



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision F08-02

INSURANCE CORPORATION OF BRITISH COLUMBIA

Celia Francis, Senior Adjudicator

January 18, 2008

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Summary: Applicant is not permitted to expand scope of inquiry at inquiry stage to include new issues and additional records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 6(1).

Authorities Considered: **B.C.** Order 00-42, [2000] B.C.I.P.C.D. No. 46; Order F07-10, [2007] B.C.I.P.C.D. No. 15; Order F06-05, [2006] B.C.I.P.C.D. No. 10; Order F05-25, [2005] B.C.I.P.C.D. No. 33; Decision F07-03, [2007] B.C.I.P.C.D. No. 14.

1.0 INTRODUCTION

[1] The applicant in this case was involved in a motor vehicle accident with a third party. The applicant later made a request under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) to the Insurance Corporation of British Columbia (“ICBC”) for access to her claim file. ICBC provided access to some records and information and denied access to others. After mediation of her request for review, the matter proceeded to inquiry.

[2] In her initial submission, the applicant argued that, in addition to the issues listed in the Portfolio Officer’s fact report, the inquiry should include additional records, as well as new issues respecting s. 6(1) of FIPPA. ICBC objected to this in its reply. The parties made other comments and I then invited the parties to make further submissions on specific questions.

2.0 ISSUE

[3] The issue here is whether the applicant is permitted to expand the scope of this inquiry to include additional records and to include the issue of whether or not ICBC complied with s. 6(1)¹ of FIPPA in its search for responsive records and in describing the excepted information.

3.0 DISCUSSION

[4] **3.1 Documentation Considered**—I considered the following items, all of which are in the possession of the parties, in arriving at my decision:

- The OIPC's notice of inquiry and portfolio officer's fact report of October 18, 2007
- The applicant's initial submission of November 3, 2007
- ICBC's initial submission of November 5, 2007
- The applicant's reply submission of November 13, 2007
- ICBC's reply submission of November 14, 2007
- The applicant's letter of November 19, 2007 and Affidavit #3 of Chris Leck
- ICBC's letter of November 20, 2007
- My letter of December 3, 2007
- The applicant's letter of December 4, 2007
- ICBC's letter of December 20, 2007
- The applicant's letter of December 28, 2007
- ICBC's letter of January 7, 2008
- The responsive records as severed in April 2007² and as re-severed in October 2007³

[5] I did not find it necessary to consider a separate two-page ICBC fax of December 20, 2007, which was not copied to the applicant,⁴ noting that in any

¹ This section reads: 6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

² This was the set of documents that ICBC provided to the portfolio officer for mediation.

³ ICBC's legal counsel provided me with this set of documents with her letter of November 20, 2007, in response to my letter of November 15, 2007.

⁴ ICBC's legal counsel said in her letter of December 20, 2007 that the email attached to this fax was sent in the context of mediation and so, under the OIPC's rules, was confidential. While I am not certain I agree with ICBC on this point, it is not necessary to deal with it, for the reason just given. Also the applicant does not deny that her representative initially selected certain pages to be the subject of the inquiry, as I discuss below.

event the salient information in that fax appears at p. 1 of ICBC's letter of December 20, 2007, which was provided to the applicant.

[6] **3.2 The Inquiry Documents**—The portfolio officer's fact report of October 18, 2007 notes the following events in the request and review processes:

- The applicant made an access request on May 24, 2006
- ICBC responded on April 18, 2007
- The applicant requested a review on April 23, 2007

[6] The fact report also stated that:

5) On June 15, 2007 the applicant requested that this matter move to an inquiry. On June 22, the applicant's representative clarified that he was requesting that only pages 8–11, 38–40, 103, 104, 109, 132–134, 136, 144 & 145 of the records be the subject of the inquiry.

[7] The notice of inquiry and portfolio officer's fact report for this matter both state that the only issues in this inquiry would be ICBC's "application of sections 13, 14, 15, 16, 17, 20 and 22 to some portions of the records".

[8] **3.3 Parties' Initial Arguments**—In its initial submission, ICBC referred to the issues in dispute as follows:

11. The Portfolio Officer's October 18, 2007, Fact Report indicates that pages 8-11, 38-40, 103-104, 109, 132-134, 136, 144 and 145 are at issue in this inquiry. However, after the Notice of Written Inquiry was sent out, ICBC released further information to the applicant. Additionally, ICBC also no longer relies on ss. 15 and 20 of FIPPA and relies on s. 17 in respect of only one record (p. 109). As a consequence, only the following records or parts of records form the subject of this inquiry: ...⁵

[9] ICBC attached to its initial submission a copy of its decision letter of October 29, 2007 and copies of the newly released records.

[10] In her initial submission, the applicant said the following:

Mr. Boyd, in his Portfolio Officer's Fact Report dated October 18, 2007, outlined the pages of the ICBC's release which we believe are in dispute. However given the ICBC's inadequate description of its records, it is

⁵ ICBC's footnote omitted. ICBC said it was claiming ss. 13, 14, 17 and 22 respecting some or all of pp. 8-11, 38-40, 103, 104, 109, 134 and 144 and said that still other information is outside the scope of the request.

impossible to determine if the indicated pages contain all the records we consider in dispute.

Specific Documents

To clarify our position, in addition to the pages noted in Mr. Boyd's report, the records we seek release of include:

1. All file (CL-80) notes;
2. Estimate sheets (CL-14) for [the third party's] vehicle, a 1994 Chevrolet pick-up truck;
3. Page 1 of ICBC's CL-386 Low Velocity Impact Questionnaire, completed by [the third party] and dated July 14, 2005;
4. Page 2 of ICBC's CL-14E with respect to a 1994 Chevrolet pick-up truck, dated July 14, 2005;
5. E-mails between all ICBC staff;
6. Statement of [the third party], dated July 14, 2005;
7. Any other documentation pertaining to the 1994 Chevrolet pick-up truck or our client's vehicle, whether held by ICBC or off site;
8. Colour copies, in their original form, of any photographs taken of the 1994 Chevrolet pick-up truck, whether held by ICBC, or off site; and
9. The identity and contact information of any witnesses who have information with respect to the circumstances of the motor vehicle accident in question, or to when and how the damage was caused to the motor vehicles in question.⁶

[11] The applicant also took the position that this inquiry should include the issue of whether or not ICBC had complied with s. 6(1) of FIPPA in its search for responsive records and in its description of the excepted information.⁷

[12] In its reply submission,⁸ ICBC objected to the applicant's attempt to expand the scope of this inquiry to include additional records and issues, arguing that it was neither just nor fair to permit the applicant to do so at this stage. ICBC noted that, in Decision F07-03,⁹ a case where a public body raised s. 17 of FIPPA at the inquiry stage, Commissioner Loukidelis observed that, as an administrative tribunal, this Office can control its own procedures.

⁶ Pages 1-2, initial submission.

⁷ See p. 2, initial submission.

⁸ At paras. 1-9.

⁹ [2007] B.C.I.P.C.D. No. 14. The Commissioner did not permit the public body to add this exception. ICBC also referred to previous British Columbia and Ontario orders dealing with public bodies' attempts to raise additional discretionary exceptions at the inquiry stage.

[13] In her reply, the applicant admitted that certain issues were not in dispute¹⁰ and added

6. We are unable to confirm the ICBC suggestion of which records remain in dispute. As perilously [*sic*] discussed, the ICBC has failed to comply with s. 6(1) of the “Act” in not providing descriptions of the records withheld.¹¹

[14] The applicant said that she had notified this Office of her concerns¹² and, in support, provided the following affidavit evidence from an employee of her representative’s law firm:

2. On October 18, 2007 I received by facsimile, the Notice of Inquiry dated October 18, 2007 with respect to the matter at hand. Attached to the Notice of Inquiry was a copy of the “Portfolio Officer’s Fact Report”, dated October 18, 2007. This was my first opportunity to review said report. Attached hereto and marked as Exhibit 3A, to this my Affidavit, is a true copy of the Portfolio Officer’s Fact Report, dated October 18, 2007.
3. Within a week or so of October 18, 2007, I contacted, by telephone, Carole Shave, Registrar of Inquires [*sic*], to advise that we were unable to agree with Mr. Boyd’s suggestion, that the subject of the inquiry could be limited to the pages noted under point 5 of his report.
4. The reason I gave was that ICBC had failed to properly identify the information withheld, and as such we were unable confirm if the information withheld by the ICBC contained all of the documentation we considered in dispute.
5. I advised Ms. Shave, that in addition to the pages noted in Mr. Boyd’s report, in our submission we would be raising the issue of the ICBC not properly identifying the information withheld, and that we would be making references to specific documentation we considered in dispute.
6. Ms. Shave advised that she would take the matter under review. I did not hear back from Ms. Shave in this regard, and as such, we proceeded with our submission on the basis previously outlined.¹³

¹⁰ Page 1, reply submission. The applicant said she was not seeking information about third parties not related to this matter, a CPIC (Canadian Police Information Centre) number, reserve information, the defendant’s driver’s licence number and personal home email addresses.

