



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

Order 01-31

INSURANCE CORPORATION OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
July 3, 2001

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Summary: Applicant sought vendor numbers for all ICBC suppliers whose status as such had, throughout ICBCs existence, been revoked, reinstated, suspended or refused. ICBC refused disclosure of certain records under ss. 17 and 21(1)(c)(iii). ICBC's initial submission consisted of its disclosure of a computer printout listing suppliers whose numbers had been suspended or revoked and abandoned its reliance on ss. 17 and 21. ICBC at that time said it kept no record of, and could not generate a record of, any businesses who had been refused supplier numbers when they applied or of suppliers whose supplier numbers had been reinstated after suspension or revocation. ICBC is not obliged under s. 6(2) to create a record responding to the applicant's request.

Key Words: duty to assist – create a record.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1) and (2).

Authorities Considered: B.C.: Order 00-32, [2000] B.C.I.P.C.D. No. 35.

1.0 INTRODUCTION

[1] The one issue that remains alive in this case is whether ICBC has complied with its obligations under s. 6 of the *Freedom of Information and Protection of Privacy Act* ("Act"). That question arises in relation to the applicant's April 18, 2000 access to information request to ICBC for information relating to ICBC vendors or suppliers "whose status has been ... revoked; ... re-instated; ... suspended; ... or refused ... in the history of ICBC". (The applicant also sought information disclosing reasons for the dismissal of an ICBC employee, but that request is not, as is discussed below, in issue in this inquiry.)

[2] ICBC responded to the applicant's request in the following terms, on June 2, 2000:

From the records that are kept by the corporation, we were able to generate a list of all vendors-suppliers who once had, but no longer have, a vendor number. However, records available do not enable us to differentiate reasons for the termination of a vendor number. These reasons could vary, for example, from a change of company name- ownership, where the number under the old name-ownership is terminated and a new number is assigned, to termination for cause. In any event we are unable to release this list, since inferences could be drawn from the inclusion of companies on the list, which could harm the reputation and business interests of those companies, as well as the relations between ICBC and the automotive industry generally, which would harm ICBC's interests.

[3] In taking this position, ICBC cited ss. 17 and 21(1)(c)(iii) of the Act. ICBC also told the applicant that it does not "keep a record of the companies who were 'refused' a vendor number." Dissatisfied with this decision, the applicant requested a review, under s. 53 of the Act, and I held a written inquiry under s. 56 after the matter failed to settle during mediation.

2.0 ISSUE

[4] Some explanation is necessary in order to define the issue before me. The only issue specified in the Notice of Written Inquiry issued to the parties was ICBC's application of s. 17 of the Act to a list of vendors that no longer have a vendor number with ICBC. This is consistent with the applicant's July 2, 2000 request for review, in which he said he wished to "appeal their [ICBC's] decision that the information we requested is withheld under Section 17 and Section 21(1)(c)(iii) of the Act." No mention is made in the request for review of the applicant's request for third-party personal information or any other issues. Further, the Portfolio Officer's Fact Report confirms that the s. 21 issue was eliminated during mediation. Accordingly, the only issue that remained alive at the start of the inquiry was whether ICBC was authorized to refuse disclosure under s. 17.

[5] As it turned out, even the s. 17 issue fell by the wayside. ICBC's initial submission consisted of an enclosure letter and a copy of a computer printout of a list of, as ICBC put it, "suppliers whose supplier numbers had been suspended or revoked". ICBC sent a copy of this record to the applicant at the same time. ICBC added, in its initial submission, that it does not keep a record of – or have any method of generating a record of – "businesses which have been refused supplier numbers or suppliers who have had their supplier numbers re-instated after their status had been suspended." This response raised the question of whether ICBC has complied with its obligation, under s. 6(2) of the Act, with respect to creation of records. The applicant addressed that issue in his reply submission. I will therefore address it here. Consistent with previous orders under s. 6, I consider that ICBC has the burden of proof respecting s. 6(2).

