



Yukon  
Information  
and Privacy  
Commissioner

## DECISION

Pursuant to subsection 43 (1) of the  
*Access to Information and Protection of Privacy Act*  
File ATP18-02D

Diane McLeod-McKay, B.A., J.D.,  
Information and Privacy Commissioner

**Public Body:** Department of [REDACTED]

**Date:** May 3, 2019

**Summary:** The Department of [REDACTED] (Department) sought relief from the Information and Privacy Commissioner (IPC) under paragraph 43 (1)(a) of the *Access to Information and Protection of Privacy Act* to disregard seven access to information requests submitted by the Applicant in respect of certain categories of information requested by the Applicant in 30 access to information requests made by the Applicant to the Department over a period of one year. After considering the facts and evidence, the IPC found that the access requests were repetitious and/or systematic and that requiring the Department to process the seven access requests would unreasonably interfere with its operations due to their repetitious and/or systematic nature. The IPC exercised her discretion and granted the relief sought by the Department subject to certain terms and conditions.

**Statutes Cited:**

*Access to Information and Protection of Privacy Act*, RSY 2002, c 1

*Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25

*Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165

**Cases Cited:**

*Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC)

*Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC)

*Alberta Motor Association*, 2010 AIPC P1241 (March 8, 2010)

*Grant MacEwan College*, IPC File Reference #F3885, March 13, 2007 (AB IPC)

*British Columbia Hydro and Power Authority, Re*, 2005 CanLII 11955 (BC IPC)

*British Columbia (Ministry of Labour and Citizens' Services) (Re)*, 2006 CanLII 42644 (BC IPC)

*British Columbia (Labour) (Re)*, 2010 BCIPC 51 (CanLII)

*British Columbia (Technology, Innovation and Citizen's Services) (Re)*, 2014 BCIPC 16 (CanLII)

*Law Society of British Columbia (Re)*, 2018 BCIPC 37 (CanLII)

*Ministry of Management Services*, Auth. (s. 43) 03-01, December 10, 2003 (BCIPC)

*Office of the Auditor General of British Columbia*, Order F18-37, 2018 BCIPC 40 (CanLII)

*Vancouver Coastal Health (Re)*, 2013 BCIPC 25 (CanLII)

*Department of Justice*, File# 12-031, October 18, 2012 (YT IPC)

**Explanatory notes:**

All references to sections, subsections, paragraphs and subparagraphs, as applicable, in this Decision are to the *Access to Information and Protection of Privacy Act* (ATIPP Act) unless otherwise stated.

## I JURISDICTION

[1] Subsection 43 (1) states the following.

*43(1) If a public body asks, the commissioner may authorize the public body to disregard one or more requests under section 6 or section 32 that*

*(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or*

*(b) are frivolous or vexatious.*

[2] On November 9, 2018, the Department requested the IPC authorize it to disregard seven of the Applicant's access requests (Seven Requests) as well as any further access requests from the Applicant related to the following.

(i) [the Applicant's] *employment history or performance;*

(ii) [REDACTED];

(iii) [REDACTED]; or

(iv) *the handling of [the Applicant's] previous access requests.*<sup>1</sup>

## II BURDEN OF PROOF

[3] The ATIPP Act is silent on the burden of proof in respect of section 43. Former Yukon IPC, Tim Koepke, identified that the burden of proof with respect to section 43 is on the public body.<sup>2</sup> I concur with the former IPC that the burden rests with the public body to establish that either paragraph 43 (1)(a) or (b) applies in this case.

## III ISSUES

[4] There are two issues to be decided. I must first decide whether the Department has established that the circumstances in paragraphs 48 (1)(a) or (b) exist in regards to the Seven Requests. If the circumstances do exist, then, through the exercise of my discretion, I must decide whether to authorize the Department to disregard them.

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<sup>1</sup> Department's submission, at p. 28.

<sup>2</sup> *Department of Justice*, File# 12-031, October 18, 2012, at para. 7 (YT IPC).

#### IV DISCUSSION ABOUT THE ISSUE

##### Department's Submission

[5] In its submissions, the Department identified in a document titled "Table of Requests" (Table) that 29 access to information requests were received from the Applicant between [REDACTED] and [REDACTED], inclusive of the Seven Requests (Access Requests). This same document forms part of the affidavit of the Director of Information Management and Technology for the Department (Affidavit). Also in the Affidavit are copies of the Access Requests referenced in the Table.

[6] In the Table, tab 17 is identified as A-7293. At tab 17 in the Affidavit is access request A-7292. Also, in the Table, tab 18 is identified as A-7294. At tab 18 in the Affidavit is access request A-7293. Having gone through the tables and tabs, there is no access request numbered A-7294 contained therein. I note that in access request A-7354 the Applicant states in the access request email that A-7294 was reviewed by my office and that it was determined through review that this access request was not a request for records. The Applicant indicates in the email that a subsequent request was submitted by the Applicant to clarify the records sought.

[7] Based on the foregoing, I am satisfied that the Table was mislabeled and that A-7294 was missed. The error in the Table is that access request A-7292 should be identified as tab 17 and access request A-7293 as tab 18. The result is that the total number of Access Requests made by the Applicant between the foregoing dates is 30, not 29. Details about them follows.

##### A-6890

[8] In this access request dated [REDACTED] the Applicant requested the following:

- email, SMS messages, and/or meeting notes concerning the work performance or [REDACTED] of the Applicant between certain individuals within the Department and another Department;
- emails, and/or meeting notes between a number of individuals in the Department related to the Applicant's position, pay, employment, probation and [REDACTED]; and
- emails, and/or meeting notes between the Applicant and a number of others related to various aspects of their employment including work performance and support.

[9] The Applicant added that the records requested include “cell phone messages sent and received on work phones, notes of meetings, and calendars – handwritten, printed, digital or otherwise” and “emails that were ‘Permanently Deleted’ through Microsoft Outlook, [that] can be retrieved”.

[10] It is indicated in the Table that the Department provided “4,749” records to the Applicant in response to this access request.

A-6893

[11] In this access request dated [REDACTED], the Applicant requested specific notes prepared by an individual in the Department on two separate dates for a meeting in 2017 with the Applicant.

[12] The number of records provided to the Applicant in response to this access request as indicated in the Table is “7”.

A-6916

[13] In this access request dated [REDACTED], the Applicant requested 14 types of records. They are summarized below.

- records outlining challenges working with a specific team on specific dates;
- records relating to issues of [REDACTED] between specific dates;
- records relating to [REDACTED] issues affecting the Applicant and dissatisfaction with the work environment;
- records related to meetings with the Department’s human resources branch; and
- records identifying training and support requests;

[14] The Applicant added that the records requested include “cell phone messages sent and received on work phones, notes of meetings, and calendars – handwritten, printed, digital or otherwise” and “archived emails, and emails that were ‘Permanently Deleted’ through Microsoft Outlook, [that] can be retrieved”. The Applicant also indicated in this access request that the Department number the results to align with the specific requests and to identify if there are no records related thereto.

[15] The Table indicates that the Department provided “0” records in response to this access request.

A-6918

[16] In this access request dated [REDACTED], the Applicant requested 21 types of records. Most identify communications between specific individuals and specific dates or time periods. A summary of the records requested are below.

- records used for or related to recruiting for the Applicant's position and subsequent hiring;
- records created by the Applicant in respect of recruiting and hiring;
- records related to the delivery and monitoring of the Applicant's position;
- records showing cancelled weekly team and bilateral meetings involving the Applicant;
- records of training and efforts made to receive training to meet performance expectations including denials of training requests;
- records related to performance monitoring; and
- records related to [REDACTED].

[17] The Applicant added that the records requested include "cell phone messages sent and received on work phones, notes of meetings, and calendars – handwritten, printed, digital or otherwise" and "archived emails, and emails that were 'Permanently Deleted' through Microsoft Outlook, [that] can be retrieved". The Applicant also indicated in this access request that the Department number the results to align with the specific requests and to identify if there are no records related thereto.

The Table indicates that the Department provided "2" records in response to this access request.

A-6919

[18] In this access request dated [REDACTED], the Applicant requested 42 types of records. Most identify communications between specific individuals and specific dates or time periods. A summary of the records requested are below.

- records of a meeting between the Applicant and specific individuals in the Department;
- records about the Applicant's probation or [REDACTED];

- records about challenges at work including [REDACTED];
- records related to the Applicant's performance including any expectations and those showing the support by others of the Applicant's work, those related to [REDACTED], and complaints about the Applicant;
- records about performance by others in the Department;
- records showing the timing of decisions made in relation to the Applicant's [REDACTED];
- records associated with specific meetings with individuals in the Department;
- records associated with the Applicant's request that records, including electronic, would not be deleted and were preserved;
- records related to any conflict involving the Applicant including those involving the respectful workplace office; and
- records of the Applicant's management of specific issues in the Department.

[19] The Applicant added that the records requested include "cell phone messages sent and received on work phones, notes of meetings, and calendars – handwritten, printed, digital or otherwise" and "archived emails, and emails that were 'Permanently Deleted' through Microsoft Outlook, [that] can be retrieved". The Applicant also indicated in this access request that the Department number the results to align with the specific requests and to identify if there are no records related thereto.

[20] The Table indicates that the Department provided "26" records in response to this access request.

#### A-6926

[21] In this access request dated [REDACTED], the Applicant requested multiple types of records. A summary of the records requested are below.

- records of communications between the Applicant and an individual in the Department;
- records relating to expectations of the Applicant in regards to the Applicant's probationary period and when it would end;
- records relating to the Applicant's [REDACTED];

- records relating to the Applicant being treated unprofessionally or [REDACTED] by others; and
- records relating to support offered to the Applicant in respect of their position;

[22] The Applicant requested that the response be numbered and that where no records exist that it be identified.

[23] The Table shows that “0” records were provided in response to this access request.

A-6932

[24] In this access request dated [REDACTED], the Applicant requested five types of records. A summary of the records requested are below.

- records of the meetings where the Applicant requested that records associated with their employment, including emails, be preserved;
- records of the Applicant’s request to the Department’s ATIPP Coordinator about access to these records; and
- records between Department employees associated with the Applicant’s request that records be preserved.

[25] The Table shows that “77” records were provided in response to this access request.

A-6935

[26] In this access request dated [REDACTED], the Applicant requested records related to the Applicant’s desk.

[27] The Table shows that “1” record was provided in response to this access request.

A-6996

[28] In this access request dated [REDACTED],<sup>3</sup> the Applicant requested 16 types of records. A summary of the records requested are below.

- records about preparing for meetings on specific dates;

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<sup>3</sup> The Table says “[REDACTED]” but the date on the request provided by the Records Manager to the Department is [REDACTED].



- records about the Applicant's probation period and decisions made by Department employees in respect thereof;
- records about the Applicant's participation in meetings about the probationary period;
- records showing the timelines and reasons associated with [REDACTED] the Applicant's probationary period;
- records related to any [REDACTED] experienced by the Applicant;
- records relating to a conflict of interest issue associated with a Department employee related to the bullying; and
- records showing procedural fairness or lack thereof in regards to decisions made about the Applicant's probationary period.

[29] The Table shows that "16" records were provided in response to this access request.

A-7161

[30] In this access request dated [REDACTED], the Applicant requested records related to preparations for the Applicant's [REDACTED] including any [REDACTED] and information about the removal of any [REDACTED].

[31] The Table shows that "52" records were provided in response to this access request.

A-7176

[32] In this access request dated April 30, 2018, the Applicant requested records containing information about the Applicant's involvement with [REDACTED]. The Applicant added that the records should include "calendars, meeting notes, text messages, and emails and any information related thereto that was shared with the Deputy Minister and Assistant Deputy Minister.

[33] The Table shows that "13" records were provided in response to this access request.

A-7266

[34] In this access request dated [REDACTED] the Applicant requested records involving a specific individual containing information about the following:

- the Applicant's performance,
- the Applicant's experience of [REDACTED];
- the Applicant's [REDACTED] or other challenges related to the Applicant's performance;
- the lack of support from the Applicant's superiors in respect of the Applicant's position;
- the Applicant's probation [REDACTED]; and
- information about any "fall-out or negative consequences" experienced by a specific individual.

[35] The Table shows that "249" records were provided in response to this access request.

A-7231

[36] In this access request dated [REDACTED], the Applicant requested notes taken during the Applicant's interview and information regarding the assessment of the material used for the interview.