¹¹ Page 2, reply submission.

¹² Page 1, letter of November 19, 2007.

¹³ Affidavit #3 of Chris Leck, November 19, 2007. The July 2007 OIPC inquiry instructions, in effect at this time, told inquiry participants to put any objections to the fact report in their initial submissions. The January 2008 revision instructs participants to provide any objections to the fact report to the OIPC within three days of its issuance.

[15] **3.4 Request for More Submissions**—After reviewing the parties' initial and reply submissions, the responsive records and the applicant's letter of November 19, 2007, I sent my letter of December 3, 2007 to the parties in which I first made a number of observations:

- my copy of the 162 pages of requested records was missing the same items (p. 1 of the CL-386 and p. 2 of the CL-14E) as the applicant and I invited ICBC to comment on this
- certain pages and exceptions (which I listed) were no longer in issue because ICBC had disclosed the third party's statement (item 6 in the applicant's list—see para. 10 above), the applicant had stated she was not interested in other items and still other information was outside the scope of the request
- most of the 162 records listed in the requester report in this case were either fully disclosed or disclosed in severed form, with perhaps 4-5 pages fully withheld
- it was not clear from my review of the 162 records in this case if all of the other types of records that the applicant now wanted existed

[16] I then invited the parties to provide any further submissions they wished to make on the issues above, including as follows:

- any documentary evidence the parties could provide in support of the statement at para. 5 of the fact report (quoted above)
- submissions from the applicant as to why she did not raise the s. 6(1) issues until after the OIPC had issued the notice for this inquiry and why, at this stage of the process, she should be permitted to raise these issues and to expand the scope of the inquiry to include other records besides those listed in para. 5 of the fact report
- any submissions ICBC wished to make on the applicant's letter of November 20, 2007, including the affidavit evidence

[17] **3.5 Parties' Further Submissions**—The applicant's legal representative expressed general concerns over the adequacy of information in ICBC's "requester reports"¹⁴ since Order 00-42¹⁵ and, to illustrate its point,

¹⁴ These are tables listing the pages disclosed and withheld and, for the latter category, the exceptions applied. ICBC attaches to each requester report a "severance key" which describes the kinds of information ICBC typically withholds under the various exceptions.

¹⁵ [2000] B.C.I.P.C.D. No. 46.

provided samples of reports it has received in response to other requests her law firm has made. The representative argued that ICBC has had a corporate policy since Order 00-42 of not complying with s. 6(1) or other relevant orders on this topic. The representative also suggested that ICBC's copying procedures can lead to documents being missed during request processing and observed that both her office and the OIPC must rely on ICBC to do an adequate search for responsive records and to provide a complete set of records under review.¹⁶

[18] The representative continued as follows:

In preliminary discussions with Mr. Boyd as to the scope of the inquiry, Mr. Leck of our office blindly relied on the ICBC to comply with its obligations in completely and accurately searching its records in relation to the applicant's request. It became apparent on review of Mr. Boyd's Fact Report, that we could not make an informed decision as to the stated limitations of the inquiry when we did not have an adequate description of the withheld or severed information. As such, we promptly clarified with the Commissioner's office as to the information and issues we considered in dispute.

It has become apparent in the initial states [*sic*] of the inquiry, following the voluntary release of additional information by the ICBC, that various records considered in the dispute are unaccounted for. Due to the ICBC's failure to provide adequate descriptions of the information withheld, the applicant has been significantly prejudiced in her ability to ascertain whether the ICBC has complied with any or all of its obligations under the *Act*. In particular, the ICBC's obligation to respond openly, accurately, and completely to the applicant's request in searching for records.¹⁷

[19] The applicant argued that the inquiry should proceed as set out in her initial submission, because ICBC had had adequate notice of the issues the applicant considers to be in dispute and "the scope of the inquiry needs to be expanded due to the ICBC's failure to properly search and/or accurately produce the records in relation to the applicant's request". The applicant said that the inquiry should also proceed on this expanded basis due to: ICBC's failure over some years to comply with its s. 6(1) duties to search for records and properly describe them, despite OIPC orders on these points; ICBC should have been aware that challenges on these issues would be raised; and clarification of ICBC's obligations would benefit others. The applicant said that, if these matters are not dealt with here, her representative's office will have no choice but to raise these issues in subsequent reviews with the OIPC, resulting in "needless duplication of effort and utilization of resources" by the same parties.¹⁸

¹⁶ Page 1, letter of December 4, 2007.

