OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
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Order 03-16

MINISTRY OF FORESTS

David Loukidelis, Information and Privacy Commissioner
April 25, 2003

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Summary: The applicant sought access to an electronic copy of the Ministry's computerized enforcement and compliance tracking system, ERA. The Ministry initially proposed giving the applicant a paper copy and estimated a fee. Discussions clarified that the applicant wanted an electronic copy of a snapshot, at a given date, of the ERA, with certain data entities and attributes deleted. The Ministry refused on three grounds: an electronic copy of the snapshot included computer software elements that are excluded from the definition of record in Schedule 1, s. 6(2) did not require it to create the requested record and s. 4(2) did not require it to sever the record. Section 6(2) requires the Ministry to create the electronic record that the applicant requested, but information excepted from disclosure under the Act cannot reasonably be severed from the record under s. 4(2).

Key Words: record – creation of record – unreasonable interference with operations – severance – can reasonably be severed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 6(2), Schedule 1 (definition of "record").

Authorities Considered: B.C.: Order No. 205-1997, [1997] B.C.I.P.C.D. No. 67. **Ont.:** Order P-24, [1988] O.I.P.C. No. 24; Order PO-2087-I, [2002] O.I.P.C. No. 208.

Cases Considered: *Montana Band* and *Canada (Solicitor General)* in *Ontario (Minister of Finance)* v. *Ontario (Information and Privacy Commissioner*) (1997), 102 O.A.C. 71; *Canada (Information Commissioner)* v. *Canada (Solicitor General)*, [1988] 3 F.C. 551 (T.D.); *Montana Band of Indians* v. *Canada (Minister of Indian & Northern Affairs)*, [1989] 1 F.C. 143, [1988] F.C.J. No. 339; *SNC-Lavalin Inc.* v. *Canada (Minister of Public Works)*, [1994] F.C.J. No. 1059 (T.D.).

1.0 INTRODUCTION

[1] On March 29, 2001, the applicant sought from the Ministry of Forests ("Ministry") a copy of the "entire Enforcement Action, Administrative Review and Appeal Computer Tracking System (ERA) database in electronic form." The request expressed a "preference" to receive the database files in either "Excel or Access format." The applicant's letter went on to say that, if the Ministry considered ERA "not to be a routinely releasable document", the Ministry should treat the letter as a request for access to records, under the *Freedom of Information and Protection of Privacy Act* ("Act"), specifically, "for a digital copy" of the ERA database.

[2] On April 25, 2001, the Ministry responded by providing the applicant with a fee estimate of $10,507. The Ministry asked for a deposit of the full amount of the estimate. It is clear from the Ministry's response that, despite the applicant's request for an electronic copy of the ERA database, the Ministry proposed to prepare and provide a paper copy of the database, totaling some 28,500 pages. For this reason, the fee estimate included $7,125 for photocopying the 28,500 pages.

[3] It appears that, in the months following this response, the applicant and the Ministry discussed the request further. In a July 27, 2001 letter to the Ministry, the applicant confirmed previous communications to the Ministry that the applicant was prepared to accept a copy of ERA with certain "entities" and "attributes" deleted if this would facilitate release. The letter went on to say the following:

> … I have therefore indicated the Entities and Attributes that I do not want access to by crossing out those Entities and Attributes on the attached charts. I have also indicated with a question mark those Attributes that I would only be interested in if they are necessary to understand affiliated Attributes.
>
> If it is easier for Mr. Wood to provide me with an electronic copy of the most recent snapshot with the indicated Attribute fields removed then please proceed on that basis. If it is easier for Mr. Wood to provide me with an electronic copy of the most recent snapshot with the Entities that I have not indicated then let us proceed on that basis. In either avenue, if the remarks associated with particular fields complicate the severing of the record then I would be prepared to do without them to facilitate release.

[4] The applicant enclosed with that letter, as indicated in the above passage, a printout of the entities and attributes contained in ERA, on which were indicated those that the applicant was prepared to do without. The following examples of ERA entities, and some of the attributes for each listed entity, are taken from that printout:

ENTITY	ATTRIBUTE
Appeal	Appeal Number Appeal Type Rejection Reason Hearing Start Date Heard By, etc.
Client Location	Client Number Client Location Code
Cut Block	Forest File Cutting Permit Cut Block, etc.
Determination (Decision that identifies a client, violations and associated enforcement actions.)	Determination Number Determination Date Determination Made By Determination Status Update Timestamp, etc.
Enforcement Action (Any action taken by the Province in response to a violation.)	Enforcement Type Enforcement Officer UserID Enforcement Action Status Response Period Completion Flag, etc.
Instructions Issued (An enforcement action that resulted in the issuance of instructions to the alleged offender.)	Instruction Decision Date Enforcement Type Enforcement Officer Enforcement Amount Enforcement Action Status Response Period Completion Flag, etc.
Remediation Order (An enforcement action that identifies a set of activities that an offender is directed to perform.)	Scheduled Completion Date Actual Completion Date Plan Required Plan Submitted Plan Approved Remediation Work Status Remedy Description, etc.
Stop Work Order (An order issued by the Province directing an offender to cease work and vacate the site of an alleged incident.)	Work Order Lifted Date Lifted Reason Enforcement Action Enforcement Type Enforcement Officer Enforcement Action Status, etc.
No Action (As implied the Province may elect not to take an enforcement action for a specific violation.)	No Action Decision Date Enforcement Type Enforcement Officer Enforcement Action Status Completion Flag, etc.

[5] As a result, on August 3, 2001, the Ministry wrote to the applicant and said the following:

> The Ministry now understands you to be requesting either:
>
> (1) a copy of the entire ERA (i.e., a record containing the information that was in the ERA as at a given date), or
>
> (2) a copy of the ERA with certain Attributes and Entities removed, as indicated in the attachment to your letter received by our counsel on July 30, 2001.
>
> The Ministry understands that your request is for either (1) or (2) in electronic form only, and that you will not accept a paper copy of either (1) or (2) in response to your request.
>
> It is the Ministry's position that the Act does not require the Ministry to provide you with either (1) or (2) in electronic form.

[6] In taking this position, the Ministry relied on ss. 4(2) and 6(2) of the Act, which read as follows:

> **Information rights**
>
> 4(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.
>
> …
>
> **Duty to assist applicants**
>
> 6(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.