[37] The Table shows that "12" records were provided in response to this access request.

A-7236

[38] In this access request dated [REDACTED], the Applicant requests records related to a specific email the Applicant sent to an individual working within the Department's human resources branch. The Applicant also requested records containing information about how the [REDACTED] mentioned in this email were dealt with.

[39] The Table shows that "52" records were provided in response to this access request.

A-7238

[40] In this access request dated [REDACTED], the Applicant requested eight types of records related to [REDACTED] used in an [REDACTED]. A summary of the records requested are below.

- records identified to substantiate claims made by Department employees or that provide certain evidence [REDACTED];
- a complete email thread that the Applicant alleges was altered; and
- evidence of a specific MOU.

[41] The Table shows that “5” records were provided in response to this access request.

A-7241

[42] In this access request dated [REDACTED] the Applicant requested notes taken by a specific individual during the interview with the Applicant for recruitment.

[43] The Table shows that “10” records were provided in response to this access request.

A-7292

[44] In this access request dated June 30, 2018, the Applicant requested the following records:

- GAM Policy 3.47; and
- records showing how the bullying reported by the Applicant was addressed by the Department and that specific individuals carried out their responsibilities according to policy.

[45] The Applicant requested to be informed if records do not exist in regards to this request.

[46] The Table shows that “84” records were provided in response to this access request.

A-7293

[47] In this access request dated [REDACTED] the Applicant requested specific emails between an individual and the Applicant in regards to a specific workplace matter.

[48] The Table shows that "84" records were provided in response to this access request.

A-7294

[49] As indicated above, this access request was not provided by the Department in its submissions.

A-7328

[REDACTED] In this access request dated [REDACTED], the Applicant requested personal information in regards to the Applicant's [REDACTED] generated by or involving specific individuals in the Department and the application of specific provisions of the [REDACTED]

[51] The Table shows that "7" records were provided in response to this access request.

A-7354

[52] In this access request dated [REDACTED], the Applicant requested records containing information created by a specific individual in the Department regarding a specific matter including records prepared for a cabinet submission.

[53] The Table shows that "2" records were provided in response to this access request.

A-7364

[54] In this access request dated [REDACTED], the Applicant requested records, including emails, attachments, documents, phone calls, handwritten notes, texts, appointments, outlook calendar entries, etc., between the Public Service Commission and the Department containing information about the Applicant's:

- position;
- probation;

[REDACTED]

[55] In this access request the Applicant stated the following.

*I acknowledge in advance that some of the records responsive to this request have already been requested. However, some records received from other departments are responsive to ATIPP requests filed previously with [the Department]. In its results, [the Department] did not deliver these particular records.*

[56] The Applicants requested that the records be identified by type so as “to mitigate the need to file a review and/or subsequent ATIPP requests.”

[57] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

A-7365

[58] In this access request dated [REDACTED] the Applicant requests a specific email between two individuals and an “outlook request” mentioned in the email.

[59] The Table shows that “2” records were provided in response to this access request.

A-7370

[60] In this access request dated [REDACTED], the Applicant requests a specific email about the Applicant’s desk generated by a specific individual. The Applicant indicated therein that the record was not provided in response to the first request for information associated with the desk and asked that the “IT branch” retrieve the email through searching the Applicant’s and the individual’s email accounts.

[61] The Table shows that “5” records were provided in response to this access request.

A-7393

[62] In this access request dated [REDACTED], the Applicant requests records, including handwritten notes, related to the [REDACTED], specifically any records withdrawn from the [REDACTED] material on the morning of the [REDACTED] and any records associated with the removal of this material.

[63] The Applicant indicates in this request that “[n]ew information has come to light that shows the public body has withheld records in response to these two requests and is in contravention of the ATIPP Act.”

[64] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

A-7394

[65] In this access request dated [REDACTED], the Applicant requested access to records containing information about the following:

- the requirement of the Applicant to take on extra work as a result of employee' illness; and
- direction associated with the extra work and existing workload.

[66] In the access request, the Applicant states “[r]esults of IPC reviews...are suggesting that records have been altered by staff before being delivered to the ATIPP coordinator.” The Applicant then asks to have “IT” access the records instead of Department employees.

[67] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

A-7404

[68] In this access request dated October 5, 2018, the Applicant requested records pertaining to a specific training request. The Applicant added that “[t]his record was specifically requested in a previous ATIPP request and I did not receive it. I am asking for it again along with any other records in the email thread. Given that staff at the public body have in the past withheld responsive documents from the ATIPP Coordinator and/or altered documents before delivering them to the coordinator, I am asking that you...retrieve [the records] directly from IT Services.”

[69] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

A-7405

[70] In this access request dated October 5, 2018, the Applicant requested records, including calendar entries, appointments, meeting notes, handwritten notes, related to a specific email to an individual about the preservation of records.

[71] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

A-7436

[72] In this access request dated October 30, 2018, the Applicant requested four types of records. They are summarized as follows.

- metadata for a specific record;
- records generated as a result of a specific meeting held with a specific branch within the Department; and
- records relating to the Applicant's performance as indicated in a specific email.

[73] In regards to bullet two, the Applicant requested calendar records, emails, phone and text messages and handwritten notes. The Applicant asks in the request that their identity be revealed to branch employees and to contact them directly for the records because they "may not have been involved with an ATIPP in the past."

[74] The Applicant added the following.

*[The Department] through the ATIPP process has altered records, withheld records improperly and redacted records improperly. These facts have been established on multiple occasions by the IPC. A year after I filed my first ATIPP request A-6890, I am still officially waiting on records from that request. I recently learned via a letter from the IPC that [the Department] is still improperly applying sections of the ATIPP Act in order to redact information from the results of A-6890. This deplorable show of bad faith on the part of the public body...represents...an extreme example of the willful waste of taxpayers' money...*

[75] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

A-7439

[76] In this access request dated [REDACTED], the Applicant requested records relating to a specific calendar appointment including those created to organize the appointment, those created during and after the appointment. The Applicant notes that records include "handwritten notes and emails that relate to the meeting sent/received from meeting participants to each other and to other staff in the public body. Records also includes any subsequent appointments established in relation to the first appointment indicted on [a specific page]."

[77] This access request is one of the Seven Requests that the Department has sought authority to disregard under subsection 43 (1).

[78] In addition to the affidavit evidence, the Department provided the following submissions, some of which are summarized.

- The Applicant is a [REDACTED] employee of the Department.
- Over 12 months, the Applicant filed 29 Access Requests.<sup>4</sup>
- The Department responded to 22 of the Access Requests and requested relief for seven of them.
- All of the Applicant's requests relate to the Applicant's employment and "many cover precisely the same records."
- In A-6890, the Applicant "named 14 individuals" and "[REDACTED] staff" (which added three individuals), but did not limit the request to those individuals. Four individuals were employees of another public body. The Applicant was informed that these records were not in the custody or control of the Department.
- Searches occurred for the remaining 13 individuals.
- The Department's search was wide ranging and 4,700 pages of records were released to the Applicant.
- Fees were waived.

[79] In regards to the Seven Requests, the Department provided the following about its position, some of which is summarized.

- A-7364 "is duplicative and explicitly states that it was filed primarily because [the Applicant] believes that the Department...is "withholding records that are clearly responsive"."
- The Department provided an example of a letter written by the Applicant to the Department dated [REDACTED], in which the Applicant indicated that records received from another public body suggest that the Department did not provide certain records subject to a prior access request.

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<sup>4</sup> As noted above, the number is actually 30.



- The Department requested clarification from the Applicant about the records to assist in its search. The Applicant's response was to narrow the timeline from [REDACTED] to present, to [REDACTED] to present.
- A-7393 "is duplicative, argumentative, and alleges misconduct."
- A-7394 "is duplicative, argumentative, and alleges misconduct."
- A-7404 "is duplicative, argumentative, and alleges misconduct."
- A-7405 "is clearly delivered with the oblique motive of supporting further access requests and further allegations of misconduct in the handling of records and requests for records."
- A-7346 "asks for metadata of records produced in response to A-7161. It also asks for additional searches, to be conducted in a manner prescribed by [the Applicant], because of [their] conviction that past searches were not—and that future searches would not be properly conducted. There were also the now-standard allegations of misfeasance and bad faith on the part of Departmental personnel."
- A-7439 "is the classic form of the systematic request."<sup>5</sup>

[80] The Department provided examples of information provided by the Applicant in respect of its assertions above about the Seven Requests that have not been reproduced here.

[81] The Department asserted in its submission that the Access Requests, inclusive of the Seven Requests, are repetitious and systematic. It also asserted that the Access Requests include "unworkable criteria," that they contain specific requirements with respect to formatting, they allege misconduct by Department employees, they are a burden on the Department, and this burden is [not] outweighed by the benefit to the Applicant. The Department's submissions in respect of the foregoing are addressed below.

### **Department's Paragraph 43 (1)(a) Submissions**

In support of its view that paragraph 43 (1)(a) applies to the Seven Requests, the Department submitted the following.

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<sup>5</sup> Department's submission, at pp. 2 to 5.

*...the pending requests are repetitious because they all relate to [the Applicant's] employment and... [REDACTED].*

[82] In reliance on *British Columbia Hydro and Power Authority, Re*, (BC Hydro)<sup>6</sup> the Department indicated that the test for determining if an access request is repetitious is as follows.

*The test for whether a request is repetitious is not that it is identical to a previous request, but that it relates to substantially the same issues or events as previous requests. Requests that are "sufficiently connected to each other" in this way should be considered as being "repetitious".*

*...The pending requests-like the vast majority of [the Applicant's] previous requests-fit the systematic pattern.*

[83] In terms of the meaning of "systematic", the Department provided the following.

*Apart from the dictionary meaning of a method or plan of acting that is carried out according to a set of rules or principles, in the context of access requests, "systematic" has been described [in Office of the Auditor General of British Columbia (Order F18-37)]<sup>7</sup> as meaning:*

- *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 [the] OIPC; and*
- *behaviour suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events.*

[84] In terms of whether processing the Seven Requests will unreasonably interfere with the Department's operations, it stated its view that "both on the basis of the legal presumption and on the basis of the positive evidence" that "answering" the Seven

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6 Citation in the submission is "2005 CanLII 11955, para. 17 (BC IPC)."

7 Citation in the submission is "2018 BCIPC 40 (CanLII), para. 26."

Requests would unreasonably interfere with the Department's operations. It added the following.

*Where, as in this case, pending requests are repetitious and systematic, then there is a presumption that anything more than de minimis burden is an unreasonable interference-and it is apparent on the face of the pending requests that the burden is not de minimis.*

*The positive evidence submitted by the Department also demonstrates an unreasonable interference.*

It stated further that the evidence "also establishes unreasonable interference, both in the past and prospectively."<sup>8</sup>

#### **Department's Paragraph 43 (1)(b) Submissions**

The Department submitted that it is of the view that the Seven Requests are frivolous and vexatious. In this regard it stated the following.

*...The pending requests are frivolous because they are no longer reasonably connected to any substantive issue.*

And:

*...Their repetitive and systematic nature, the inclusion of wide-ranging allegations of misconduct, and the frequent references to "evidence" or "substantiating claims" are all indicia of vexatiousness.*

#### **Applicant's Submission**

[85] The Applicant made a number of submissions. Many contain personal information about the Applicant and others. They will be addressed, as applicable, in the Discussion section of this Decision. Some of the Applicant's submissions in respect of paragraphs 43 (1)(a) and (b) follow.

##### Repetitious

*The PB puts forward an invalid argument for this claim. In addition, the PB is seeking to abdicate its responsibility when it comes to repetitive elements.<sup>9</sup>*

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<sup>8</sup> Department's submission, at pp. 16 to 21.

<sup>9</sup> Applicant's submission, at p. 1.