¹⁷ Page 2, letter of December 4, 2007.

¹⁸ Pages 2-3, letter of December 4, 2007.

[20] ICBC said that the portfolio officer responsible for mediation on this case had sent ICBC an email on June 25, 2007 in which he stated that, upon being asked which pages were in dispute, Chris Leck¹⁹ had replied that he “wanted to go to inquiry on pages 8-11, 38-40, 103, 104, 190, 132-134, 135, 144 and 145”. ICBC said that it has since proceeded on the basis that only these pages were in dispute.²⁰ ICBC observed that it was not privy to the conversation between Chris Leck and the OIPC following the issuance of the Fact Report but that:

It is surprising, to say the least, that the applicant has only specifically raised this “dispute” and any communications with the OIPC after the Initial and Reply Submissions had been filed in the Inquiry.²¹ [underlining in original]

[21] ICBC referred to the passages on expanding the scope of this inquiry from the applicant’s initial submission (see paras. 10-11 above) and said that the portfolio officer’s fact report represents to the parties the officer’s findings of fact. The portfolio officer’s email does not, ICBC pointed out,

...suggest any uncertainty whatsoever about the results of his June conversation with Mr. Leck. He is very specific about which documents Mr. Leck identified as being in dispute. There is absolutely no indication that the applicant takes issue with ICBC’s description of the records.²²

[22] ICBC said it is prejudiced by the assertions the applicant made at the close of the inquiry. While in the applicant’s view all of the responsive records may be in dispute, ICBC said, the applicant apparently cannot be definite about this because, she claims, ICBC has failed to properly identify what information is being withheld. Regarding this latter claim, ICBC suggested that I assess it in light of the amount of information ICBC has already disclosed, the severance key provided to the applicant (a copy of which it attached), Chris Leck’s 13 years of experience as an ICBC adjuster²³ and the OIPC’s conclusions in a letter of March 2007 flowing from an investigation of 19 complaints on the adequacy of ICBC’s descriptions of withheld records (ICBC also attached a copy of this letter). ICBC suggested that, just as Mr Leck relied on his experience as an ICBC adjuster to conclude that the claim file should contain certain types of records, this same experience should have led Mr Leck to deduce the nature of the withheld information on certain other pages.²⁴

¹⁹ Chris Leck deposed that he is a litigation support clerk with the applicant’s law firm and that he was an insurance claims adjuster with ICBC from 1987 to 2000; Affidavit #2 of Chris Leck. The material before me shows that, on the applicant’s behalf, he made the FIPPA request under review here and participated in mediation through the OIPC.

²⁰ Page 1, letter of December 20, 2007.

²¹ Page 2, letter of December 20, 2007.

²² Page 2, letter of December 20, 2007.

²³ ICBC referred here to Affidavit #1 of Chris Leck, attached to the applicant’s initial submission.

²⁴ Page 3, letter of December 20, 2007. ICBC referred in this regard to pp. 42, 53-54, 138, 140, 142 and 143 and provided general descriptions of the withheld information on these pages.

[23] ICBC then argued that the integrity of the OIPC's inquiry process requires certainty as to the issues in dispute and that the parties rely on the notice and fact report to state the issues in dispute. If a party does not agree with the statements in the Fact Report, ICBC said, it should tell the OIPC, in writing, as soon as possible after receiving the report and, if appropriate, the OIPC can then issue an amended notice and fact report.²⁵

[24] ICBC went on to say that this applicant is represented by a firm of personal injury litigation lawyers who routinely make access requests to ICBC and who have the assistance of a former ICBC adjuster. If ICBC's descriptions of the withheld information were as inadequate as the applicant claims, why, ICBC asked, did she not proceed to inquiry on all of the records? ICBC said that it withheld relatively little information and it "strains credulity" that, given the extent of disclosed information and the severance key, the applicant was left uncertain as to the records she wanted.²⁶