[6] I should note here that I have not considered those of the issues addressed in the applicant's initial submission that were not specified in the Notice of Written Inquiry. It

should also be noted here that ICBC treated the applicant's request for a list of "vendors" or "suppliers" to ICBC to be a request regarding suppliers who are or were under contract with ICBC to repair material damage caused to vehicles insured by ICBC. The applicant has not disputed this interpretation and I have proceeded on that basis.

3.0 DISCUSSION

[7] **3.1 Nature of ICBC's Obligation to Create Records** – The question here is whether, in disclosing a record that was only partially responsive to the applicant's access request, ICBC has complied with its obligations to the applicant under s. 6 of the Act. That section reads as follows:

Duty to assist applicants

- 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) Moreover, the head of a public body must create a record for an applicant if
 - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

[8] The thrust of the applicant's argument, found in his reply submission, appears to be that ICBC is obliged by s. 6 to create a record in response to the balance of his request, *i.e.*, a record that identifies businesses that have been refused supplier numbers and suppliers who have had their supplier numbers reinstated after suspension.

[9] In support of its submission that it has no such records, and no means by which such records could be generated, ICBC submitted an affidavit sworn by Richard Green, who is its Manager of Material Damage Technical Services. One of Richard Green's employment responsibilities is "overseeing the relationship and qualification of suppliers contracted by ICBC to repair material damage claims and assist in providing material damage services." He deposed that businesses wishing to supply repair services to ICBC's insured must apply for that status and that each qualified supplier is given a supplier account number. He also deposed that ICBC has no records of the names of businesses that have been refused a supplier number after applying for one and that it does not "keep a record, or have any method of generating a record, of suppliers who have had their supplier number re-instated after it has been suspended or terminated."

[10] Although the issue is not before me, I am of the view that ICBC has complied with its s. 6(1) obligation to search for records. Richard Green, as Manager of Material Damage Technical Services, is well placed to provide evidence as to ICBC's record-holdings in such matters and his clear evidence is that ICBC has no records that respond

to the balance of the applicant's request. Applying the standards set out in, for example, Order 00-32, [2000] B.C.I.P.C.D. No. 35, ICBC has clearly discharged its s. 6(1) obligations in responding accurately and completely to the applicant.

[11] This observation has, in this case at least, some relevance to the s. 6(2) issue. Richard Green's evidence, summarized above, establishes that ICBC has no machine-readable records that could be manipulated – using ICBC's normal hardware, software and technical expertise – to generate records that respond to this aspect of the applicant's request. Section 6(2) speaks to an obligation to create records that arises only in the circumstances explicitly set out in that section. Richard Green's evidence is that it is simply not possible for ICBC to generate responsive records in this way, not least because it has no underlying paper-based records (much less machine-readable records). Section 6(2) does not require ICBC to go any further than it has done. If it cannot create a record as contemplated by that section – and I accept that it cannot in this case – no more need be done.

[12] I note here that the applicant contends that Richard Green's evidence is insufficient, since he “may not be qualified in computer programming.” The applicant contends that it is “obvious” that Richard Green does not have “computer experience to be able to make” the statements in his affidavit. First, as I noted above, Richard Green's evidence is that ICBC does not have any record of the names of businesses that have been refused a supplier number after applying for one and that it does not keep a record of suppliers who have had their supplier number reinstated after it has been suspended or terminated. There being no underlying records, one does not need computer experience to be able to provide probative evidence on the s. 6(2) issue. Second, I am satisfied that Richard Green has direct experience in the program area affected by the request. Whether or not he has computer experience, I find his evidence, as manager of the affected program area at ICBC, to be persuasive.

[13] I find that ICBC is not required by s. 6(2) of the Act to create records that respond to the balance of the applicant's request.

4.0 CONCLUSION

[14] Since ICBC has abandoned its reliance on ss. 17 and 21 and has released a responsive record, no order is necessary in that regard. Because I have found that ICBC is not required by s. 6(2) of the Act to create a record, no order is necessary under s. 58(3) on that point.

July 3, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia