's initial submissions, Appendix E, pages 13-16.

⁶¹ Metro Vancouver's initial submissions, Appendix E, page 12. I understand that Request 2025-057 is the resubmitted request, as indicated in the respondents email on Page 1 of Appendix F.

What relief, if any, is appropriate?

[121] As I mentioned above, relief under s. 43 is at the commissioner's discretion. It is well established that the commissioner can grant relief from future requests under s. 43.⁶² Whether for current or future requests, the remedy must be proportionate to the harm.⁶³

[122] Metro Vancouver has asked for the following relief:

1. authorization to disregard the five requests at issue in this application;
2. authorization to disregard any future request regarding: records related to the 2022 breach of confidence and any related investigations and communications, including policy changes emanating from this breach; records related to employment terms or performance of the CAO; and records related to the respondent's perception that the City of Coquitlam has been treated inequitably relative to other municipalities; and
3. That the respondent only be permitted to have one open request at a time with Metro Vancouver, for a period of two years.
 - i. Relief for the access requests at issue

[123] In my view, the appropriate relief with respect to the Second and Fourth requests is to allow Metro Vancouver to disregard them. I have found that they are not a serious request for records because the respondent believes there are no records responsive to these requests. On this basis, I found that these requests are frivolous. There are no additional circumstances that persuade me that it would be fair for Metro Vancouver to respond to them.

[124] I also find it appropriate to relieve Metro Vancouver of its obligation to respond to the Third Request and parts of the First Request. I have found that these requests are an abuse of the right to make a request because they are systematic. Again, there are no additional circumstances that persuade me it would be fair for Metro Vancouver to respond to them.

[125] However, I found that the Fifth Request and the remaining parts of the First Request are not frivolous, vexatious, or an abuse of the right to make a request because they are systematic. In my view, responding to these requests would not unreasonably interfere with Metro Vancouver's operations. I decline to provide relief under s. 43 for these requests or parts thereof.

⁶² *Crocker*, *supra* note 15 para 40.

⁶³ *Ibid*, para 45.

ii. Future relief

[126] Metro Vancouver has asked for future relief in two different ways. It has asked that I restrict the topics that the respondent can make requests about and it has asked that I restrict the respondent to one access request at a time for a period of two years.

[127] I decline to restrict the topics that the respondent may make a request about. While the respondent has made some frivolous and systematic requests, when viewed holistically, the overall pattern is not so egregious as to justify completely restricting his access to records relating to these topics. In my view, this kind of restriction is not warranted in these circumstances.

[128] Metro Vancouver has also asked that I restrict the respondent to one open access request at a time for a period of two years. I can see that, if the respondent were to make several access requests in a relatively short period of time, as he did when he made the First through Fifth Requests, that this could represent an undue strain on the public body's resources. However, I think that the remedy that Metro Vancouver is suggesting would be disproportionate to the harm inflicted. While I have found that some of the requests are systematic and frivolous, in my view, there are some mitigating circumstances. For example, the respondent has shown a willingness to accept feedback from Metro Vancouver on making his access requests and I trust he will do the same with this order. The respondent also says he intends to stop making access requests and has provided a timeline for doing so. For these reasons, I have decided to limit the respondent's access requests to two open access requests at a time for a period of one year only. I think that this gives the respondent a fair opportunity to pursue the topics he is interested in, while limiting the strain on the public body's resources.

CONCLUSION

[129] For the reasons above, under s. 43 of FIPPA,

1. I authorize Metro Vancouver to disregard the following requests or parts thereof:
 - Parts 1, 2, 3, 4, 5 and 7 of the First Request:
 - All of the Second, Third and Fourth Requests.
2. I authorize Metro Vancouver to disregard any access requests over and above two open access requests at a time, for a period of one year from the date of this order. For clarity, an open request is one made under s. 5 of FIPPA to which Metro Vancouver has not yet provided a response under s. 8. However, if Metro Vancouver does not respond to an access

request within the time limit set out in s. 7 of FIPPA, that request is not considered “open” for the purposes of this order.

August 21, 2026

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F26-00889