[25] The applicant countered that she has been consistent in her submissions as to the issues in dispute and has not, as ICBC suggests, attempted to raise new issues. ICBC has had notice, at least since early November 2007, of those issues, she said, and has had ample time to respond. ICBC should not treat applicants differently, depending on whether or not they are represented or have the assistance of a former ICBC adjuster, she continued. ICBC should, in her view, once notified of an error, undertake another search for records which, it appears, ICBC has not done here. The applicant's representative does not believe her firm was involved in the complaints which led to the OIPC's letter of March 2007. The changes to the severance key since that time have been "broad and generalized" descriptions of the withheld information, she added, and of little assistance. The representative said she was unable to ascertain the types of information withheld, even with the benefit of Chris Leck's experience. Without the comments in my letter of December 3, 2007, she said, she would not have been able to confirm that records are missing.

[26] ICBC responded that the OIPC's investigation of the complaints about the adequacy of ICBC's records descriptions found that ICBC generally does a good job of processing its large volumes of access requests (currently estimated to be 4,500),²⁷ the majority of which are not subject to a review by the OIPC. ICBC said it has since created a new response package in response to these

The applicant later said she "had not identified the withheld information on pp. 42, 53-54, 140, and 143 as being in dispute"; para. 1, letter of December 28, 2007

²⁵ Page 3, letter of December 20, 2007.

²⁶ Page 4, letter of December 20, 2007. ICBC also said that, with respect to the two pages that I referred to as missing, it was possible that they had not been copied due to human error in the copying process. ICBC also pointed out that one of the applicant's own exhibits shows that the applicant had received one of these pages in litigation disclosure and that ICBC had claimed privilege over the other as part of the same litigation; pages 3 and 4, letter of December 20, 2007.

²⁷ Footnote 2, p. 2, letter of January 7, 2008.

complaints, which includes a new severance key with more detailed descriptions of the types of records that it severs or withholds, and it has also revised the way it annotates records with the exceptions applied. ICBC argued that the applicant has not advanced “sufficiently extraordinary” reasons, as set out in previous orders, in support of the need to consider her s. 6 allegations at this stage. ICBC said that, in fact, most of the applicant’s reasons are based on the false assertion that ICBC has historically not complied with s. 6 and “an unfounded, unsubstantiated and untrue allegation” that ICBC has a corporate policy of not complying with s. 6 of FIPPA, both of which are inconsistent with the findings of the OIPC’s investigation and previous orders. ICBC said it welcomes the opportunity to meet the law firm’s “unmeritorious allegations” directly through the OIPC’s regular inquiry process.²⁸

[27] **3.6 Discussion**—As in Decision F07-03, this decision concerns the OIPC’s authority to exercise control over the inquiry process under Part 5 of FIPPA. I have applied here, without repeating them, the principles in that decision and the orders and caselaw it refers to.

[28] Mediation by the OIPC is an efficient, effective and cost-effective way of resolving requests for review. The purposes of mediation by the OIPC include clarifying and attempting to resolve the issues in dispute, crystallizing the issues in dispute for inquiry purposes, clarifying and focussing the applicant’s expectations and assisting the public body to respond fully to the applicant’s request.

[29] Mediation also provides an opportunity for an applicant to raise additional issues. If a matter proceeds to an inquiry, the applicant may ask that the new issues be included in the portfolio officer’s fact report for disposition in the inquiry.²⁹

[30] I agree with ICBC’s argument that it undermines the integrity and effectiveness of the mediation and inquiry processes if parties attempt to introduce new issues at the inquiry stage, when the issues have already been crystallized for inquiry purposes. Commissioner Loukidelis discussed this point at some length in Decision F07-03, noting that a public body cannot rely on a new discretionary exception at the inquiry stage unless permitted to do so. Similarly, in Order F07-10, he did not permit a complainant to introduce new issues at the inquiry stage. He has remarked that

... This approach is fair and it is conducive to fair, efficient and timely resolution of access to information disputes, whether at the mediation stage or through the inquiry process.³⁰

²⁸ Pages 1-2, letter of January 7, 2008.

²⁹ See Order F06-05, [2006] B.C.I.P.C.D. No. 10, footnote 9, and Order F05-25, [2005] B.C.I.P.C.D. No. 33, at para. 87, for similar comments.

³⁰ Para. 31, Decision F07-03, [2007] B.C.I.P.C.D. No. 14.