[7] The Ministry's letter went on to say the following:

> In order to respond to the second version of your request, the Ministry would have to hire a consultant to develop software to remove the various Entities and Attributes. In order to respond to either version of your request, the Ministry would have to hire a consultant to develop software to sever information from the various screens that make up the ERA. It is likely that a considerable amount of information would have to be severed under the Act's exceptions to disclosure, and an intensive screen-by-screen review would have to be undertaken for that purpose. It is estimated that it would take at least six months of staff time to conclude that process (even in the case of the second version of the request).

> The fee estimate that was issued to you earlier is based on the assumption that you would accept a paper copy in response to your request. We now understand that assumption was incorrect. Please disregard that estimate.

[8] On May 1, 2001, the applicant requested a review, under Part 5 of the Act, of "the appropriateness of the response and the fee request of the Ministry." Because the matter did not settle in mediation by this Office, I held a written inquiry under Part 5 of the Act.

2.0 ISSUES

[9] The issues in this inquiry are whether the Ministry could refuse access to the requested electronic record because:

1. What was requested included software elements that are not a "record" under the Act;
2. Section 6(2) of the Act did not require the creation of a record; or
3. Excepted information could not be reasonably severed from the record under s. 4(2) of the Act.

[10] Section 57 of the Act is silent respecting the burden of proof for these issues. Consistent with previous decisions, however, the Notice of Written Inquiry indicated that the burden of proof lies with the Ministry. The Ministry has accepted this allocation of the burden.

3.0 DISCUSSION

[11] **3.1 Preliminary Issues** – I will first deal with a number of procedural matters. There was some question whether Exhibits "I", "J", "K", "L", "M" and "O" to the affidavit that the applicant tendered were records provided to this Office and related to the mediation process, which would make it inappropriate for me to consider them. The Ministry took the position that the exhibited records are not mediation records and that, even if they are, the Ministry has no objection to the applicant's reliance on them in the inquiry. Accordingly, I considered those materials in my deliberations.

Amendment to issues

[12] Before the close of inquiry submissions, the applicant objected to the amendment of the issues to be addressed in the inquiry, on the basis that the amendment

> … removed a critical issue for resolution in the underlying dispute, namely section 75, including the proper grounds upon which a fee may be charged in this matter.

[13] The Ministry responded by pointing out that the fee estimate that it had originally provided related to its proposed disclosure of a paper copy of the ERA database. I agree with the Ministry that, in light of its revised response to the applicant's request (which

followed discussions between the Ministry and the applicant), the Ministry's fee estimate became irrelevant. The Ministry's revised response refused to provide access to the electronic version of ERA and expressly noted that the original fee estimate was based on the assumption that the applicant would accept a paper copy. The Ministry went on to ask the applicant to "disregard that estimate". I am satisfied that there is no s. 75 issue to be addressed here, since the Ministry has refused altogether, under ss. 4(2) and 6(2) of the Act, to respond to the applicant's request for an electronic snapshot of ERA.

Further submissions

[14] The Ministry objected to the applicant's reply submissions on the basis that they addressed an issue that the Ministry had understood was not still alive. I wrote to the parties and told them that I proposed conduct my deliberations on the basis that, by a letter to the Ministry dated July 27, 2001, the applicant had narrowed the access request to an electronic copy of a snapshot of the ERA database with certain fields deleted from that record. As I have already indicated, the applicant was willing to, if necessary, narrow the access request to forego some fields on the understanding that their entire deletion would facilitate release. This is clear from the applicant's July 27, 2001 letter. I invited the Ministry to make further submissions; it provided further argument and evidence in response to my questions about those issues. The applicant responded to those further submissions by the Ministry.

[15] **3.2 The Nature of ERA** – ERA is a software application. It is one component of the Ministry's corporate database. It tracks the progress of cases that arise under various forest-related statutes and regulations that the Ministry administers or enforces. Some data are entered into ERA "by direct user input", while other data are retrieved "by the computer program that runs ERA" from other parts of the Ministry's corporate database (para. 2.04, Ministry's initial submission). ERA shares data with applications that also run off the Ministry's corporate database. These include the Forest Tenure Administration System, Integrated Silviculture Information System, the Client Management System, the General Building System, the Ministry Code Tables and the Scaling Administration System.

[16] In tracking the progress of cases, ERA can track, among other things: investigation details; alleged and confirmed contraventions of laws; informal and formal enforcement actions; and reviews and appeals. These matters cover suspected or reported incidents of non-compliance with provisions of the *Forest Practices Code of British Columbia Act*, the *Forest Act*, the *Range Act*, the *Litter Act*, and the *Boom Chain Brand Act*, as well as regulations under these various statutes. The Ministry's ERA overview, a copy of which forms Exhibit "B" to the affidavit of Nikki Bole (a Finance, Review and Appeals Officer with the Ministry), says ERA is "the repository of Clients' FPC Performance Record, so data accuracy is critical." That document also says ERA "is a tracking system – it records what has been done, not what must be done." At the time of the inquiry, ERA contained more than 19,000 cases.

[17] According to the affidavit sworn by Nikki Bole, the data within ERA can be viewed as "a sort of 'mega-record'", with it being possible to generate smaller records

from ERA data. In the first of three affidavits he swore in this inquiry, Ian Wood, a Ministry Data Resource Officer, also said that ERA can be regarded as a kind of 'mega-record'. (Ian Wood is responsible for day-to-day operation, management, support, and data-custodianship of ERA and has extensive duties respecting the ERA's operation, maintenance and enhancement.) The third affidavit of Ian Wood was provided in response to clarifying questions I posed to the parties. It is useful for the discussion of the issues below to quote at length from his third affidavit, which I have treated as the Ministry's final and most focussed description of ERA for the purposes of this inquiry:

> 3. In paragraph 7 of my affidavit sworn on August 17, 2001 I said: "ERA can be considered to be a sort of 'mega-record'. Smaller records with particular information can be, and routinely are, generated from the data on ERA." A more precise way of expressing what I meant in the first of those sentences is to say that the *data* that exist on ERA can be considered to form a sort of "mega-record". In other words, the software elements that also exist on ERA cannot be considered to be part of a "mega-record".
>
> 4. ERA is a software application which runs on an IBM mainframe computer system, with its data contained in an IBM DB2 database running on that mainframe. A snapshot of ERA ("Snapshot") is contained in a Microsoft Access 2.0 database application called CEDAR (Compliance and Enforcement Data Analysis and Reporting system). CEDAR is used to produce ad hoc and complex reports which it is [*sic*] beyond the capabilities of ERA to produce. Reports issued by the Compliance and Enforcement Branch of the Public Body are produced using CEDAR rather than ERA. Also, CEDAR can be used to produce transmittable reports in the form of Microsoft Excel spreadsheets. It is beyond the capabilities of ERA to produce these. CEDAR consists of both data and software components.
>
> 5. Raw ERA data is that data which is extracted at specific dates from ERA and loaded into CEDAR (the "Raw ERA Data"). Raw Data is used by CEDAR software components to create derived data before any reports are generated from CEDAR.
>
> 6. In addition to the above described Raw ERA Data, a Snapshot contains other raw data (the "Other Raw Data") extracted at specific dates from software applications other than ERA (the "Other Applications") which run on an IBM mainframe computer system, with their data contained in an IBM DB2 database running on that mainframe, and with which ERA interacts, and which are required in order to perform analysis and reporting related to the Ministry's activities in the area of compliance and enforcement.
>
> 7. In addition to the above described Raw ERA Data and Other Raw Data, a Snapshot contains derived data (the "Derived Data") which are created by the software components of CEDAR and are based on Raw ERA Data and Other Raw Data. Derived Data are created as an intermediate preprocessing step in creating reports and performing analysis. Derived

Data are not part of either ERA or the Other Applications. Rather, they are created by and exist within CEDAR. Examples of Derived Data are:

- ERA case names, which are not stored in clear language in ERA
- Calendar, fiscal, and ERA reporting years for some of the many dates stored in ERA
- Tables containing only those contraventions which are determined to have been against the *Forest Practices Code Act of British Columbia* (the "FPC"). (ERA, and therefore CEDAR, contains information concerning contraventions against statutes other than the FPC, as well as alleged contraventions investigated but not taken to the formal determination process, and alleged contraventions which were taken to the formal determination process and determined to not have occurred.)
- Attributes indicating whether a determined contravention or a related administrative enforcement action is under appeal at the time of the taking of the Snapshot. (This information is available by data linkage in the Raw ERA Data, but is much more easily included in reports if it available as an attribute of a contravention.)
- A table of all inspections done, which are stored in different tables in the Other Raw Data. (This is required for reports done against "all inspections".)
- Tables containing inspection summaries based on tenure type broken down by office, inspection and volume summaries by tenure holder, inspection and volume summaries by tenure, and tenure lists by sector of the holder

8. In addition to the above described Raw ERA Data, Other Raw Data, and Derived Data, a Snapshot contains control data (the "Control Data") which are used by the software components of CEDAR to control data processing and the contents of reports. Control Data are, for the most part, created manually within the CEDAR database. Examples of Control Data are:

- Clarified type codes which have various implied meanings in ERA application, but which are more useful in reporting if the [*sic*] are expanded explicitly in CEDAR
- A table indicating which statute authorizes each statute and regulation. This information is not available in the Ministry's corporate database and is required for many of the reports produced by CEDAR
- A table containing a list of those administrative enforcement actions which are considered "informal"
- A table containing a list of those administrative enforcement actions which are considered "formal"
- A table containing a list of contravenable statutes which are related to riparian zones
- A containing a list of contravenable statutes which are related to soil disturbance

- A table containing a list of contravenable statutes which are related to unauthorized harvest of Crown timber

9. In addition to all of the above, a Snapshot contains software components developed in Microsoft Access version 2.0 (collectively, the "CEDAR Software"). The CEDAR Software components fall into the following categories:

- Import/export specifications, which are templates used to import the Raw ERA data into CEDAR
- Data table definitions, which define the tables within CEDAR
- Programmed queries which perform data selection, table creation, data update, table row appending, and table row deletion
- Macro commands, each of which automates a set of actions

10. A Snapshot contained within CEDAR is over 200 megabytes in size, vastly outstripping the 1.4 megabyte capacity of a floppy disk. A Snapshot is not a record as such, but is a computer program which also contains the data on which that program runs. These data are very roughly analogous to a set of "documents", some of which are enormously large, with each of the "documents" existing as a table of data. Some of the data in a given table do not make sense in and of themselves as they serve only to define linkages to data in other tables.

11. The CEDAR Software components are computer programs. That is, each component consists of a series of electronically coded signals that communicate commands to store, retrieve, and manipulate data or control storage, retrieval and manipulation of data.

12. In paragraph 3 of my first affidavit I said: "I understand that what the Applicant wants is a copy, in electronic and not paper format, of *all of the information that was contained in ERA*, either with or without those Certain Entities and Attributes, at the time the most recent snapshot of ERA data was taken". In paragraph 6 of my supplemental affidavit I said that the "remainder of the snapshot is composed [of] *data which is not part of ERA*, and software components developed in Microsoft Access version 2.0 which…" To be clear, the applicant's request (as I understood and still understand it) is for all of the data contained in ERA as of a specific date. The only place that ERA data as of a specific date exist is in a Snapshot that is held in CEDAR, as the Raw ERA Data component of that Snapshot. I did not and do not understand the Applicant's request to encompass data, other than Raw ERA Data, that is in the Snapshot (other than that data which makes the Raw ERA Data readable). I along with others from the Ministry, had numerous dealings (correspondence and meetings) with the Applicant in an attempt to clarify the request – to ascertain whether the Applicant appreciated the sheer enormity of the request and what would be entailed in responding to it, and to see if there was other information the Ministry could provide that would satisfy the Applicant. In all of those dealings the Applicant (in the person of Aran O'Carroll) was explicit that the request was for, in the first instance, "the entire Enforcement Act,

> Administrative Review, and Appeals Computer Tracking System (ERA) database" (which I understood to mean all Raw ERA Data), and, in the second instance, a subset of the data requested in the first instance (ie., all Raw ERA Data minus certain Entities and Attributes). (As well, in both instances, I understood the Applicant to want that data other than Raw ERA Data that makes the ERA data readable (for example, tables which translate codes and linkage keys into understandable character strings). That is a very small portion of the Other Raw Data in the Snapshot, and I did not mean to include it in my earlier statement that *all* of the non-ERA data and software components would have to be removed.) CEDAR is the container for ERA data as of a specific date (the Raw ERA Data) and for other data that make that data readable. CEDAR is also the container for other data and software, which are not encompassed by the Applicant's request for information. [emphasis added]

[18] The Ministry has recently updated its electronic case-tracking information system, to a version called CEDAR 2. It appears, however, that CEDAR 2 has not been designed to accommodate the right of access under the Act and the Ministry's related obligations under the Act respecting creation of records and severing of information.