### Systematic

*I deny this claim. The PB fails to establish it.<sup>10</sup>*

### Unreasonable interference with the public body's options

*To assert this claim, the PB is relying upon the validity of other claims it is making, including that the pending requests are repetitious, systematic, vexatious and frivolous.*

*I offered on multiple occasions to assist the PB to narrow down the scope of my requests and expedite the response process. The PB refused. The PB failed in its duty to assist the Applicant. As a result, a significant amount of records were produced unnecessarily by the PB and further requests were necessary. This failure undoubtedly contributed to the burden on the PB's resources.<sup>11</sup>*

### Frivolous

*The PB employs speculation and provides no substance to support this claim.*

*All of my requests reflect a meaningful and valid purpose.<sup>12</sup>*

### Vexatious

*The allegation that I am being vexatious is as outlandish as it is baseless.<sup>13</sup>*

### Future requests

*The PB argues "unreasonable interference" without acknowledging the significant role it played in causing a strain on its own departmental resources and functions.<sup>14</sup>*

## **IV DISCUSSION OF THE ISSUE**

[86] Section 5 of the ATIP Act provides persons with a right of access to information in the custody or control of public bodies subject to limited and specific exceptions so long as they make an access request in accordance with section 6. Section 6 requires a person to make their access request in writing to the Records Manager.

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

<sup>11</sup> *Ibid.*, at p. 2.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, at p. 5.

[87] Section 7 requires the Records Manager to “make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.” Section 10 requires a public body that has the record(s) requested by an applicant to “make every reasonable effort to assist the records manager to respond to each applicant openly, accurately and completely.”

[88] Section 13 requires the Records Manager to respond to the applicant within a specified time period. Section 8 clarifies that while the request for access is to be made to the Records Manager, it is up to the public body to decide whether to provide access and apply exceptions as applicable.

[89] Section 43 provides authority to the IPC to allow a public body to disregard a request for access to information made by an applicant in the specified circumstances.

[90] The evidence shows the Applicant made the Access Requests to the Department, a public body under the ATIPP Act, by putting the requests in writing to the Records Manager as required by section 6.

#### **Subsection 43 (1) – Authorization to disregard access to information requests**

[91] Before I exercise my discretion under section 43, the Department must establish that either paragraphs 43 (1)(a) or (b) apply. This subsection states as follows.

*43 (1) If a public body asks, the commissioner may authorize the public body to disregard one or more requests under section 6 or section 32 that*

*(a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests; or*

*(b) are frivolous or vexatious.*

#### **Interpreting subsection 43 (1)**

[92] In *Crocker v. British Columbia (Information and Privacy Commissioner) et al*,<sup>15</sup> the British Columbia Supreme Court (BCSC) provided the following guidance with regard to how section 43 in British Columbia’s (BC) *Freedom of Information and Protection of Privacy Act* (BC FIPPA)<sup>16</sup> should be interpreted. This provision contains the same wording as our subsection 43 (1).

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<sup>15</sup> 1997 CanLII 4406 (BC SC).

<sup>16</sup> RSBC 1996, c. 165.

*Section 43 is an important remedial tool in the Commissioner’s armory to curb abuse of the right of access. That section and the rest of the Act are to be construed by examining it in its entire context bearing in mind the purpose of the Legislation. The section is an important part of a comprehensive scheme of access and privacy rights and it should not be interpreted into insignificance. The legislative purposes of public accountability and openness contained in s. 2 of the Act are not a warrant to restrict the meaning of s. 43. The section must be given the “remedial and fair, large and liberal construction and interpretation as best ensures the attainment of its objects”, that is required by s. 8 of [BC’s] Interpretation Act...<sup>17</sup>*

[93] Former Information and Privacy Commissioner (BC IPC), David Loukidelis, added his views on how this provision is to be interpreted. Specifically he said that “any decision to grant a s. 43 authorization must be carefully considered, as relief under that section curtails or eliminates the rights of access to information. Another past commissioner has cautioned that, “[g]ranting section 43 requests should be the exception to the rule and not a routine option for public bodies to avoid their obligations under the legislation.”<sup>18</sup>

[94] I concur with the BCSC and BC IPC Loukidelis that subsection 43 (1) of the ATIPP Act should be interpreted as they described. This interpretation, in my view, accords with the purposes of the ATIPP Act and the legislative scheme of the access to information provisions therein.

**43 (1)(a) - Unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests.**

[95] As indicated, the Department has the burden of proving that the Seven Requests:

- are either repetitious or systematic in nature; and
- because of this, processing them would unreasonably interfere with its operations.

***Are the Seven Requests repetitious?***

Meaning of “Repetitious”

[96] The term “repetitious” is not defined in the ATIPP Act. Adjudicator Cameron with the Office of the BC IPC defined the term as follows in determining whether requests for

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<sup>17</sup> *Crocker v. British Columbia (Information and Privacy Commissioner) et al.* 1997 CanLII 4406 (BC SC), at para. 33 cited in *Office of the Auditor General of British Columbia*, Order F18-37, 2018 BCIPC 40 (CanLII), at para. 10  
<sup>18</sup> *Office of the Auditor General of British Columbia*, Order F18-37, 2018 BCIPC 40 (CanLII), at para. 11.

access to information made by an applicant under subsection 43 (a) of BC's FIPPA were repetitious.

*The plain meaning of the word "repetitious" in s. 43 is something that is characterized by repetition. Repetition is the act of repeating an act or things. To 'repeat' an act or thing, in turn, is to do the act or other thing over again one or more times.<sup>19</sup>*

[97] In reliance on the BC Hydro decision, the Department indicated its views on the meaning of "repetitious."

*The test for whether a request is repetitious is not that it is identical to a previous request, but that it relates to substantially the same issues or events as previous requests. Requests that are "sufficiently connected to each other" in this way should be considered as being repetitious."*

[98] I agree with the Department that for the purposes of this paragraph, a request does not have to be identical to be repetitious and that it is enough for it to be repetitive if it relates to substantially the same issue or events as previous requests. In my view, this interpretation accords with the manner in which this paragraph ought to be interpreted.

[99] The Seven Requests that the Department is seeking the IPC to authorize them to disregard under paragraphs 43 (1)(a) or (b) are A-7364, A-7393, A-7394, A-7404, A-7405, A-7436, and A-7439.

### Submissions

[100] The Department's position is that "[a]fter the original request, virtually every one of [the Applicant's] requests either duplicates the search parameters of that request, or overlaps with it." In support of this position, it stated the following.

*All of [the Applicant's] requests focus on similar issues. From [their] first request to the most recent, they are all related to the employment issues that resulted in [their] [REDACTED], or to [their] [REDACTED]. [Examples provided are A-6890, A-7328, and A-7364]*

*The word "probation" or "probationary" appears 56 times in the 29 requests. The word "[REDACTED]" appears 23 times.*

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19 Office of the Auditor General of British Columbia, Order F18-37, 2018 BCIPC 40 (CanLII), at para. 13.

[The Applicant] *will sometimes acknowledge that a request is duplicative, then offer what appears to be a justification for a repetitious request. This is often simply a different criterion that can be used to select a different sub-set of records from the larger set that has already been provided.* [Examples provided are A-6996 and A-7161]

*On several occasions, [the Applicant] has justified the admittedly duplicative nature of a request by alleging misconduct on the part of the Department....* [Examples provided are A-7364, A-7354, A-7370, A-7393, A-7394 and A-7404]

*On other occasions, the clearly overlapping or duplicative nature of the requests is unacknowledged.* [Examples provided are A-7266, A-7328, A-6890]

[101] The position of the Applicant is that the Department's argument is invalid. On this point, the Applicant states that "the PB is seeking to abdicate its responsibility when it comes to the repetitive elements." The Applicant then added that the Department "is at least partially responsible for repetitive elements."<sup>20</sup> In support of this position, [t]he Applicant states the following.

*The PB is essentially asking the Privacy Commissioner to gloss over the fact that it has yet to produce all of the records I have been asking for and to which I am rightfully entitled. I agree with the PB to a certain extent that there are repetitive elements present in some of my ATIPP requests. But this is because the PB makes very little effort (or no effort at all) to assist and I have to change how I ask for records based on:*

- a) records redacted or missing from the results;*
- b) records subsequently delivered as a result of IPC reviews;*
- c) records received from other public bodies;*
- d) information and advice from the Office of the IPC; and*
- e) my own study of ATIPP legislation.*

*Furthermore, when I do make requests that may have repetitive elements, these so-called "repetitive" requests have yielded additional records not provided in the results of a previous request (as the PB will have to acknowledge based on the records I received from the PB to date). What does this say about the PB's approach to the ATIPP process? Does it say that the PB's attitude is "well, let's not give it to [the Applicant] then" or does*

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<sup>20</sup> Applicant's submission, at para. 97.



*it say “well, this is not a repetitive request, this is actually a new request, so let’s give the Applicant the records that are responsive to this new request.” By not delivering all responsive records the first time, and then claiming the second time that a request is repetitive whilst delivering additional responsive records, the PB is trying to have its cake and eat it too.*

*The PB wants the Privacy Commissioner to attribute full responsibility for the strain on its resources and functions to the Applicant and thereby seek justification for not producing the remaining records requested.*

*If the requests that the PB wants the Privacy Commissioner to disregard are in fact repetitive, then in theory the PB will deliver results that I already have in my possession. However, if on the contrary, these same requests yield new records, it can be said that the PB is wrong about their repetitive nature. Given that the PB should by now have prepared the remaining results (as I believe it was obliged to do), can the IPC view the results and determine for itself if these are records I already received? Presumably if there are new records in the results, then the request was not repetitive.<sup>21</sup>*

[102] The Applicant also provided their views about why there is difficulty obtaining the records requested, which are discussed below.

#### Consideration of Repetitious by other IPCs

[103] In BC Hydro, the matter before the BC IPC was a request for decision by BC Hydro to disregard two access requests submitted to it by an applicant under section 43 of BC’s FIPPA. As indicated, this section has the same wording as our subsection 43 (1).

[104] In this case, BC Hydro, having responded to 19 separate access requests and releasing approximately 1,000 pages of records to an applicant, was of the view that “all of the [applicant’s] requests relate directly or indirectly to his employment with BC Hydro and the disputes arising from that employment.”<sup>22</sup> The BC IPC found the following in respect of the 19 access requests.

- “Approximately half of the [respondent’s] requests relate to specific letters between BC Hydro staff and the respondent that are apparently located in the respondent’s personnel file”.<sup>23</sup>

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<sup>21</sup> Applicant’s submission at pp. 6 and 7.

<sup>22</sup> *British Columbia Hydro and Power Authority, Re*, 2005 CanLII 11955 (BC IPC), at para. 4.

<sup>23</sup> *Ibid.*, at para. 7.

- “Another third relate to individual meetings between the respondent and named BC Hydro staff, which apparently concerned personnel issues.”<sup>24</sup>
- “The remainder of the requests relate primarily to reports and emails in the respondent’s personnel file.”<sup>25</sup>
- “Almost all of the requests ask for all records or information related to the specified meetings or letters.”<sup>26</sup>
- “The requests that relate to letters also generally include a request for “all information” related to the distribution of the letter to named individuals who were copied on the letter.”<sup>27</sup>
- “Other requests instead set out a series of statements or allegations made in the particular letter or meeting that is the subject of the request and then ask for policies, information or other documents related to those statements or allegations.”<sup>28</sup>
- “The respondent’s access requests have often arrived close together in time [four in January 2000, 16 in September 2000, and six in January 2002].”<sup>29</sup>

[105] The BC IPC found the following.

*...the access to information requests in issue here relate to individual letters or meetings involving the same four or five individuals—apparently BC Hydro managers—and thus appear to relate to discrete topics. I accept, however, that the requests, including the two which are the subject of the s. 43 application, all pertain to the respondent’s employment with BC Hydro, pertain to related disputes and are sufficiently connected each to the other that they are repetitious.*<sup>30</sup>

[106] In Order F18-37,<sup>31</sup> Adjudicator Cameron found an applicant’s access requests were not repetitious on the following evidence.

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<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, at para. 7.

<sup>26</sup> *Ibid.*, at para. 8.

<sup>27</sup> *Ibid.*, at para. 9.

<sup>28</sup> *Ibid.*, at para. 10.

<sup>29</sup> *Ibid.*, at para. 11.

<sup>30</sup> *Ibid.*, at para. 17.

<sup>31</sup> *Office of the Auditor General of British Columbia*, 2018 BCIPC 40 (CanLII).