[31] In this case, according to the fact report, mediation did not lead to the disclosure of previously withheld information.³¹ It did however result in the applicant agreeing to confine the scope of the inquiry to specific page numbers,³² a desirable result in that it allowed the parties to devote their resources to a smaller amount of withheld information.

[32] The applicant's request for review did not express any concerns over missing pages, the adequacy of ICBC's search or the contents of the requester report. There is also no indication in the fact report or the applicant's submissions that she raised any such s. 6(1) issues during mediation. Although the applicant later characterized the choice of pages as the portfolio officer's or ICBC's "suggestion", she earlier acknowledged that the fact report "outlined" the pages that "we believe are in dispute". She nowhere denies that, at the end of mediation in mid-June 2007, her representative told the portfolio officer that he wanted only certain pages to be in dispute for inquiry purposes. Indeed, it was not until the inquiry stage in mid-October 2007, four months later, that the applicant raised the additional issues and records.

[33] The applicant explains her failure to raise the s. 6(1) issues until the inquiry stage by saying that, during mediation, her representative's argument "blindly relied" on ICBC to have complied with its s. 6(1) obligations. I do not find this explanation persuasive. Mediation involves the active and informed participation of the parties involved. The applicant in this case was not sidelined, powerless and speechless, in the mediation process and was not coerced into narrowing the scope of the pages in dispute for this inquiry. Rather, she has been represented throughout by a law firm with experience making access requests and whose employee, a former ICBC adjuster, voluntarily selected certain pages to be the subject of the inquiry.

[34] I also find to be vague and unpersuasive the applicant's explanation that it only became apparent at the beginning of the inquiry, "following the voluntary release of additional information by the ICBC, that various records considered in the dispute are unaccounted for". She did not say how the additional release led to this realization. In addition, my review of the records provided to me for this inquiry suggests that it should have been clear from the numbering of the records in ICBC's original release package of April 2007 that p. 1 of the CL-386 and p. 2 of the CL-14E were missing. It is thus difficult to see why it was not until the inquiry that the applicant realized these pages were not accounted for.

³¹ While ICBC did make a further release, this occurred during the inquiry process and thus cannot be attributed to mediation.

³² I could find no indication in the material before me why the applicant selected these particular pages.

[35] Moreover, as already noted, ICBC withheld relatively little information and it is possible to infer the nature of much of the withheld information from the records themselves. For example, it is clear from the severance key and the surrounding information on pp. 8-13 (file notes) that ICBC considers that the severed information on these pages relates primarily to litigation. Similarly, it is clear that the severed information on p. 138 relates to a third party's autoplan coverage.

[36] As for the other types of withheld information, the contents of the severance key did not change between April and October 2007. If the applicant really found this document did not suffice to help her to decide which pages she wanted to pursue at inquiry, she could have asked for more detailed descriptions during mediation or, as ICBC suggested, she could have pursued all of the withheld material in the inquiry.

[37] The applicant had ample opportunity to raise all of these issues during the six to seven weeks of mediation with the portfolio officer, not to mention during the four-month period between the end of mediation and the issuance of the notice and fact report for this inquiry. The applicant's apparent inattention to the minutiae of the records and associated material during mediation is not sufficient reason for her to attempt to introduce additional records and issues at the inquiry stage, when ICBC, which had the burden of proof for most of the exceptions, had already spent time and effort preparing its submissions.

[38] In any case, even if the applicant had raised the s. 6(1) issues in her request for review or soon after, the OIPC would, in keeping with its normal practice, likely have referred her to ICBC first. The OIPC would have opened a separate complaint file on the s. 6(1) issues only if the applicant had been able to demonstrate that she had first attempted—unsuccessfully—to resolve the s. 6(1) issues with ICBC. Then, a portfolio officer would, with the Commissioner's delegated authority, have investigated and disposed of these issues. This would have been a faster, more effective method of dealing with the applicant's s. 6(1) concerns than a formal inquiry process.

[39] As the Commissioner commented in Decision F07-03,³³ this is not a case where a party seeks to raise new issues because new facts came to its attention after the OIPC issued the notice and fact report for this inquiry and that the party could not have known without using due diligence. The applicant's explanations after the fact do not persuade me that the alleged deficiencies of the requester report and search, and the additional release of records, provide a sound basis for broadening the scope of the inquiry at this stage.

³³ At para. 22.

4.0 CONCLUSION

[40] For the reasons discussed above, the applicant is not permitted to expand the scope of this inquiry to include additional issues and records.

January 18, 2008

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File: F07-31656