[19] **3.3 The Right of Access** – The right of access under s. 4(1) of the Act relates to records. The word "record" is defined in Schedule 1 as follows:

> **"record"** includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.

[20] The Act does not explicitly contemplate access requests for parts of a "record". It is not uncommon, however, for an applicant to request any record containing information the applicant specifies, with the result that a large record responds to the request, but only a small part of the record contains information that is specifically responsive to the request.

[21] In this case, the Ministry initially responded to the access request by offering to disclose a snapshot of the information found in ERA in paper form. Disclosing a paper copy of the snapshot was going to entail efforts and costs in locating, preparing, handling and copying such a voluminous record. Efforts were also likely to be required to sever information excepted from disclosure under the Act. There was no issue taken, quite rightly, that the snapshot, in paper form, with or without some information severed, is a "record" under the Act that is capable of disclosure and reproduction in response to an access request.

[22] The applicant made it clear, however, that an electronic snapshot of the information in ERA, not a paper copy, was being requested. In the July 27, 2001 letter, the applicant also communicated willingness to agree to certain entire classes of information being eliminated from the electronic record involved if this would facilitate release of the remainder. The applicant's letter communicated a desire to frame the

access request so as to simplify any required or permitted severing of information by the Ministry.

[23] The Ministry's various written submissions maintain that responding to a request for an electronic form of information that can be disclosed in paper form is not the same exercise as responding in paper form because an electronic version would include more than ERA data. The "extra" data would be software elements developed in Microsoft Access version 2.0 – import/export specifications, data table definitions, programmed queries and macro commands – and non-software data that is not from ERA (what the Ministry refers to as the "Other Raw Data", "Derived Data" and "Control Data").

[24] Having deliberated on the material before me, I decided that four points arose. The first, third and fourth points were raised by the Ministry. The second point was not raised directly by the Ministry, but flowed from its first point, as a possible means of overcoming the inclusion with the requested record of Ministry owned or developed software elements owned or developed.

[25] The Ministry's first point was that the Microsoft Access version 2.0 software elements used to generate ERA snapshot reports are excluded from the definition of "record" and thus are not subject to an access request under s. 4(1) of the Act. The second point, not raised directly by the Ministry but related to its first point, was whether ERA snapshot reports can be generated by the Ministry in a format that does not include proprietary computer software elements or similar mechanisms for producing records. The third point was that, according to the Ministry, removing fields of non-ERA data from an electronic record amounted to the creation of a new record. This brought into play s. 6(2) of the Act, which prescribes the parameters for when a public body must create a record for an access applicant. The fourth point was that, if s. 6(2) required the creation of a record in this case, the Ministry said it could still refuse access altogether because excepted information could not be reasonably severed under s. 4(2) of the Act.

[26] **3.4 Must the Ministry Create A Record?** – Having decided that these four points arise, I decided that input was desirable from an independent computer scientist, Dr. Jens Jahnke, retained under s. 41(2) of the Act. I decided his input would assist me in determining whether ERA snapshot reports could be produced in an electronic format that is commercially or universally available. On September 11, 2002, I wrote to the parties and told them of my decision to involve Dr. Jahnke, with whom I did not communicate directly. My letter to him set out parts 3.1 through 3.3 of this order and stated the question that I wanted him to explore:

> Ian Wood has deposed, at para. 4 of his third affidavit, that "CEDAR can be used to produce transmittable reports in the form of Microsoft Excel spreadsheets". It is not clear whether these spreadsheets are reports the Ministry would have printed out if the applicant had requested a paper, as opposed to electronic, copy of an ERA snapshot. I have tentatively inferred, however, that the production of the 28,500 pages of paper copy that the Ministry offered to provide the applicant would have entailed the hard-copy printing of reports produced from CEDAR in some electronic format.

> The question I want Dr. Jahnke to explore is whether an ERA snapshot can be outputted by the Ministry, whether using CEDAR or otherwise, in a commercially or universally available electronic format such as a Microsoft Excel spreadsheet format or perhaps a Portable Document Format ("PDF") or Hyper-text Mark up Language ("HTML") format.

[27] I told the parties in my September 11, 2002 letter that, after I had received input from Dr. Jahnke and further submissions from the parties, I would address the following issues:

1. Are CEDAR software elements a record?

2. Can the Ministry output ERA snapshot reports in other electronic formats?

3. Must the Ministry create a record?

4. Can excepted information be reasonably severed?

[28] My letter told the parties that the submissions and evidence they had already provided to me would be made available to Dr. Jahnke and this was done. In addition, a meeting was convened on November 12, 2002 to allow Dr. Jahnke to discuss the matter with Ministry representatives. Ian Wood, other Ministry representatives and the Ministry's counsel, attended that meeting. In addition, the applicant, my counsel and I were present. A court reporter also attended and produced a transcript, copies of which were delivered to the parties at the time.

[29] Dr. Jahnke's input came in the form of a November 25, 2002 report to me. He defined the term "ERA snapshot" as being "an aggregate" of:

> 1. "Raw ERA Data" (extracted from ERA at specific dates and loaded into CEDAR)
> 2. "Other Raw Data" (extracted at specific dates from applications other that ERA)
> 3. "Derived Data" (created by the software components of CEDAR and based on Ray ERA Data and Other Raw Data)
> 4. "Control Data" (which are used by the software components of CEDAR to control data processing and the contents of reports)
> 5. "Software Components" (developed in Microsoft Access version 2.0)
>
> [citations omitted]

[30] His report then stated two key assumptions:

- The term "electronic format" in the question posed to Dr. Jahnke meant "electronic data format", to differentiate from "computer programs" that can also be said to exist in "electronic format"; and

- The term "ERA snapshot" in the question posed did not include software components developed in Microsoft Access version 2.0.