- The first request was filed on the day the applicant's employment ceased with the Office of the Auditor General of British Columbia (OAG) in which he requested "any records that mentioned him over a period of approximately one year."
- Two weeks later, the applicant made a second request for records relating to firings that occurred in another BC Government Ministry for the purpose of drawing a comparison between the applicant's termination and inappropriate action taken by OAG executives.
- The applicant then made 33 more requests over a period of three months.
- The OAG sought relief under section 43 of BC's FIPPA for 22 of those requests.
- The information requested in the 22 requests were for:
  - *the Respondent's personal information;*
  - *the OAG's processing of the Respondent's previous access requests;*
  - *communications between the OAG and OIPC;*
  - *employee job descriptions;*
  - *officials' and employees' expenses and calendar entries;*
  - *harassment policies, procedures and records;*
  - *employee complaints and/or communications about harassment and/or inappropriate behaviour in the workplace;*
  - *information about Workplace Environment Satisfaction surveys; and*
  - *information related to diversity in the workplace and workplace safety issues.*

[107] In reaching her conclusion, Adjudicator Cameron stated the following.

*The OAG asserts that the Respondent's requests are repetitious in that they are attempts to locate records that will establish that the OAG has committed wrongs. However, in my view, this alone is not sufficient to establish that the requests themselves are repetitious, especially if the requests are for different information connected only by an applicant's belief that it may help him establish what he seeks to prove.*

*In this case, the Outstanding Requests relate to broad topics such as a "whistleblower", OAG employee calendar entries, office expenses and workplace environment surveys, as*

*well as requests for the Respondent's own personal information. Unlike Decision F05-01, the Outstanding Requests are not sufficiently connected to be repetitious. Furthermore, although the Respondent has made 13 identically phrased requests for information about the processing of his previous requests, all 13 are for a different subset of information and the responsive records would not overlap. This may be indicative of a pattern of requesting information, but I find that it is not repetitious.<sup>32</sup>*

### Analysis

[108] All the Applicant's requests for records in the 22 Access Requests that were processed and responded to by the Department fall into two general categories. They are:

- records concerning the work performance or ██████████ of the Applicant; and

[109] records relating to the Applicant's employment, under fill development plan, pay, probation, and ██████████. While the Applicant made broad requests for records under these categories in A-6890, A-6916, A-6918 and A-6919, many of the subsequent Access Requests were more specific and detailed. These Access Requests included requests for the following:

- records about their performance in relation to specific projects involving the Applicant during their employment;
- records to support claims made by management in respect of their performance;
- records about ██████████ and ██████████ in the workplace and management thereof related to the Applicant;
- evidence about compliance with policies regulating conduct by employees;
- records about specific meetings involving certain individuals;
- records about support received by colleagues in respect of their employment responsibilities;
- records associated with the Applicant's recruitment including all material used, evaluations conducted and scoring;
- records relating to the Applicant's training;

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<sup>32</sup> *Ibid.*, at paras. 21 and 22.

- records of performance management and planning associated with the Applicant's position including position support;
- records about a [REDACTED];
- records showing removal of [REDACTED] during the [REDACTED] phase; and
- records about preservation of evidence.

[110] Most of the records requested involve the Applicant's supervisor, Department human resources personnel, any individual involved in the probation [REDACTED] [REDACTED] including senior management of the Department and employees of the Public Service Commission, and colleagues with whom the Applicant worked.

[111] The types of records requested for the 22 Access Requests, which varies by request, are as follows,

- emails including those permanently deleted;
- notes of any sort;
- correspondence or other forms of recorded communications;
- cell phone messages (SMS);
- calendar entries; and
- Outlook requests.

[112] Detail about the records requested by the Applicant in each of the Seven Requests along with my conclusions about whether they are repetitive is as follows.

#### A-7364

[113] In this access request, the Applicant requested the following:

- "any and all records between [the Department] and the Public Service Commission that relate to my Underfill Development Plan, [REDACTED] [REDACTED]"; and
- "records between the Departments that relate to advice, information, guidance or direction given to YG employees at the aforementioned departments with respect to me."

[114] The Applicant prefaced their request with the following.

*I acknowledge in advance that some of the records responsive to this request have already been requested...*

[115] The timeline is [REDACTED] to present.

A-7393

[116] In this access request, the Applicant requested the following:

- [REDACTED] on the Department's original [REDACTED]; and
- all records related to the decision to withdraw [REDACTED] from the [REDACTED].

[117] The Applicant prefaced this request with the following.

*In two previous ATIPP requests to the public body, I asked for records related to my [REDACTED]. I specifically requested records that were withdrawn by the employer from its [REDACTED] on the [REDACTED]. New information has come to light that shows the public body has withheld records in response to these two requests and is in contravention of the ATIPP Act.*

[118] The timeline is [REDACTED]

A-7394

[119] In this access request, the Applicant requested the following:

- "records between [my supervisor] and I, and between [my supervisor] and my colleague(s), and records involving me and my colleagues, related to a) my colleague(s) inability to attend work (for a portion and/or all of a day), and b) direction from my [supervisor] to me in relation to extra tasks, workload and deadlines."

[120] The Applicant prefaces this request with the following statement.

*When I worked at [REDACTED], I had three colleagues who were [REDACTED]. Between [REDACTED] there were times when one, two or all three of my colleagues were unable to come to work for one reason or another. As a response, I was directed by my supervisor...to take on additional tasks as*

*well as my own. I was not checked in with by [my supervisor] for failing to meet my workload.*

[121] The timeline is [REDACTED].

A-7404

[122] In this Access Request, the Applicant requested records that demonstrate that the Applicant requested to attend “the Organizational Development Branch’s machinery of government training.” The Applicant added that “[t]his record was specifically requested in a previous ATIPP request and I did not receive it.”

[123] The timeline is [REDACTED].

A-7405

[124] In this Access Request, the Applicant requested records relating to a request to a specific [Department employee] to preserve records.

[125] The timeline is [REDACTED].

A-7436

[126] In this Access Request, the Applicant requested the following:

- records containing the metadata for a table entitled “Client feedback” in pages 0024 and 0027,<sup>33</sup> i.e., “the date it was created, the time of day it was created, and the identity of the author”;
- for the same table, the author’s calendar records related to a meeting held between branches of the Department, and their emails, phone and text messages, notes taken before, during and after these meetings; and
- records relating to a meeting between the author of the table and “[REDACTED] [REDACTED] to discuss [REDACTED]”.

[127] The timeline is [REDACTED].

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33 I accept that these are page numbers generated by the Department in response to Access Request A-7161.

A-7439

In this Access Request, the Applicant requested records relating to a specific calendar appointment identified by the Applicant from “page 5155”.

Conclusion

[128] The Applicant made the first of the Access Requests to the Department on [REDACTED], shortly after the Applicant [REDACTED] the Department. The first access request, A-6890, was very broad. In it, the Applicant requested records related to work performance or behaviour, or employment while employed for the Department, including records about the underfill development plan, pay, probation, and [REDACTED]. The Applicant then made 29 more requests for more detailed information related to the categories mentioned spanning over a period of one year.

[129] It is clear from the evidence that the records requested by the Applicant in A-7364, A-7393 and A-7404 are for the same records requested in some of the prior Access Requests. The Applicant acknowledges this fact. I am also of the view that the records requested by the Applicant in A-7405 and A-7394 and some of the records in A-7436 relate substantially to the same issues or events as prior Access Requests given that they all request subsets of information within the categories. In my view, they are sufficiently connected to the prior Access Requests in which the Applicant requests records related to work performance or behaviour, or employment, including the underfill development plan, pay, probation and [REDACTED]. With the exception of the following, I agree with the Department, that these Access Requests are repetitious in nature.

[130] There is not enough evidence to conclude whether two types of records listed in A-7436 are repetitious. These records are described in this Access Request as records containing the metadata associated with a table entitled “Client feedback” and calendar records for the author of the table related to a meeting held between branches of the Department plus their emails, phone and text messages, notes taken before, during and after these meetings. I also cannot determine from the records requested in A-7439 if those records are repetitive. I will address these records in my evaluation below about whether the Seven Requests are systematic.



## ***Are the Seven Requests Systematic?***

### Meaning of 'Systematic'

[131] In reliance on Order F18-37,<sup>34</sup> the Department indicated its views on the meaning of the word “systematic”.

*Apart from the dictionary meaning of a method or plan of acting that is carried out according to a set of rules or principles, in the context of access requests, “systematic” has been described as meaning.*

- *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 [the] OIPC; and*
- *behaviour suggesting that a respondent has no intention of stopping the flow of requests and questions, all of which relate to essentially the same records, communications, people and events.*

[132] In a decision issued by Alberta’s Information and Privacy Commissioner (AB IPC) authorizing Grant MacEwan College to disregard access requests made by an applicant, the AB IPC defined “systematic in nature” as follows.

*...a pattern of conduct that is regular (“constant, steady”) or deliberate (“intentional; done on purpose ... fully considered; not impulsive”)...*<sup>35</sup>

[133] I agree with the foregoing interpretation of ‘systematic in nature’ and adopt the same for the purposes of interpreting this term in paragraph 43 (1)(a) of the ATIPP Act.

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<sup>34</sup> *Office of the Auditor General of British Columbia*, 2018 BCIPC 40 (CanLII), para. 26.

<sup>35</sup> AB IPC, *Grant MacEwan College*, IPC File Reference #F3885, March 13, 2007, upheld on judicial review in *Bonsma v. Alberta (Information and Privacy Commissioner)*, 2010 ABQB 209 (CanLII), at para. 24.

## Submissions

[134] The Department's position is that the Applicant's Access Requests are "systematic". In this regard it stated that "[a] systematic series of requests is one that builds and expands on previous request results. A record is produced in response to a request. An applicant then makes a second request, asking for all records related to one of the records produced in response to the first request. That second group of records then gives rise to a third request for all records related to the one of the records produced in the second group of records-and so on, *ad infinitum*."<sup>36</sup> It added the following.

- "This pattern is reflected in many of [the Applicant's] most recent requests" citing A-7439 and "A-7236 (A-6890)" and "A-7328 (A-6890)" as examples.<sup>37</sup>
- "[The Applicant] also frequently uses the ATIPP process to compare the set of records obtained from a particular access request with sets of records obtained from other public bodies in response to other ATIPP requests, as well as to sets of records obtained by [the Applicant] during the course of [their] employment." The example cited is "A-7365."<sup>38</sup>

[135] The Applicant stated in regards to the allegation that the Seven Requests are systematic "I deny this claim. The PB fails to establish it."<sup>39</sup> The Applicant provided additional information in support of their position that will be addressed below.

## Consideration of Systematic by Other IPCs

[136] In OAG, Adjudicator Cameron with the Office of the BC IPC found access requests submitted by the applicant in that case to be systematic. Her conclusions in this regard follows.

*I agree with the OAG's submission that the Respondent's requests in this proceeding are similar to those of the respondent in Decision F05-01. In that case, the former Commissioner determined that the respondent had a pattern of requesting records based on what he saw in previous records he had already received and accepted the public body's argument that the requests were methodical and deliberate, and therefore, systematic. The former Commissioner said:*

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36 Department's submission, at para. 25.

37 *Ibid.*, at para. 26.

38 *Ibid.*, at para. 27.

39 Applicant's submission, at para. 1.

*Step by step, the respondent has requested, often in minute detail, records on various aspects of his employment and that of others; related matters such as security services; interactions, communications or incidents with other employees; his access to information files; MSDL's organizational restructuring, staffing and hiring processes; emails involving him; information supporting statements made in letters or emails to him; and other matters of concern to him. He has also made a number of requests for records related to matters referred to in records he had already received in response to earlier access requests, in one or two cases regarding events from the 1990s.*

*He has also often followed up on responses to FOI requests with questions about the records (or lack thereof), requests for information on relevant orders and why, in cases where the Ministries had subsequently released records, the Ministries had not disclosed the records earlier. He has also followed up with questions on the contents of the records and with questions about the responses to his access requests. As an example of the latter, in a request for emails on a particular topic, upon being told that there were no emails, he made a series of requests for information on email backup tapes, whether they existed, where they were stored, the use made of them and so on. The respondent also requested reviews of or made complaints about a number of the responses he had received, for example, where he was told no records existed or he had already received records responsive to his request in response to earlier requests.<sup>40</sup>*

*In this proceeding, the Respondent's requests are detailed and many arise out of the content of the responsive records that he has already received. It is apparent that the Respondent has been combing through the responsive records from earlier requests and basing his new requests on his assessment of what information he believes is missing. He has also followed up with questions about the records and has requested reviews or made complaints to the OIPC. Instead of waiting for the outcome of those processes, he has made a series of new access requests in an effort to uncover the information he believes has been improperly withheld. He has also made repeated requests for his own personal information, with a new request starting where a previous request for the same*

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40 Office of the Auditor General of British Columbia, 2018 BCIPC 40 (CanLII), at para. 33.

*type of information left off and has made multiple requests for information relating to the “processing” of previous requests.*

*Specifically, a total of 17 of the 22 Outstanding Requests are aimed at locating information the Respondent believes is missing from the records the OAG provided in response to Request 1. The Respondent’s submission supports this conclusion. He says:*

*I would argue that most of the FOI requests I have submitted relate to my personal and private records, how they were search[ed] (in light of their inadequacy), how they were processed, records about calendars because I did not believe all records about meetings held about me had been provided, as well as other records that helped shed light on the environment of suppression and oppression at the OAG. I was compelled to submit most of [the] FOIs as a direct result of the bangled and ill-handled first FOI request.*

*Based on the Respondent’s submissions and my review of his requests, I find that he has pursued the information he seeks in a methodical and deliberate manner, with the objective of either obtaining all of the information he believes is missing from the records he has been provided, or locating information that will prove records have been withheld. I am satisfied that these 17 requests are systematic.*

*The remaining five of the Respondent’s Outstanding Requests are aimed at locating evidence that would prove the OAG “is deficient in terms of ethical principles.” The Respondent submits that based on his own experience of working at the OAG, it is his opinion that the OAG has a complicated relationship with the “truth and truth claims.” It is clear to me that his interest is not in the totality of the information [REDACTED] the records he has requested. His goal is to identify pieces of information in those records that will support his views about the OAG.*

*In my view, he has also pursued this information in a methodical and deliberately-planned manner. For example, all five of the Outstanding Requests cover roughly the same period of time between 2014 and 2018. Additionally, four of the five Outstanding Requests were submitted within one month. I also note that although each request is for a distinct type of information, they are drafted similarly and broadly, with an aim to capture anything loosely related to the specific topic and are also further connected by*

*the fact that the Respondent believes the responsive records will demonstrate that the OAG is ethically deficient.*<sup>41</sup>

### Analysis

[137] As indicated, the Access Requests made by Applicant span a one-year period, between [REDACTED] and [REDACTED].

[138] In A-6890, the first request made on [REDACTED], the Applicant was seeking information related to their employment, the conditions therein, [REDACTED]. In response, the Applicant received 4,749 records sometime in January 2018.<sup>42</sup>

[139] In A-6893, the second request made four days after the first on [REDACTED], the Applicant was seeking notes from three specific meetings between themselves and their supervisor that were prepared by the supervisor. The Applicant requested notes of these same meetings prepared by a different person in A-6890. The Applicant received seven records, although it is unclear when this occurred. Subject to any extensions, the Department had until [REDACTED], to provide its decision to the Records Manager for response to the Applicant.

[140] According to the Applicant's evidence, [REDACTED]<sup>43</sup>

[141] A-6916, the third request on [REDACTED], was made following the [REDACTED]. The majority of records sought by the Applicant were about treatment in the workplace, concerns raised regarding this treatment, management of the concerns by human resources, and support by colleagues in relation to the concerns. The Applicant received zero records in response. It is unclear when the response letter was received. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[142] The same day, the Applicant made the fourth access request. In A-6918, the Applicant requested records "... relied upon by [my supervisor] and the Employer to make

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41 *Ibid.*, paras. 35 to 37.

42 In the Applicant's submission, on p.19, it indicates that the first interim response for A-6890 was received on [REDACTED]. Based on the evidence, I am satisfied that this date should be [REDACTED]. The Applicant indicates on p.29 that he received the records for A-6890 in [REDACTED]. Plus, subject to any extensions, the Department only had until [REDACTED] to provide its decision to the Records Manager so that he could provide a response to the Applicant in accordance with the timelines in the ATIPP Act.

43 Applicant's submission, at p.19.

a case for [REDACTED]...The records asked for below were also relied on by my [supervisor] and HR during my [REDACTED]; these records carried a lot of weight and I expect that they can be provided.” The records sought related to the Applicant’s recruitment, performance management including meetings about the same with the Applicant’s supervisor, training, and [REDACTED] in the workplace. The Applicant received two records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[143] Also on [REDACTED], the Applicant made the fifth access request. In A-6919, the Applicant requested records “...relied upon by [my supervisor] and the Employer to make a case for [REDACTED]...The records asked for below were also relied upon by [my supervisor] and HR during my [REDACTED]”. The records sought were about the Applicant’s probation [REDACTED], performance management by the Applicant’s supervisor in general and in respect of specific projects, and interactions with employees within and external to the Department in respect of specific projects. The Applicant received 26 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[144] The following day, on [REDACTED], the Applicant made the sixth access request. In A-6926, the Applicant requested, “Records of communications between [the Applicant’s supervisor] and HR...related to [the Applicant’s supervisor] having created the expectation for [the Applicant] previously that the Applicant would a) complete probation in [REDACTED] and b) receive fully [sic] pay by [REDACTED].” “Records...that exist related to retract a) or b) above. The records sought were about the Applicant’s probation, [REDACTED] and response thereto. The Applicant received zero records in response. It is unclear when the Applicant received the letter. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[145] Twelve days later, on [REDACTED], the Applicant made the seventh access request. In A-6932, the Applicant requested records about discussions the Applicant had with HR employees in [REDACTED] about preservation of records including steps taken by these employees in respect of the Applicant’s request. In the access request the Applicant indicates that the Applicant had requested the HR employees preserve records relating to the Applicant’s work performance and behavior, [REDACTED] so that the Applicant could access them [REDACTED]. In this access request, the Applicant expresses the view that the records were not preserved as

requested. The Applicant also sought records about the Applicant's attempts to have the issue about the non-preserved records addressed by the ATIPP Coordinator in [REDACTED] and [REDACTED] of [REDACTED]. The Applicant received 77 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[146] Two days later, on [REDACTED], the Applicant made the eighth access request. In A-6935 the Applicant sought records about being directed by the Applicant's supervisor to give away the Applicant's [REDACTED] and about replacement efforts. The Applicant does not provide reasons for this request. The Applicant received one record in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[147] Sometime in [REDACTED] of [REDACTED], the Applicant received some or all 4,749 records from A-6890.

[148] On [REDACTED], the Applicant made the ninth access request. In A-6996, the Applicant sought records about whether the Applicant was treated fairly according to the principles of natural justice and procedural fairness in relation to the [REDACTED] [REDACTED] at a meeting on [REDACTED], including whether the Applicant's supervisor properly considered the Applicant's evidence in respect of the Applicant's performance and whether the Applicant's [REDACTED] in the workplace were properly addressed. In the request, the Applicant describes the records sought, of which there are 16 kinds, by presenting views over two pages about what transpired before, during and after the meeting. The Applicant received 16 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[149] The Applicant made the tenth access request on [REDACTED]. In A-7161 the Applicant requests records "that relate to preparations for [REDACTED] [REDACTED]" The records sought were about communications between the Applicant's supervisor and HR and the removal of [REDACTED] prior to [REDACTED]. The Applicant received 52 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[150] Two weeks later, on [REDACTED], the Applicant made the eleventh access request. In A-7176, the Applicant requests records about a claim made to [REDACTED] and a supervisor's involvement. The Applicant indicated in this Access Request that the records sought demonstrate that the supervisor was aware of the Applicant's [REDACTED] and

that following time off related thereto that the supervisor “offered no support [REDACTED] [REDACTED]”. The Applicant received 13 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[151] On [REDACTED], the Applicant made the twelfth access request. In A-7266 the Applicant requests records related to performance, [REDACTED] [REDACTED] “lack of support” from a supervisor. The Applicant also indicates the records sought demonstrate any “fall-out or negative consequence” created for one of their colleagues “as a result of being forthright” with the supervisor and other Department employees. The Applicant received 249 records in response. When is unclear. There is no date indicated for the Department to provide its decision to the Records Manager.

[152] On [REDACTED], the Applicant made the thirteenth access request. In A-7231 the Applicant requests records made by a specific Department employee in relation to hiring. The Applicant received 12 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[153] On [REDACTED], the Applicant made the fourteenth access request. In A-7236 the Applicant sought an email sent to this same employee that “outlined a number of serious concerns for a HR branch” and records related to [REDACTED] in the workplace “as mentioned in this email”. The Applicant received 52 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[154] On [REDACTED], the Applicant made the fifteenth access request. In A-7238 the Applicant requests: records to substantiate claims made in [REDACTED]; an email that was “altered” including how it was used during the [REDACTED] and how it was received by HR and specifically requests that the record be “sought directly from IT Services and not from the individual who delivered it to HR”; and evidence about an MOU that was created “in response to inappropriate behavior by a member of staff at [another department] and when it was created.

[155] The Applicant received five records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[156] On [REDACTED], the Applicant made the sixteenth access request. In A-7241 the Applicant requests notes taken by a supervisor during the Applicant’s interview for the position. The Applicant received 10 records in response. When is unclear. The



Department had until [REDACTED] to provide its decision to the Records Manager for response.

[157] On [REDACTED], the Applicant made the seventeenth access request. In A-7292 the Applicant requests records containing evidence about how certain Department employees managed allegations of [REDACTED] by a supervisor and another Department employee. The Applicant received 84 records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[158] The same day, the Applicant made the eighteenth access request. In A-7293 the Applicant requests an email between the Applicant and a supervisor “where [the supervisor] directs me to play down the lack of stakeholder engagement with respect to [a specific] file”. The Applicant received two records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[159] The Applicant made the nineteenth access request, A-7294, sometime between [REDACTED] and [REDACTED]. This access request was not included as an exhibit by the Department.

[160] On [REDACTED], the Applicant made the twentieth access request. In A-7328 the Applicant requests records related to “[REDACTED] [REDACTED]” related to the Applicant’s probation, [REDACTED]. The Applicant received seven records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[161] On S [REDACTED], the Applicant made the twenty-first access request. In A-7354 the Applicant requests “records containing communications created by [a supervisor] that makes clear and/or implies [the supervisor’s] direction to remove and/or edit, and/or minimize, and/or alter, and/or dilute references to a lack of engagement or consultation with stakeholders with respect to [a specific file]. The Applicant received two records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[162] On [REDACTED] the Applicant made the twenty-second access request. In A-7364 the Applicant states “I acknowledge in advance that some of the records responsive to this request have already been requested. However, some records received from other departments are responsive to ATIPP requests filed previously with [the

Department]. In its results, [the Department] did not deliver these particular records. This gives me reason to believe that [the Department] is withholding records that are clearly responsive. The Applicant then requests records related to the underfill development plan, probation [REDACTED]. This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[163] The same day, the Applicant made the twenty-third access request. In A-7365 the Applicant requests an email between a Department HR employee and an employee from another department. The Applicant indicates that "I am requesting the full email thread related to this record". The Applicant also requests the outlook request mentioned by one of the employees in the email. The Applicant received two records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[164] Also on [REDACTED], the Applicant made the twenty-fourth access request. In A-7370 the Applicant states "My supervisor...directed me to give away my [REDACTED] when I worked at [the Department]. This direction was communicated to me in an email from [the supervisor]". The Applicant indicates that the email "was withheld by the [D]epartment". The Applicant adds "I have reason to believe [the supervisor] may have deleted this email and/or not delivered it to the ATIPP coordinator". The Applicant then requests that, for this reason, the request be sent to the Deputy Minister for the Department and that he "asks the IT branch to retrieve the email..." The Applicant received five records in response. When is unclear. The Department had until [REDACTED] to provide its decision to the Records Manager for response.

[165] On [REDACTED] the Applicant made the twenty-fifth access request. In A-7393 the Applicant states that "In two previous ATIPP requests to the public body, I asked for records related to [REDACTED]. New information has come to light that shows the public body has withheld records in response to these two requests and is in contravention of the ATIPP Act. The Applicant then requests two [REDACTED] and claims they were on the Employers [REDACTED] before it was amended. This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[166] The same day, the Applicant made the twenty-sixth access request. In A-7394 the Applicant states that "When I worked at [REDACTED], I had three colleagues who were [REDACTED]. Between [two dates] there were times when one, two or all three of my colleagues were unable to come to work for one reason or another. As a response, I was directed by my supervisor...to take on additional tasks as well as my own. I was not checked in with by [my supervisor] at any point to see what my workload was

like before [the supervisor] added to it. Instead I was criticised [sic] by [my supervisor] for failing to meet my workload". The Applicant then requests records related to this concern. The Applicant also indicated that "[r]esults of IPC review and an investigation are suggesting that records have been altered by staff before being delivered to the ATIPP coordinator" and "...to ensure the integrity of the ATIPP process, I am asking that you do not ask [my supervisor] directly for these records but rather you ask IT to access them". This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[167] On [REDACTED] the Applicant made the twenty-seventh access request. In A-7404 the Applicant requests an email about a training request he made to the supervisor. The Applicant indicates that "[t]his record was specifically requested in a previous ATIPP request and I did not receive it". The Applicant added that "[g]iven that staff at the public body have in the past withheld responsive documents from the ATIPP Coordinator and/or altered documents before delivering them to the coordinator, I am asking that you do not ask [my supervisor]" and "that you retrieve it directly from IT services". This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[168] The same day, the Applicant made the twenty-eighth access request. In A-7405 the Applicant requests records related to a request made to a Department employee to preserve records. This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[169] On [REDACTED], the Applicant made the twenty-ninth access request. In A-7436 the Applicant requested metadata (date and time created and the author) for a specific table and records about who the author met with and any correspondence created from these meetings. In respect of these records the Applicant instructed the ATIPP coordinator on the search parameters. Adding that "a year after I filed my first ATIPP request A-6890, I am still officially waiting on records from that request. I recently learned via a letter from the IPC that [the Department] is still improperly applying sections from the ATIPP Act in order to redact information from the results of A-6890. This deplorable show of bad faith on the part of the public body has not only had a negative impact on my life but it represents also an extreme example of the willful waste of taxpayers' money. I ask that you bring this ATIPP request to the immediate attention of the [D]epartment's Deputy Minister." This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[170] The same day, the Applicant made the thirtieth access request. In A-7439 the Applicant states “[i]n the results of A-7365 there is what appears to be a calendar appointment on page 5155”. The Applicant then requests records related to this appointment. This is one of the Seven Requests that the Department has sought relief for under subsection 43 (1).

[171] In the Applicant’s submissions, they provided their views on why so many requests for information were made between [REDACTED] and [REDACTED] and about the subject matter therein. Some of those views are set out in the analysis of whether the Seven Requests are repetitive above. I will not repeat them here. The Applicant added the following.

*The records that are proving the hardest to get are records that either reflect poorly on the PB or reflect well on me. I have been receiving some of the records gradually (for example the [REDACTED] emails or the positive feedback from clients) but only after IPC reviews and after other public bodies shed light on their existence.*

*In some cases where I know records exist, the PB is simply point blank refusing to provide them. Examples of these include my calendar records, [my supervisor’s] calendar records, HR calendar records and earlier draft of the typed summaries of the [REDACTED] and [REDACTED] meetings between HR, [my supervisor] and I. All of these records serve to cast the PB in a bad light but I am nonetheless entitled to them in accordance with the ATIPP Act.*

*A significant volume of records I am asking for were cited and referenced by the PB when it [REDACTED]. These records carried great weight in the Employer’s [REDACTED] therefore it stands to reason that they exist. Naturally then, when I request these records and don’t receive them, and I receive no explanation as to why I’m not receiving them, I seek advice and ask for them differently. I ask for them differently because I can’t think of any other reason I’m not getting them aside from that my request could have been worded differently.*

*I have made ATIPP requests to 3 other public bodies aside from the PB. These other public bodies stand in stark contrast to the PB in terms of how they have responded to my requests. By working meaningfully with me, these other public bodies delivered results via a transparent, focused and expedited process. Specifically, these other public bodies have*

- a) *worked with me closely to narrow down the focus of my requests;*

- b) *explained clearly what records are responsive to specific parts of my request;*
- c) *explained clearly if there are no records for a specific part of my request; and*
- d) *delivered results that are clearly responsive thereby negating the need for mediation, reviews and investigations.*

*Once I learned how efficient the ATIPP process could be, I started to apply what I learned from dealing with other public bodies to subsequent ATIPP requests filed with the PB. I made clear to the PB in subsequent ATIPP requests that the process could be less burdensome, and that the volume of subsequent reviews and requests could be minimised, if the PB agreed to assist and respond as the other public bodies have. The PB refused and now in the Submissions it argues “unworkable criteria,” “formatting of responses” and “burden” as reasons to grant relief. Essentially, the PB has created a make-work program for itself and wants to attribute the related burden to me.*

*The Submissions does not acknowledge in any way that each review of results carried out by the IPC to date has resulted in additional records being produced; sometimes in the form of entirely new records and sometimes in the form of previously redacted information being revealed. In addition, the Submissions does not acknowledge in any way that the IPC found that the PB improperly redacted and withheld records on a number of occasions. It is beyond doubt that the public body has failed on more than one occasion to produce records it ought to have produced in response to an initial ATIPP request. By not addressing or acknowledging these facts in the Submissions, the PB is attempting to gloss over its role in creating the need for additional requests and reviews, thereby contributing to a strain on its resources and functions.*

*Furthermore, as the results of IPC reviews show, the PB has used the same sections of the ATIPP Act over and over again to improperly withhold records and apply redactions. The PB does not address this pattern of behavior in the Submissions, therefore it is unknown what explanation it is willing to offer in order to justify it. In [REDACTED], the PB was the subject of an IPC inquiry [REDACTED] that found the PB improperly redacted and withheld records. There are many similarities between the Privacy Commissioner’s report and my current situation. These facts beg the question of how the PB could continue to improperly apply the same sections of the Act over and over. This does not inspire confidence in the PB’s willingness to learn in order to ensure it properly applies the ATIPP Act and operates in an efficient manner with respect to the ATIPP process.<sup>44</sup>*

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44 Applicant’s submission, at pp. 7 to 9.

[172] The Applicant added that:

*...when an applicant makes a first-time ATIPP request, nobody sits the Applicant down, offers a manual, and explains how exactly it should be done. To my mind, this places even greater importance on the PB's duty to assist. I got better at making ATIPP requests over time thanks to the assistance of the ATIPP Office, the Office of the IPC, and other public bodies aside from the PB...when I learned that there was a better way to get the records I was seeking, I started to write ATIPP requests differently.*

*...because the PB refused to share with me which specific parts of my request were and were not resulting in the production of records, I adopted the strategy of filing a greater number of shorter requests as opposed to a lesser number of longer requests. The idea is that this strategy will help me to figure out what parts of my ATIPP requests produce records, and what parts produce no records. In other words, it was my workaround for the PB's failure to assist.<sup>45</sup>*

[173] After describing these views, the Applicant then provided reasons for making numerous access requests. They are summarized below.

- There were discrepancies between the notes taken and summaries used for the [REDACTED].<sup>46</sup>
- Only final versions of the summaries were provided and not the drafts and no explanation about whether they exist or not has been provided.<sup>47</sup>
- Records were received from other public bodies that led the Applicant to have “reason to believe” that the Department must have these records and failed to provide them.<sup>48</sup>
- Records were withheld, specifically [REDACTED] and [REDACTED] and those in respect thereto.
- Records were altered before they were released.<sup>49</sup>

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<sup>45</sup> *Ibid.*, at p.17.

<sup>46</sup> *Ibid.*, at para. 78.

<sup>47</sup> *Ibid.*, at para. 79.

<sup>48</sup> *Ibid.*, at para. 81.

<sup>49</sup> *Ibid.*, at paras. 90 and 109.

## Conclusion

[174] It is clear from the evidence that several of the Applicant's Access Requests, inclusive of the Seven Requests, are systematic. I base my conclusion on the following.

[175] The first several Access Requests were made by the Applicant in an effort to obtain information to defend against the Department's position regarding [REDACTED] and to demonstrate that, in the Applicant's view, [REDACTED]. This is evident both from the nature of the requests, the context, and the Applicant's submission in which comments were provided about these intentions. There is no evidence, other than the timing of when the Applicant received the records from A-6890, to suggest they were systematic until the 22<sup>nd</sup> Access Request, A-7364, was made. This Access Request and those that follow demonstrate the Applicant was of the view that the Department was withholding records, altering them prior to release, destroying them, or improperly applying exceptions to them or the information therein. This is despite a finding by my Office that the same allegations made by the Applicant in respect of Access Requests A-6890, A-6893, A-6916, A-6918, A-6919, A-6926, A-6932, A-6996, and A-7161 were unfounded.<sup>50</sup>

[176] Access Requests A-7364, A-7365, A-7370, A-7393, A-7394, A-7404, A-7405, A-7436, and A-7439 all contain information that suggest the Applicant was in fact combing through information received from prior access requests made to the Department or other public bodies to identify other information or records to request. The evidence in these nine Access Requests also demonstrates that the Applicant was revising earlier access requests to obtain the records or information that, in the Applicant's view, was improperly refused. They also contain evidence that the Applicant was systematically raising issues with the Department about its responses to earlier requests, specifically by alleging it was improperly applying the ATIPP Act or failing to meet its duty to assist. In some cases, as admitted by the Applicant, some responses were reviewed by my Office.

[177] In my view, the nine Access Requests identified in the preceding paragraph, which are inclusive of the Seven Requests, and the evidence provided by the Applicant together with their timing demonstrate a pattern of conduct that is regular and deliberate. My conclusion in this regard is bolstered by the decision of the BC IPC in F05-01,<sup>51</sup> cited in F18-

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<sup>50</sup> Our File No. ATP18-111.

<sup>51</sup> BC Hydro, 2005 CanLII 11955 (BC IPC).

37,<sup>52</sup> who arrived at a similar conclusion on the facts in that case, which are similar to those here.

[178] I am also of the view that the Applicant will continue to make requests for access to information for the type of records or information contained in the Access Requests in an effort to obtain the information or records for the purpose of proving that the management ██████████ of the Applicant's employment was ██████████.

[179] My view in this regard is based on the contents of the Access Requests and the submissions. It is clear in these documents that the Applicant believes that the Department is intentionally withholding certain information or records, or that it destroyed them in an effort to ensure the Applicant does not have access to them. As indicated previously, our investigation into similar allegations made in respect of nine of the Access Requests concluded the allegations were unsubstantiated. The content of the Applicant's submission about the investigations and reviews conducted by my Office in respect of a number of the Access Requests, some of which is inaccurate, suggests ██████ does not accept our conclusions reached and will continue to make access requests in search of certain records or information.

[180] Given the foregoing, I agree with the Department that the Seven Requests demonstrate that they are systematic in nature.

***Will processing the Seven Requests unreasonably interfere with the operations of the Department?***

Submissions

[181] The Department's position is that processing the Seven Requests would unreasonably interfere with its operations. In regards to this position, it indicated that its position is based on "the legal presumption" and "positive evidence". It added that:

*Where, as in this case, pending requests are repetitious and systematic, then there is a presumption that anything more than a de minimis burden is an unreasonable interference—and it is apparent on the face of the pending requests that the burden is not de minimis.*

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52 *Office of the Auditor General of British Columbia*, 2018 BCIPC 40 (CanLII), at paras. 33 to 38.



*The positive evidence submitted by the Department... also demonstrates an unreasonable interference.*<sup>53</sup>

[182] The Applicant's position is that any burden on the Department was caused by its own doing, and stated the following.

*I offered on multiple occasions to assist the PB to narrow down the scope of my requests and expedite the response process. The PB refused. The PB failed in its duty to assist the Applicant. As a result, a significant amount of records were produced unnecessarily by the PB and further requests were necessary. This failure undoubtedly contributed to the burden on the PB's resources.*<sup>54</sup>

[183] The Applicant provided additional information in respect of this part of the test under paragraph 43 (1)(a). I will address this information below.

Meaning of 'Unreasonable Interference with the Operations of a Public Body'

[184] The Department made a number of legal arguments about this meaning, which I have set out below.

*The mere fact that a request imposes an unreasonable burden on a public body does not, by itself, suffice to justify relief under s. 43.*<sup>55</sup>

[185] The authority relied on for this proposition is *British Columbia (Technology, Innovation and Citizens' Services) (Re)*.<sup>56</sup> The Department cites a number of paragraphs from this decision in support. It is unclear to me how these paragraphs support the proposition. Notwithstanding this, I agree, based on a plain reading of the words in paragraph 43 (1)(a), it is not enough for the Seven Access Requests to unreasonably interfere with the Department's operations if processed. They must also be repetitive or systematic in nature and that this causes the unreasonable interference.

*Similarly, the fact that a request is repetitive or systematic, does not by itself suffice to justify relief under s. 43.*<sup>57</sup>

[186] For the foregoing reasons, I agree.

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53 Department's submission, at paras. 49 and 50.

54 Applicant's submission, at para. 7.

55 Department's submission, at para. 51.

56 2014 BCIPC 16 (CanLII), at paras. 21 to 23

57 Department's submission, at para. 52.

*However, a finding that a request is repetitive or systematic effectively raises a (rebuttable) presumption that responding to the request would be an unreasonable “overburdening of a public body”*

[187] The authority cited for this proposition is *Law Society of British Columbia (Re)*<sup>58</sup>  
The Department included the following from this decision.

*[11] In Auth. (s. 43) 99-01, former Commissioner Loukidelis explained that when someone abuses the right of access under FIPPA, it can have serious consequences for the access rights of others and for the public interest:*

*...Access to information legislation confers on individuals such as the respondent a significant statutory right, i.e., the right of access to information (including one’s own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies’ costs of complying with the Act. Section 43 exists, of course, to guard against abuse of the right of access.*

[188] I disagree with the Department that the presumption as described exists. The authority cited does not, in my view, support this proposition and I find no such presumption exists.

[189] The BCSC had the following to say about the meaning of “unreasonable interference in the operation of a public body” under BC’s FIPPA.

*The determination of what constitutes an unreasonable interference in the operation of a public body rests on an objective assessment of the facts. What constitutes an unreasonable interference will vary depending on the size and nature of the operation. A public body should not be able to defeat the public access objectives of the Act by providing insufficient resources to its freedom of information officers.<sup>59</sup>*

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58 2018 BCIPC 37 (CanLII), at para. 11.

59 *Crocker v. British Columbia (Information and Privacy Commissioner)*, 1997 CanLII 4406 (BC SC), at para. 37.

[190] In *British Columbia (Ministry of Labour and Citizens' Services) (Re)*(BC MLCS), the BC IPC considered the following in deciding an “unreasonable interference with the operations of a public body” had been made out.<sup>60</sup>

1. The size of the access and privacy branch in the public body. Note that the size (i.e. number of employees) must be sufficient to meet the operational demands of processing access to information requests generally.
2. The number of requests by the applicant as compared to the total number received in a specific time period.
3. The degree of complexity associated with the request and the time spent related thereto.

[191] In the BC MLCS case, there were three staff when the applicant began making requests. Three additional staff were hired to address the backlog which they alleged was caused in large part by the applicant’s requests. The applicant had made 41 requests in over 2 years and made up 28% of all requests received. The applicant’s requests were broad. Plus, their numerous requests overlapped, which required staff to take the time to evaluate the records already provided for each access request. The applicant generated correspondence subsequent to each request that took time to address. The public body spent numerous hours (over 300) processing the applicant’s requests which impacted its ability to respond to other access requests. The public body expected additional requests from the applicant.<sup>61</sup>

[192] The BC IPC commented that the requirement to process a large number of records, although a factor, “is not enough to cross the threshold of what is an unreasonable interference with a public body’s operations.”<sup>62</sup>

[193] In reference to the foregoing evidence, the BC IPC stated the following.

*I accept the Ministries’ contention that the detailed, overlapping nature of the respondent’s requests makes them difficult to deal with, in that it is necessary in each case to determine what the applicant wants, if the Ministries have already provided the requested records or, in the case of new requests, if the Ministries have the requested records. The Ministries’ evidence about the time taken to deal both with the*

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60 2006 CanLII 42644 (BC IPC), at paras. 37 to 41.

61 Similar factors were considered in *British Columbia (Labour) (Re)*, 2010 BCIPC 51 (CanLII), at paras. 29 to 32.

62 *Ministry of Management Services*, Auth. (s. 43) 03-01, December 10, 2003, at para. 27, located at: <https://www.oipc.bc.ca/decisions/173>.

*respondents' requests and his many and detailed follow-up issues and questions establishes, in my view, that the respondent's past requests have unreasonably interfered with the Ministries' operations within the meaning of s. 43(a). I am also satisfied that responding to the outstanding requests would continue to have this effect.*<sup>63</sup>

[194] The evidence put forward by the Department in support of its position that the Applicant's Access Requests have unreasonably interfered with its operations as set out in the Affidavit of the Director of Information Management and Technology for the Department (Director). This information follows.

- The Applicant made the first request on [REDACTED].
- He made 28<sup>64</sup> requests afterward, with the last made on [REDACTED].

[195] The Director identified the impact of the Applicant's Access Requests over the one-year period.

- *The Department has one dedicated position to deal with ATIPP requests.*
- *I estimate that about 40% of that person's time over the past year has been spent on [the Applicant's] requests. In terms of direct salary and benefit costs alone that represents over \$35,000 in direct cost. Adding in the value of time spent by operational staff collecting these records and the total cost of responding to [the Applicant's] requests likely exceeds \$50,000.*
- *[The Applicant's] requests comprise over 50% of the ATIPP requests received by the Department since [REDACTED].*
- *[The Applicant] also emails Departmental personnel directly with directions, inquiries, and complaints concerning the handling of [the] requests...*
- *In my judgement, dealing with [the Applicant's] requests has interfered with the Department's ability to meet its obligations to other applicants under the [ATIPP Act].*
- *I estimate that 150 to 200 hours would be required to review and produce records in response to [the Applicant's] seven pending requests.*

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63 *Ibid.* 2, at para. 41 and in *Office of the Auditor General of British Columbia*, Order F18-37, 2018 BCIPC 40 (CanLII), at paras. 43 to 51.

64 Note that I determined the Applicant made 29 requests afterward.

- *I estimate that between 1,000 and 1,500 records would likely have to be reviewed in response to [the Applicant's] seven pending requests.*
- *In my judgement, continuing to deal with [the Applicant's] requests in the future will interfere with the Department's ability to meet its obligations to other applicants under the [ATIPP Act].*<sup>65</sup>

## Analysis

### *Department resources*

[196] The Department indicated it has one resource dedicated to processing access to information requests made for Department records. It also indicated that 40% of this individual's time over the past year was used to process the Applicant's Access Requests, minus the Seven Requests, and that the cost to the Department, in salary and benefits in respect of this individual, was "over \$35,000". It added that there was additional time spent by other personnel in the Department who were involved in providing records responsive to the Access Requests and there are associated costs in terms of their salaries and benefits. It estimated the total cost to the Department to process the Access Requests "likely exceeds \$50,000."<sup>66</sup>

### *Number of requests vs. total average number*

[197] The total number of Access Requests received from the Applicant was 30 within a one-year period. The Department did not provide evidence about the average amount of access requests it normally receives. However, the ATIPP Office in the Department of Highways and Public Works tracks this information.

[198] Between April of 2012 and March of 2017, the Department received on average 19 access requests per year. Between April of 2017 and October of 2018, a period of one and one-half years, the Department received 87 access requests. As indicated, the Applicant's Access Requests were made between [REDACTED] and [REDACTED].

[199] Based on the size of the Department and the average number of access to information requests received annually, at least up to 2017 and 2018, I am satisfied that it adequately resourced the access to information function within the Department.

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65 Director Information Management and Technology's Affidavit, at paras. 9 to 15.

66 *Ibid.*, at para.

*Degree of complexity*

[200] The Applicant made eight of the Access Requests in seven weeks between [REDACTED] and [REDACTED], after [REDACTED]. Most of these Access Requests were significantly lengthy and detailed and requested specific information about their employment and [REDACTED]. As indicated, the information within these requests makes it clear that the Applicant was seeking evidence within the records to support their view that the management of their employment and [REDACTED] was improper.

[201] In each Access Request, the Applicant specifies the search parameters indicating emails including those deleted, cell phone or SMS messages, meeting notes, calendar details and other existing records created in relation to specific events, activities, communications, incidents, processes, and meetings are to be searched. The Applicant also identified in each specific people associated with the records. Many of the requests involve the same people but in some, they differ. In response, the Department provided 4,862 records.

[202] Between [REDACTED] and [REDACTED], the Applicant made another twelve of the Access Requests. Two A-6996 and A-7328 are similar to the first eight in style while identifying different people and events or circumstances related to the requests. The rest are not as lengthy and seek targeted and specific information about events related to the Applicant's employment and [REDACTED]. In response, the Department provided an additional 504 records.

[203] In several of the Access Requests, the Applicant asks for records provided to be correlated to each of the information or records requested therein. I understand the reason for this is so that the Applicant can determine if there are or are not responsive records.

[204] I have already determined that the Seven Requests are repetitive and/or systematic. To process these requests would take a considerable amount of work and would involve, for each one, identifying the individuals who interacted with the Applicant in certain circumstances and speaking to all the individuals identified to obtain the records, including employees of the Information and Communications Technology branch in the Department of Highways and Public Works. Once the records are received, the Department would then need to review them and decide whether there are exceptions to the right of the Applicant to access the records or information therein. The Director indicated that this would take approximately 150 to 200 hours and involve between 1,000

and 1,500 records. They would then need to evaluate the records to determine what records or information was already provided to ensure redactions or refusals, as applicable, are consistently applied.

### Conclusion

[205] The volume and detail associated with the Applicant's Access Requests has already had a significant impact on the Department's resources. In my view, requiring it to undertake this exercise for the Seven Requests, which are, for the reasons above noted, repetitious and/or system[ati]c, would, in my view, unreasonabl[y] interfere with the operations of the Department, specifically its ability to process access to information requests received from other members of the pub[li]c within the requisite timelines and on its resources throughout the Department.

[206] The Department provided no evidence on whether increasing resources will alleviate the pressure created by the increased number of access to information requests it received between [REDACTED] and [REDACTED]. On this point, as indicated, I am satisfied that at least up to [REDACTED], the Department had adequate resources to process the average number of access requests it received each year. I acknowledge that adding resources to manage an influx is challenging in Yukon as processing access to information requests requires a specific skill set. Even if the Department was able to supplement its resources for the purposes of processing the Access Requests, I am satisfied that the ripple effect of processing the Seven Requests would still unreasonably impact the operations of the Department for the reasons above noted.

[207] The Applicant asserted in a number of the Access Requests that the Department was improperly processing them including by refusing to identify records that are relevant, misapplying the exceptions to the right of access to information in Part 2 of the ATIPP Act, and destroying records or information. The Applicant provided no evidence to support these allegations. As indicated, our investigation into these allegations in respect of several of the Access Requests found similar allegations unfounded.

### **Findings – Paragraph 43 (1)(a)**

[208] Based on the foregoing, I find the Department has met its burden of proving that paragraph 43 (1)(a) applies to the Seven Requests. Given my finding, I will not go on to determine whether the Seven Requests are frivolous or vexatious.

## Exercise of Discretion

[209] Restricting an individual's access to information rights should not be taken lightly and should only occur after careful consideration of all the facts. In this case, I found that if the Department is required to process the Seven Requests, it will interfere with its operations because of their repetitious or systematic nature. Given this, and taking the facts into account, my decision is to authorize the Department to disregard these requests.

[210] Although I have reached this decision, I would like to address the Applicant's concerns as expressed in their submission about the Department's and the Records Manager's duties to assist.

[211] As indicated, many of the Access Requests include requests for information about specific events that, in my view, would require Department employees to interpret what is being asked for in order to locate and provide responsive records. The ATIPP Act provides individuals with the right to access records and information therein. Subsection 6 (2) makes it clear that individuals who make a request for records or information from a public body "must provide enough detail to identify the record." In my view, many of the Applicant's Access Requests do not meet this requirement.

[212] The Records Manager and Department have a combined duty to assist the Applicant make an access request in such a manner that the specific records or information sought is clear and the responsive records or information is provided, subject to applicable exceptions. The Applicant indicated that the Records Manager and Department failed to meet their respective duties to assist in providing assistance with making proper access requests. The Applicant further expressed that this failure led, in part, to the need to make multiple requests for the same information. I do not have enough evidence to evaluate these assertions and make no finding in this regard.

[213] The Applicant made a noteworthy comment about the experience in navigating Yukon government's access to information processes that I believe warrants due consideration by the Records Manager and the Department about whether improvement to these processes are needed.