[31] Based on the above, Dr. Jahnke said that, given the second assumption just stated,

> It is possible for the Ministry to output an ERA snapshot (or any combination of parts of it mentioned in B2 except the software Components) to a commercially or universally available electronic format. The user's guide for Access describes readily available functionality to export data to Microsoft Excel spreadsheets. (Ian Wood declares in the Nov. 11 hearing that "the export of data from Access to Excel has never been an issue".
>
> The generation of Postscript or PDF is another possibility when an appropriate printer driver is installed. Such a printer driver would potentially have to be purchased at minor cost.

[32] Dr. Jahnke's report also noted that, during the meeting, Ian Wood had mentioned that the Ministry has, since Sierra's request, rolled out a new version of CEDAR, referred to as CEDAR 2. The report noted that CEDAR 2 is based on Microsoft Access 97 "and separates the data components from the software components of an ERA snapshot … in two different MDB files." Accordingly, Dr. Jahnke reported that, in addition to his above-quoted conclusions about ERA snapshot data export from the original CEDAR, "it becomes possible with CEDAR 2 to output ERA snapshot data (without the Software Components) directly in MDB format."

[33] I permitted the Ministry and Sierra to make representations in light of Dr. Jahnke's report. The applicant accepted Dr. Jahnke's conclusions, as did the Ministry. The Ministry's response went on to say the following:

> The Ministry further says that it has never disputed that it is technologically *possible* to output the requested data in electronic format. What the Ministry has said, and what it continues to say, is that, given the lengths and costs (as described in the Ministry's various submissions in this inquiry) that the Ministry would have to go to in order to have the data outputted in electronic format, without also disclosing data that have not been requested by the Applicant and/or that the Ministry is entitled to withhold under the Act, the duty to create a record under section 6(2) does not arise, and/or exceptable information cannot reasonably be severed, within the meaning of section 4(2), from the remainder of the record. [original italics]

[34] The Ministry's contention in this submission that it has never disputed that it is technologically possible to output the requested data in electronic format is consistent with the position its representatives took at the meeting. That position is, however, quite inconsistent with its earlier submissions and evidence in this inquiry, which at various points explicitly maintained that it was not possible to segregate software elements from data elements in order to produce an ERA data snapshot.

[35] At all events, I am able, based on the material before me (which include, and follow, Dr. Jahnke's involvement and report) to make findings respecting the four issues

set out above. My finding respecting the second issue means I need not, strictly, consider the first issue, *i.e.*, whether CEDAR software elements are a record. I agree that software elements of CEDAR would not be records within the meaning of the Act, but that does not affect my finding on the second issue, *i.e.*, whether the Ministry can output ERA snapshot reports in another commercially or universally available electronic format.

[36] There is no longer any dispute that it is technically feasible to produce, in Microsoft Access or Microsoft Excel, an ERA snapshot that contains data elements only. This holds true for the original CEDAR and for CEDAR 2. As its response to Dr. Jahnke's report confirms, however, the Ministry continues to maintain that the duty to create a record under s. 6(2) of the Act does not apply. It takes this position, it says, "given the lengths and costs (as described in the Ministry's various submissions in this inquiry) that the Ministry would have to go to in order to have the data outputted in electronic format" without also disclosing information protected from disclosure. This contention confuses questions arising under s. 6(2) with those arising under s. 4(2).

[37] Regarding s. 6(2)(a), as the Ministry's response to Dr. Jahnke's report concedes, it is technologically possible to create an ERA snapshot from a machine-readable record in the Ministry's custody or control. Indeed, the task can be readily accomplished. For example, during the meeting, Ian Wood said that Ministry staff could, using Ministry computers, export ERA data into a Microsoft Access report without also exporting software elements. He said the Ministry could, using CEDAR 2, produce a Microsoft Access ERA snapshot in "four hours of turn it on and walk away." It can also be readily inferred from the material before me that the Ministry has the necessary software – *i.e.*, CEDAR and Microsoft Access – to create the requested ERA snapshot.

[38] The Ministry acknowledges it has the burden of establishing that, under s. 6(2)(b), creation of an ERA snapshot (for example, in Microsoft Access) would unreasonably interfere with its operations. The material before me does not establish that creation of such a snapshot would do this.

[39] Some of the information in an ERA snapshot may be excepted from disclosure under one or more of the Act's exceptions to the right of access. But questions of severance of such information under s. 4(2) aside, it is clear that a snapshot of *all* data in the ERA, at a given time, could be exported into, at the very least, a Microsoft Access record and the steps necessary to create such a record using Microsoft Access would not be onerous in terms of staff time or other Ministry resources. Indeed, Ministry staff noted at the meeting that the Ministry creates such a record for the purposes of preparing its annual reports. As already noted, moreover, Ian Wood said at the meeting that the Ministry could, using CEDAR 2, produce a Microsoft Access ERA snapshot in "four hours of turn it on and walk away." This does not speak to unreasonable interference with the Ministry's operations as contemplated by s. 6(2)(b).

[40] The Ministry's affidavit evidence speaks more to the burden of responding to the request in terms of the cost the Ministry says would be involved to create software to sever excepted information from the electronic record. That is a s. 4(2), not s. 6(2), issue.

I am not persuaded that the Ministry is excused, under s. 6(2)(b), from its duty to create the requested record.

[41] I find that s. 6(2) requires the Ministry to create the requested ERA snapshot in Microsoft Access or Excel from machine-readable records in its custody using its normal computer hardware and software and technical expertise.

[42] **3.5 Must the Ministry Sever the Electronic Record?** – The fourth and final issue is whether information in an ERA snapshot that is excepted from disclosure under the Act "can reasonably be severed" under s. 4(2).

[43] In its response to the applicant's request, the Ministry said "it is estimated that it would take at least six months of staff time" to sever the record, even in the case of the "second version of the request", under which specified attributes and entities were not requested. Nikki Bole's affidavit contains evidence relevant to this issue:

> 10. I have further been informed, and believe it to be true, that the Applicant has requested, in the alternative, an electronic copy of ERA with certain of its Entity and Attribute fields (the "Certain Fields") removed. …
>
> 13. I have been informed of which Entity and Attribute fields (ie., the Certain Fields) the Applicant would be content to do without. They make up a relatively small portion of ERA.
>
> 14. In order to respond to version 2 of the Applicant's request, software capable of removing the Certain Fields would have to be developed.
>
> 15. In order to respond to either version of the request, software capable of electronically removing information from within various fields in ERA (in the case of version 2, from within various fields in the remaining parts of ERA) would have to be developed. (It is likely that information would be severed under sections 15 and 22 of the Act.)
>
> 16. The Ministry does not have, in-house, the computer software or technical expertise to be able to respond to either version of the Applicant's request. To respond to either version requires special skills/abilities. Although I am sure that the Ministry has staff with these skills, Ministry staff are generalists who oversee various systems. They are not specialists who are, or can be, completely dedicated to one system. No one in the Ministry is specifically employed to develop software. Typically, system development is contracted out and overseen by staff in the Information Management Group (a branch in the Ministry).
>
> 17. As the Ministry has not looked into the possibility of hiring a contractor to develop the software that would be needed to respond to either version of the request, I do not know how much it would cost or how long it would take to obtain that software. But from my knowledge about systems work, I would expect it to cost approximately twenty thousand dollars. The contract would presumably be put out to tender, and some time would be

taken up in a bidding process. It would then take, I expect, about a month to develop software.

18. Assuming that a contractor could be hired, and the software necessary to respond to either version of the request could be developed, then, in order to respond to either version of the request, the Ministry would have to make an electronic copy of all of the data on ERA, on which to do the work (of deleting the Certain Fields, and/or of removing exceptable information). That copy would have to be stored somewhere on the Ministry's system. Ministry staff would then have to review screen-by-screen to determine what information should be removed. (There are many screens on which exceptable information exists. Even screens on which exceptable information is not supposed to exist would have to be reviewed, because not all users input data in consistent locations.) The head of the Ministry would then have to make a decision based on staff recommendations. The software would then have to be applied to remove that information. That copy of the record, with information removed, would then have to be copied onto a CD-ROM which could be given to the Applicant.

[44] The first affidavit sworn by Ian Wood is also relevant:

8. In order to respond to version 2 of the Applicant's request [*i.e.*, for a snapshot of ERA with specified entities and attributes removed], the Ministry would have to hire a software developer to develop software capable of removing the Entity and Attribute fields.

9. In order to respond to either version of the request, a software developer would have to be hired to develop software capable of electronically severing information from ERA (in the case of version 2, from the remaining parts of ERA). …

11. The Ministry does not have available, in-house, the computer software or technical expertise to be able to respond to either version of the Applicant's request. Special knowledge and skills would be required in order to develop the software that would be needed to enable the Ministry to respond to either version of the request. Although the Ministry has staff who may have the requisite knowledge and skills, those staff are not employed to develop software. Typically, system development is contracted out and overseen by staff in the Information Management Group (a branch of the Ministry).

12. As the Ministry has not looked into the possibility of hiring a contractor to develop the software that would be required to respond to either version of the request, I do not know how much it would cost or how long it would take to obtain that software. But from my knowledge about systems work, I would expect it to cost in the tens of thousands of dollars. The contract would presumably be put out to tender, and some time would be taken up in a bidding process. It would then take, I expect, about a month to develop the software.

13. Assuming that a software developer could be hired and could develop the software needed to respond to either version of the request, then, in order

> to respond to either version of the request, the Ministry would have to make an electronic copy of all of the data on ERA, on which to do the work (of deleting the unwanted Entities and Attributes in the case of version 2 of the request, and, in the case of either version of the request, of removing exceptable information). That copy would then have to be stored somewhere on the Ministry's system. Ministry staff would then have to review all Entities and Attributes requested in the particular version of the request. Even Entities and Attributes which are not supposed to contain exceptable information would have to be reviewed because not all users input data in consistent locations. The head of the Ministry would then have to make a decision based on staff recommendations. The software would then have to be applied to remove that information. That copy of the record, with information removed, would then have to be copied onto CD Rom. The Applicant would have to have MS Access version 97 or later in order to receive, electronically, a record responsive to either version of the request.
>
> 14. And none of the above addresses the question of how severing of information could or would be indicated to the Applicant. It is theoretically technologically possible to develop a way of inserting section numbers of the Act into particular fields from which information is removed, in an individualized way, but that would cost in the hundreds of thousands of dollars to develop. There is currently no way to do that in an individualized way.

[45] Similar and more detailed evidence was also forthcoming from Ministry representatives during the November 12, 2002 meeting. They described the effort and cost (tens of thousands of dollars) that would be entailed in developing software to sever information from individual entities and attributes covered by the applicant's request. While it appears the Ministry could, relatively easily, suppress ERA entities and attributes that the applicant is willing to do without, the task of reviewing and severing the contents of the remaining entities and attributes, even when aided by envisioned electronic severing technology, would be daunting because of the size, complexity and data-entry frailties of the record involved.

[46] Ministry representatives explained that for most, if not all, investigations in which the Ministry is involved, ERA is effectively the Ministry's investigation file. It is not simply an electronic summary of information found in paper investigation files. Ministry representatives identified, in particular, the necessity and complexity of ensuring that personal information and law enforcement information respecting ongoing Ministry or police investigations is identified and severed where appropriate. This includes the importance of protecting the identity, for example, of whistleblowers, *i.e.*, individuals who have reported infractions to the Ministry. These aspects of ERA stem from the fact that it is, as Ministry representatives said at the meeting, effectively the Ministry's investigation file for most if not all investigations, as opposed to an electronic summary of information found in a paper investigations file.

[47] Severing would, Ministry representatives said, also be complicated by the fact that, because Ministry staff in the field do not consistently enter information in the correct fields within ERA, non-suppressed fields could not be safely assumed to be free

of information that could or must be severed under the Act. The Ministry could not, for example, be sure that it needed to review only 'comment' fields in ERA for information that might be protected under the Act because such information might also show up in other non-suppressed fields.

[48] The Ministry's evidence speaks to the financial burden it would face in creating software to sever the electronic ERA snapshot and the burden entailed in undertaking the necessary severing. At para. 5.15 of its initial submission, the Ministry argues that

> … public bodies are not required to sever records in all cases regardless of the magnitude, complexity and cost of the task, but rather in cases in which exceptable can **reasonably** be severed from the remainder of the record. [bold in original]

[49] It adds, at para. 5.16, that the applicant's insistence on an electronic copy of the information means severance "cannot be carried out in the usual way", on paper, thus necessitating development of "a method of severing electronically". As I read the evidence, the Ministry is not saying that it lacks the necessary computer hardware – and it may even have the necessary in-house technical expertise – but it does not have the necessary software to sever the requested electronic record and such software would have to be developed (by in-house or external technical experts, or both working in conjunction). The Ministry suggests that language in s. 6(2) that is different from the language in s. 4(2) should drive the interpretation and application of s. 4(2). At para. 5.19 of its initial submission, the Ministry argues that, since the Legislature did not intend to require public bodies to go outside the bounds of their normal equipment and expertise to create records,

> … surely it would not think it reasonable to require a public body to go to those lengths to sever an existing record (which is, after all, just another format in which information in the in the custody or under the control of a public body exists). In the Public Body's submission, the Legislature's conscious choice to include in section 4(2) the word "reasonably" between the words "can" and "be severed" reflects exactly that thinking.