*...when an applicant makes a first-time ATIPP request, nobody sits the applicant down, offers a manual, and explains how exactly it should be done. To my mind, this places even greater importance on the PB's duty to assist. I got better at making ATIPP requests over time thanks to the assistance of the ATIPP Office, the Office of the IPC, and*



*other public bodies aside from the PB...when I learned that there was a better way to get the records I was seeking, I started to write ATIPP requests differently.*<sup>67</sup>

[214] Based on the contents of the Access Requests that were processed by the Department, including one reviewed by my Office where we determined it was not a proper request for information or records, the Records Manager and Department may have failed to meet their duties to assist the Applicant identify the records or information sought, and that this failure may have contributed to the repetitious and systematic requests that impact on its operations. As indicated, I do not have sufficient evidence to make a finding in this regard and make no such finding. In my view, however, the Records Manager and Department need to evaluate what occurred here as well as the Applicant's comments about the experience to ensure it is adequately assisting applicants in accordance with the duty to assist applicants imposed under the ATIPP Act.

#### **Future Access Requests**

[215] The Department has sought relief under subsection 43 (1) for future access requests made by the Applicant in respect of the following:

- (i) [the Applicant's] *employment history or performance;*
- (ii) [REDACTED]
- (iii) [REDACTED]; *or*
- (iv) *the handling of [the Applicant's] previous access requests.*

[216] In its submission, the Department indicated that the IPC has authority to grant such relief as set out, in reference to decisions of the AB IPC and BC IPC, the subject matter for which such relief was granted. Specifically:

- (a) *subject matter;*
- (b) *reference to overlap or duplication of previous requests;*
- (c) *the number of requests made or pending at one time; and*
- (d) *the number of hours required to respond.*<sup>68</sup>

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<sup>67</sup> Applicant's submission, at para.67.

<sup>68</sup> Department's submission, at para 78.

[217] The Applicant submitted in regards to the request for relief sought by the Department that it not be granted.

[218] The Department cited several cases in support of its position that the IPC has authority to grant relief from having to process future access requests submitted by the Applicant.

[219] In a decision by former IPC, Tim Koepke,<sup>69</sup> he stated the following about this authority.

*...It is settled law that a section 43 authorization may deal with possible future requests by an Applicant to a public body within certain limits.<sup>70</sup>*

[220] In reference to *Mazhero v. British Columbia (Information and Privacy Commissioner)* (Mazhero),<sup>71</sup> the former IPC added therein the following comments made by Tysoe J.

*...One cannot predict with any certainty that a request which has not yet been made will unreasonably interfere with the operations of the public body. It would not be appropriate to effectively deprive an applicant from the right to make future requests which would not unreasonably interfere with the operations of the public body.*

*...As a general rule, even though the Commissioner has determined that the repetitive or systematic nature of past and pending requests represent an unreasonable interference with the operations of the public body, he should not generally authorize a public body to disregard all future requests for records (or a type of records) without regard to whether any such requests will unreasonably interfere with the operations of the public body. As stated by Coultas J. in *Crocker [v. British Columbia (Information and Privacy Commissioner)]*, the remedy fashioned by the Commissioner must redress the harm to the public body seeking the authorization. In attempting to minimize such harm, it is too drastic to authorize the public body to disregard all future requests for records (or a type of records) when it is not known whether any such requests will cause unreasonable interference with the operations of the public body. This is especially so when the requests relate to personal information for two reasons. First, personal information is more restricted by its nature and it is less likely that a request for personal information will unreasonably interfere with the operations of the public body. Second, the applicant*

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<sup>69</sup> *Department of Justice* (File #12-0310) (18 October 2012) (YT IPC).

<sup>70</sup> *Ibid.*, at para. 46.

*has a stronger claim to have access to records of a personal nature than to general records.*<sup>72</sup>

[221] Tysoe J. also stated the following.

*An appropriate remedy in respect of future requests would be to authorize the public body to disregard such requests in specified circumstances. An example of such a remedy is the one which Coultas J. found acceptable in Crocker; namely, that the public body was required to deal with only one request at a time. Another example would be to authorize the public body to disregard a request for records if it would take the staff of the public body more than a specified number of hours to comply with the request. I have no doubt that there are other ways to describe circumstances that would allow the public body to disregard future requests which would be likely to interfere with its operations. It should also be borne in mind that if the authorization is not adequate in describing the circumstances which would permit the public body to disregard a future request which it believes will unreasonably interfere with its operations, the public body may again apply under s. 43 for an authorization to disregard that request.*

*In the present case, the Commissioner concluded that the access requests made by Dr. Mazhero were repetitious, systematic and unreasonably interfered with the operations of the City. It was reasonable for the Commissioner to have authorized the City to disregard all pending requests from Dr. Mazhero and there is no basis for setting aside the authorization as it pertains to pending requests. However, the Commissioner exceeded his jurisdiction by authorizing the City to generally disregard future requests from Dr. Mazhero without regard to whether any such future requests would unreasonably interfere with the operations of the public body.*<sup>73</sup>

[222] The Department also cited the foregoing two cases.

[223] In terms of the relief granted by Information Commissioners for future access requests, the Department cited: *Vancouver Coastal Health (Re)*, 2013 BCIPC 25 (CanLII), paras. 43-44 (VCH); *Alberta Motor Association*, 2010 AIPC #1241 (March 8, 2010), para. 47 (AMA); and *British Columbia Hydro and Power Authority, Re*, 2005 CanLII 11955 (BC IPC), para. 44 (BC Hydro).

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<sup>72</sup> Mazhero, 1998 CanLII 6010 (BC SC), at paras. 27 and 29.

<sup>73</sup> *Ibid.*, at paras. 30 and 31.

[224] Paragraphs 43 to 44 of VCH state as follows.

*If VCH were required to respond to the existing request and future requests relating to the specified subjects, it would expend scarce resources when it has been found to have responded adequately in the past. VCH would have to take resources away from other applicants' requests or other activities. An authorization for VCH to disregard the existing request and future requests relating to the specified subjects avoids waste of public resources and interference with the rights and needs of others.*

*In light of all the factors and circumstances, I consider the following authorizations are appropriate to provide relief against unreasonable interference with VCH's operations under s. 43 of FIPPA:*

1. ...
2. *VCH is authorized to disregard any access request made by the respondent, or made on his behalf regarding:
  - a. records about the care the respondent's mother received at the Villa Cathay residential care facility;
  - b. records about VCH's investigation into the respondent's mother's care; and
  - c. records about the respondent's freedom of information requests to date.*
3. *Given the historical nature of the subject matter it covers, not [REDACTED] time limit is necessary for this authorization.*

[225] The decision made by Adjudicator Flanagan in VCH was made after determining that the applicant in that case requested records as identified in point two above as a result of his "unwavering concern about his late mother's care" that resulted in his "intense interest in any documents that relate to that care...[with] focus on a tightly related set of events"<sup>74</sup> and after finding that the applicant's access requests were repetitive, systematic and unreasonably interfered with the operations of VCH and that they were frivolous and vexatious.

[226] Paragraph 46 of AMA states as follows.

*I am satisfied that, to date, all of the Respondent's requests for access to personal information have related in some manner to the dispute regarding their fire and flood*

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<sup>74</sup> VCH, at para. 22.

*insurance claims. I am satisfied that with respect to the fire and flood insurance claims (including AMA's investigations of these claims and the Respondents' insurance file as it relates to these claims and coverage of these claims) the Respondents have been provided with access to their personal information, as they are entitled under PIPA. Although I am not satisfied that a blanket authorization to disregard all future requests is warranted, I am satisfied that AMA should be able to disregard a limited type of future requests. In my opinion, the current and future access requests by the Respondents under PIPA for any personal information relating to their fire and flood insurance claims are and would be:*

- *Of a repetitious and systematic nature and amount to an abuse of the right to make those requests (s. 37 (a)); and*
- *Vexatious (37 (b)).*

[227] This decision was made by Frank Work, former AB IPC, under Alberta's *Personal Information Protection Act*. The provisions cited authorize the AB IPC to authorize an organization to disregard an access to information request upon finding it is repetitious or systematic and would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests or if it is frivolous or vexatious. AB IPC Work found both subsections 37 (a) and (b) were made out by AMA. He also indicated in his decision that the focus of the applicant's access requests were to obtain information related to their insurance claims and to that end made 15 requests for access to information from AMA over a period of two years.

[228] Paragraph 44 of BC Hydro states as follows.

*In the circumstances, including the fact that the respondent's right of access to his own personal information is in some degree implicated here, I make the following authorization under s. 43 with a minor variation from BC Hydro's request in light of the time that has passed since its s. 43 application:*

1. ...
2. *from the date of this decision, BC Hydro is authorized to disregard any access requests made by or on behalf of the respondent in excess of one open request at any one time, and the following conditions apply respecting each open request:*
  - a) *BC Hydro is not required to spend more than 7 hours responding to each access request; and*

b) *BC Hydro is not required to respond to any request to the extent that it requests records that have already been the subject of an access request to BC Hydro by or on behalf of the respondent.*

3. *The following apply respecting the above paragraphs:*

a) *BC Hydro is to determine, in light of its s. 6 (1) duties to the respondent, what is a single access request for the purpose of this authorization; and*

b) *for the purposes of paragraph 2, an “open access request” is a request for records under s. 5 of the Act to which BC Hydro has not, in light of its s. 6 (1) duties to the respondent, responded under s. 8 of the Act.*

[229] Former BC IPC Loukidelis granted the above relief to BC Hydro after finding that an access request made by the respondent was repetitious and systematic and processing it would unreasonably interfere with BC Hydro’s operations. He also found that it and another request made were frivolous and vexatious. In this case, the applicant had made 35 requests for information to BC Hydro for “104 or 105 items under the Act” and BC Hydro had provided “approximately 1,000 pages of records” in response.<sup>75</sup>

[230] It is clear from the foregoing that I have authority to authorize the Department to disregard future access requests and accept that I must take a number of considerations into account in deciding whether to grant this relief. If granted, I must devise an appropriate remedy to ensure the applicant’s access to information rights are maintained to the degree possible while relieving the Department from having to continue to respond to access requests that are repetitious or systematic and that unreasonably would interfere with its operations.

[231] I agree with Tysoe, J., that my authority to grant relief for future requests is limited by the authority granted to me to authorize the Department to disregard an access to information request. That is, I may authorize the Department to disregard an access to information request made by the Applicant that is repetitious or systematic and if processed will unreasonably interfere with the operations of the Department. I also agree with Tysoe, J. that, as a general rule, I should not, through the authority to allow a public body to disregard an access request, prevent individuals from accessing their own personal information for the reasons indicated.

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75 BC Hydro, at para. 4.

[232] Based on the foregoing, I authorize the Department to disregard future access to information requests made by the Applicant that are for records or information that do not contain the Applicant's personal information about their

- (i) employment history or performance;
- (ii) [REDACTED]
- (iii) [REDACTED]
- (iv) the handling of the Applicant's previous access requests,

that are found, based on the tests set out in this Decision, to be repetitious or systematic and that would unreasonably interfere with the operations of the Department.

[233] In this case, I must make an exception to the general rule about restricting access to personal information rights. This is because most of the information or records sought by the Applicant from the Department to date contains the Applicant's personal information. This exception is required to ensure the Applicant's future access requests do not unreasonably interfere with the operations of the public body if they are proven to be repetitious or systematic. As such, I also authorize the Department to disregard future access requests from the Applicant for their personal information contained in records in respect of their:

- (i) employment history or performance;
- (ii) [REDACTED]; and
- (iii) [REDACTED]

that are found, based on the tests set out in this Decision, to be repetitious or systematic and that will, if processed, unreasonably interfere with the operations of the Department, unless the Applicant can satisfy the Records Manager or the Department that the Applicant's personal information is being requested for a purpose other than establishing that the management of their employment and [REDACTED] was improper.

**V DECISION**

[234] In accordance with my authority under paragraph 43 (1)(a), my decision is to authorize the Department to disregard the Seven Access Requests.

[235] I further authorize the Department to disregard future access requests for records made by the Applicant to the Department on the terms above stated.

**VI APPLICANT'S RIGHT OF APPEAL**

[236] The Applicant has a right of appeal under subsection 43 (2) to the Yukon Supreme Court as a result of my decision herein to authorize the Department to disregard the Applicant's Seven Requests and future access requests if the Department does disregard the Seven Requests and future access requests.

**ORIGINAL SIGNED**

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Diane McLeod-McKay, B.A., J.D.,  
Information and Privacy Commissioner

Copy to: Records Manager