[50] As I understand the Ministry's argument, the Legislature's use of the word "reasonably" in s. 4(2) warrants interpreting that section as if the explicit language of s. 6(2), or language importing the same considerations, had also been incorporated into s. 4(2). I cannot agree with this reasoning. In s. 6(2), the Legislature has stipulated that the record must be able to be created using the public body's normal computer hardware and software and technical expertise *and* its creation must not unreasonably interfere with the operations of the public body. This explicit statutory test in s. 6(2)(a) must contemplate that it is possible for the creation of records using a public body's normal computer hardware and software and technical expertise to still unreasonably interfere with operations of the public body. If otherwise, s. 6(2)(b) would serve no purpose.

[51] A different approach is taken in s. 4(2), which applies to *all* records whether they are paper or electronic and whether they are in the custody or control of the public body or have been created from such records in accordance with s. 6(2). The test under s. 4(2) is one of reasonableness. There is no presumption (explicit or implicit) in this test that it is reasonable to sever excepted information only if the public body has the "normal

computer hardware and software and technical expertise" for the task. On the Ministry's interpretation of s. 4(2), a public body could replace paper records with electronic records and fail, by design or for other reasons, to develop or acquire computer software or hardware, or technical skills, to sever the electronic version of the records. This would automatically qualify as a circumstance in which information excepted from disclosure cannot be reasonably severed and there would be no right of access to the remainder of the record.

[52] I am not prepared to say that the severing of an electronic record is (as the Ministry says) "qualitatively" different from paper severing in a way that excuses public bodies from the duty to sever electronic records or carries a lower threshold of what can reasonably be severed under s. 4(2). Nor am I prepared to say that a public body must be excused from severing under s. 4(2) if it would have to develop, acquire or engage the use of technological equipment, methods or skills in order to sever electronic records or to sever them efficiently (such as with a photocopier that has special features for producing severed copies of records).

[53] Having said this, the Legislature's use of the word "reasonably" in s. 4(2) obviously limits the duty of a public body to sever protected information and disclose the rest. The Ministry refers to the following interpretation of s. 4(2) from the provincial government's *Policy and Procedures Manual* for the Act:

> "Reasonably be severed" means that after the excepted information is removed from a record, the remaining information is both intelligible and responsive to the request.

[54] I agree with this statement. There will be cases where, after protected information is removed, the remainder of the record conveys nothing intelligible. Where the remainder of a severed record consists of disconnected words or snippets of sentences that cannot reasonably be considered intelligible, it is not reasonable to sever under s. 4(2). This view is supported by decisions elsewhere in Canada. For example, in *Canada (Information Commissioner)* v. *Canada (Solicitor General)*, [1988] 3 F.C. 551 (T.D.), Jerome A.C.J. said the following at pp. 558-559:

> 14 With this approach in mind, I have closely reviewed the unexpurgated version of the report which, pursuant to my order of April 16, 1987, was filed in a sealed envelope. One of the considerations which influences me is that these statutes do not, in my view, mandate a surgical process whereby disconnected phrases which do not, by themselves, contain exempt information are picked out of otherwise exempt material and released. There are two problems with this kind of procedure. First, the resulting document may be meaningless or misleading as the information it contains is taken totally out of context. Second, even if not technically exempt, the remaining information may provide clues to the content of the deleted portions. Especially when dealing with personal information, in my opinion, it is preferable to delete an entire passage in order to protect the privacy of the individual rather than disclosing certain non-exempt words or phrases.

> 15 Indeed, Parliament seems to have intended that severance of exempt and non-exempt portions be attempted only when the result is a reasonable fulfillment of the purposes of these statutes. Section 25 of the *Access to Information Act*, which provides for severance, reads:
>
> > 25. Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a record that the head of the institution is authorized to refuse to disclose under this Act by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains, any such information or material. [Emphasis added.]
>
> Disconnected snippets of releasable information taken from otherwise exempt passages are not, in my view, reasonably severable.

[55] In *Montana Band of Indians* v. *Canada (Minister of Indian & Northern Affairs)*, [1989] 1 F.C. 143, [1988] F.C.J. No. 339, Jerome A.C.J. dealt with a record the contents of which were almost entirely exempt from disclosure. He said the following at pp. 160-161 (F.C.):

> 34 In addition, I do not find that the information regarding public funds is reasonably severable. To attempt to comply with section 25 would result in the release of an entirely blacked-out document with, at most, two or three lines showing. Without the context of the rest of the statement, such information would be worthless. *The effort such severance would require on the part of the Department is not reasonably proportionate to the quality of access it would provide.* [emphasis added]

[56] See, also, *SNC-Lavalin Inc.* v. *Canada (Minister of Public Works)*, [1994] F.C.J. No. 1059 (T.D.), at para. 48.

[57] An early decision under Ontario's *Freedom of Information and Protection of Privacy Act* accords with Jerome A.C.J.'s views. In Order P-24, [1988] O.I.P.C. No.24, Commissioner Sidney Linden (as he then was) said the following at p.8:

> The inclusion of subsection 10(2) reinforces one of the fundamental principles of the Act, that "necessary exemptions from the right of access should be limited and specific" (subsection 1(a)(ii)). An institution cannot rely on an exemption covered by sections 12 to 22 of the Act without first considering whether or not parts of the record, when considered on their own, could be disclosed without revealing the nature of the information legitimately withheld from release.
>
> The key question raised by subsection 10(2) is one of reasonableness. In my view, it is not reasonable to require a head to sever information from a record if the end result is simply a series of disconnected words or phrases with no coherent meaning or value. A valid subsection 10(2) severance must provide the requester with information that is in any way responsive to the request, while at the same time protecting the confidentiality of the portions of the record covered by the exemption. My interpretation of subsection 10(2) would appear to be supported by

> Associate Chief Justice Jerome of the Federal Court of Canada (Trial Division), who commented on severance in a recent case dealing with the severance provisions of the federal Access to Information Act (The Information Commissioner of Canada and Solicitor General of Canada, unreported and under appeal). At page 8 of the decision, the Associate Chief Justice states:
>
> > …these statutes do not, in my view, mandate a surgical process whereby disconnected phrases which do not, by themselves, contain exempt information are picked out of otherwise exempt material and released
>
> I have reviewed the records at issue in this appeal and have concluded that no information that is in any way responsive to the request could be severed from the documents and provided to the requester without disclosing information that legitimately falls within the subsections 12(1)(b), 12(1)(e) and 13(1) exemptions.

[58] The Ontario Divisional Court approved of these passages from *Montana Band* and *Canada (Solicitor General)* in *Ontario (Minister of Finance)* v. *Ontario (Information and Privacy Commissioner*) (1997), 102 O.A.C. 71. See, also, Ontario Order PO-2087-I, [2002] O.I.P.C. No. 208.

[59] As para. 34 of *Montana Band* suggests, the reasonableness aspect of severance provisions such as s. 4(2) also imports other considerations. One is not required to altogether ignore the burden of severing a record when considering whether protected information can "reasonably" be severed. There will be cases where the cost of severing is very great while the part of the record that remains after severing, reasonably viewed, is perhaps not entirely incoherent and meaningless, but nonetheless is without informational value.

[60] Here in British Columbia, my predecessor addressed this issue as follows in Order No. 205-1997, [1997] B.C.I.P.C.D. No.67, at p.7:

> The [Public Service Appeal] Board submits that the language of this subsection incorporates the standard of reasonableness for severing for either technical or financial reasons. It argues that a public body may be entitled to withhold an entire record, "because it is not reasonably possible, technically, to sever excepted information from the record and disclose the remainder without disclosing protected information." (Submission of the Board, paragraphs, 21, 22) Furthermore, it argues on the basis of affidavit evidence that the financial and administrative burden on the Board of such severing is unreasonable, and thus severance is not required. (Submission of the Board, paragraphs 23, 24; see, especially, the affidavit of Joy Leach, paragraph 12) It also cannot charge the applicant under section 75(3) of the Act for access to his own personal information. (Submission of the Board, paragraph 31) The Board concludes:
>
> > ...judged from the perspective of financial reasonableness and practicability, the personal information in question cannot reasonably be severed from the record, and the Board should not be required to do so. (Submission of the Board, paragraph 25)
>
> In response to the Board's arguments, the applicant relies on Ontario Order P-820. In that case, the Ontario Criminal Code Review Board had been asked to provide

> an applicant with copies of tape recordings of Review Board proceedings involving the applicant. The Review Board made arguments similar to those advanced by the Board in the present inquiry. The Inquiry Officer for the Ontario Information and Privacy Commissioner treated the record as the personal information of the applicant. The Inquiry Officer further concluded that the Review Board had the technical capability to reproduce the tapes for disclosure. The B.C. Board concludes, however, as follows about its tapes:
>
> > Because the tapes contain third party personal information that must be severed from the tapes before they can be released, Order P-820 is *not* persuasive on this point. It is one thing to ask a public body simply to reproduce a tape in its entirety, without severance, and quite another to require it to incur significant and unreasonable financial and practical costs in severing tapes using the technology and process set out in the Board's affidavits in this case. (Submission of the Board, paragraph. 29)
>
> I have some sympathy for the position advanced by the Board because I am interested in reaching pragmatic decisions under the Act. *While financial, practical, and technical considerations may be relevant to deciding whether excepted information can reasonably be severed from a particular record, I must be careful not to interpret section 4(2) of the Act in a manner which would undermine the Act's stated purpose of promoting more open and accountable public bodies.* In the particular circumstances of this application, and having regard to both the affidavit evidence and submissions before me, I am not persuaded that, had it been necessary for the Board to do so, any third-party personal information could not, for financial, practical, or technical reasons, be "reasonably severed from" the tapes. I might conclude otherwise in some extraordinary cases but this is not such a case. [emphasis added]

[61] I would add, finally, that there is no room under s. 4(2) for drive-by assessments of whether a record is reasonably severable based (for example) on the assumptions that, because the record is of a particular type, it is unlikely to contain information that must be disclosed, or it is unlikely that excepted information can reasonably be severed. Records of all kinds and in all formats must be reviewed to determine which portions must be disclosed and which can or must be withheld. The duty to sever can only be performed case by case, in light of the contents of the record at hand, and that duty generally entails examination of each portion of the record.

[62] I will now address whether, in light of the evidence and the above observations, the requested ERA snapshot can "reasonably be severed". This case is close to the line, but I am persuaded, in the end, that the ERA snapshot cannot "reasonably be severed" within the meaning of s. 4(2) of the Act and that the Ministry is not required to sever even the truncated version of an ERA snapshot that the applicant has indicated would be acceptable.

[63] The conclusion I have reached in this case should not be taken to suggest that public bodies do not have an obligation to sever electronic records by electronic means. They do. If an electronic record is requested, then the severing has to take place, subject only to the limits of the s. 4(2) duty as determined in each case. This case involved an access request for a record that contains a very large amount of information. This aspect

of the applicant's request converged with the growing pains and complexities of the Ministry's large-scale movement to electronic technology as its primary means of compiling and managing case tracking information.

[64] It is not an option for public bodies to decline to grapple with ensuring that information rights in the Act are as meaningful in relation to large-scale electronic information systems as they are in relation to paper-based record-keeping systems. Access requests like this one test the limits of the usefulness of the Act. This is as it should be. Public bodies must ensure that their electronic information systems are designed and operated in a way that enables them to provide access to information under the Act. The public has a right to expect that new information technology will enhance, not undermine, information rights under the Act and that public bodies are actively and effectively striving to meet this objective.

4.0 CONCLUSION

[65] For the reasons given above, I find that the Ministry was required to create a record under s. 6(2) of the Act. I also find that information excepted from disclosure under the Act cannot reasonably be severed from the record under s. 4(2). The applicant therefore does not have the right of access to the remainder of the record. In light of my conclusion respecting s. 4(2), the creation of the record under s. 6(2) would be futile and I make no order under s. 58 requiring the Ministry to do so.

April 25, 2003

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia