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

Order 01-24

MINISTRY OF TRANSPORTATION AND HIGHWAYS

David Loukidelis, Information and Privacy Commissioner
June 4, 2001

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Summary: Applicant sought public interest fee waiver on basis of its doing research for a First Nation related to a possible claim against the government. Public interest not established for s. 75(5)(b) only because applicant is or represents a First Nation. Requested records themselves must relate to a matter of public interest. Ministry authorized to deny waiver on that ground. Also no sufficient evidence that applicant could not afford to pay the fee or that fee waiver otherwise fair.

Key Words: fee waiver – public interest – cannot afford – any other reason – dissemination of information – use of information – partial fee waiver.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 75(5).

Authorities Considered: B.C.: Order No. 90-1996, [1996] B.C.I.P.D. No. 16; Order No. 154-1997, [1997] B.C.I.P.C.D. No. 12; Order No. 155-1997, [1997] B.C.I.P.C.D. No. 13; Order No. 293-1999, [1999] B.C.I.P.C.D. No. 6; Order No. 332-1999, [1999] B.C.I.P.C.D. No. 45.

Cases Considered: B.C.: *Minister of Forests et al.* v. *Information and Privacy Commissioner et al.* (B.C. Supreme Court, Victoria Registry No. 99-1290, August 13, 1999).

1.0 INTRODUCTION

[1] This order relates to a request made by the Union of British Columbia Indian Chiefs ("UBCIC"), to the Ministry of Transportation and Highways ("Ministry"), under the *Freedom of Information and Protection of Privacy Act* ("Act"). The request was for records related to Anaham Indian Reserve No. 1 and was made in connection with research into land issues involving that reserve.

[2] The applicant, UBCIC, requested a fee waiver "in the public interest". The Ministry responded by issuing a fee estimate of $3,225, on the basis that it had determined there was a large number of records involved in responding to the applicant's request. Part of the fee ($645) was for providing photocopies of records. The Ministry told the applicant that these records would include property service, tenure, road research and general office files and maps from its headquarters, Aboriginal Relations Branch and Thompson Okanagan Regional Office. It invited the applicant to narrow its request.

[3] The Ministry also indicated that the cost of photocopying the records was only for those in the Aboriginal Relations Branch at Ministry headquarters. It said that further extensive searches would be required, in its regional and district offices, before it would be able to provide a fee estimate for copying or preparation of records that it might locate in those offices. The Ministry also provided the applicant with a list of maps and plans related to the "Anaham's Flat Indian Reserve No. 1" and invited the applicant to specify the maps it wanted from the list. The Ministry said it would then issue a supplementary fee estimate.

[4] The applicant responded by expressing surprise that the Ministry proposed to charge fees, when in the past it had waived fees associated with processing the applicant's requests,

> … recognizing that settling land claims is in the public interest and that First Nations and their researchers are insufficiently funded to pay for photocopies of documents necessary for the submission of a claim.
>
> As a non-profit organization working on behalf of First Nations in British Columbia, the UBCIC Specific Claims Research Department undertakes research at the authorisation of First Nations with an aim to resolving outstanding specific land claims in the Province. We work for many First Nations and receive limited funding to undertake the necessary research. We request MoTH files only when such information is required for a particular project, not as part of general research. For these reasons, we ask that you consider our initial request that fees be waived for the research on Anaham I.R. No. 1.

[5] The applicant said it was only interested in files relating to roads crossing Anaham I.R. No. 1 and maps associated with those files. The applicant said it did not require files relating to tenure, property service or general office matters and hoped that this would narrow the request.

[6] The Ministry then replied, on November 26, 1998, by denying the request for a fee waiver in the following terms:

> In determining whether or not to waive fees for freedom of information requests, the ministry must consider whether "processing the request would unreasonably interfere with the operations of the Ministry" and what "the actual costs to the Ministry" would be in processing a request. Freedom of information requests often incur considerable costs. It is government policy to charge fees in order to allow ministries to recover a portion of these costs.
>
> While I appreciate that the Union of British Columbia Indian Chiefs (UBCIC) may have a limited research budget, the same is true of the Ministry of Transportation and Highways. Information and privacy budgets have been reduced across government. We are no longer able to provide freedom of information services without recovering some of the costs of providing records.

[7] The Ministry also provided a list of files that staff had identified as potentially responsive to the applicant's request and a fee summary, suggesting that the fee summary and list would assist the applicant in identifying its priorities. The Ministry said that the cost of providing records, except for maps and plans, from the Aboriginal Relations Branch only, would be $837.50 (2,150 copies, at 25¢ per page, and 10 hours to prepare records, at $30 per hour).

[8] The Ministry also provided a fee estimate of $2,100 for searching and locating records in its regional and district offices, based on approximately 70 hours of search time at $30 an hour. It explained to the applicant that records in its Aboriginal Relations Branch at headquarters are organized by "Indian Reserves", while records in the regional and district offices are organized by "road". It said considerable amounts of time would be required to locate the regional records, as the road files do not deal only with road crossings at Indian Reserves. The Ministry then told the applicant it might issue a revised fee estimate later, if the final costs were higher than first estimated, as "applicants are required to pay actual costs".

[9] With the Ministry's agreement, the applicant put the request on hold while it carried out some consultations. The applicant then requested a review, under s. 53 of the Act, of the Ministry's decision to refuse its request for a fee waiver. With my Office's encouragement, the two parties agreed to extend the review deadline while they sought to resolve the fee waiver issue. During this time, the Ministry says it released approximately 1,400 pages of records from its Aboriginal Relations Branch files at headquarters, without any search or copying fees. The Ministry sent the applicant a new decision letter on October 28, 1999 informing the applicant that it was waiving the $837.50 fee for providing the Aboriginal Relations Branch records but that the fee estimate for providing the regional and district office records remained in place. It is this remaining fee estimate ($2,100) that is in dispute in this inquiry. (There appears to be a difference of opinion between the parties as to the exact number of pages disclosed and the precise circumstances of that fee waiver. However, the parties do agree that, during mediation, the Ministry disclosed some records without charging. I also note that the

applicant regards the date of the decision to refuse the fee waiver request under consideration in this inquiry to be March 17, 1999, the date of a letter from the Ministry explaining its decision on the fee waiver request. It is clear, however, that the decision was first issued in a letter of November 26, 1998.)

[10] In June 2000, the applicant requested that the matter proceed to inquiry and I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

[11] The only issue mentioned in the Notice of Written Inquiry and Portfolio Officer's Fact Report for this inquiry is whether the Ministry was justified in refusing to waive the remaining $2,100 fee "in the public interest", *i.e.*, under s. 75(5)(b) of the Act. This is consistent with the applicant's original request for a fee waiver, which simply asked that fees be waived because the request "is in the public interest". The applicant and the Ministry did not challenge the framing of the issue in the Notice of Written Inquiry and Portfolio Officer's Fact Report. The submissions of both parties, however, to some extent address the issue of whether the applicant can afford the estimated fees and there is some dispute between them as to the amount and sources of potential funding available to the applicant for its research. The applicant also argues in places in its submissions that it is fair in the circumstances to waive the fees. These considerations properly relate to fee waivers under s. 75(5)(a).

[12] My decision in this case rests on the public interest issue framed in the Notice of Written Inquiry and Portfolio Officer's Fact Report. I have, in passing, addressed the ability to pay and fairness issues. If those issues were squarely before me, I would uphold the Ministry's decision to refuse a fee waiver under s. 75(5)(a).

[13] Consistent with previous orders, the burden of proof in this case is on the applicant.

3.0 DISCUSSION

[14] **3.1 Procedural Matters** – It is necessary first to address two procedural matters.

Inclusion of Mediation-Period Material.

[15] The applicant objects to the Ministry's inclusion in its submissions of a number of arguments, affidavit material and exhibits which the applicant says relate to the mediation process and which the Ministry included without its permission. The applicant says it understood from our Office's policies and procedures that records respecting attempts to settle issues after the review began, and before the inquiry took place, would not be referred to in the Ministry's submissions without its permission.

[16] The applicant says inclusion of information about the parties' good-faith negotiations and the various compromises suggested is clearly prejudicial to its position and to the viability of the entire mediation process. The applicant extends this objection to certain aspects of the Ministry's submission that dealt with the Ministry's waiver of fees associated with the disclosure of the Aboriginal Relations Branch records.

[17] The Ministry argues in response that there is nothing objectionable in referring to this material. It says such considerations are directly relevant to the issue before me, *i.e.*, whether this is an appropriate circumstance to excuse or reduce the fee. It says that my Office's policies and procedures only preclude the submission of a record generated by this Office or a record provided by a party to my Office that is related to the mediation process. It says that the events referred to in its initial submission did not involve my Office. The Ministry also pointed out, at paras. 14 and 15 of its first reply submission, that the applicant has itself included a July 1999 letter from this Office's portfolio officer to the applicant, which provided her comments on the issues. The Ministry asks that I not consider this letter.

[18] The Notice of Written Inquiry for this matter says the following about inclusion of mediation material in inquiry submissions:

> If a party includes, without the written permission of the other party, any record generated by the Office of the Information and Privacy Commissioner during the mediation process, or a record provided by any party related to the mediation process, the Office will remove that mediation record from the submission and return it to the party submitting it. It will not form part of the record of proceedings before the Commissioner in the inquiry.

[19] The purpose of this restriction is preserve the confidentiality and viability of the mediation process and to ensure that I examine the issues with fresh eyes, uninfluenced by what occurred during mediation. It is appropriate for me to know of factual matters that arise in mediation, such as decisions to narrow the issues in dispute, lower or waive fees, disclose records or add or remove exceptions. It is not appropriate, however, for me to consider a Portfolio Officer's recommendations, comments or opinions or the parties' actions or offers or other attempts to settle a matter.

[20] The applicant requested a review of the Ministry's decision on its request for a fee waiver on April 16, 1999. The July 1999 letter from the Portfolio Officer who handled mediation in this matter is clearly a "record generated by the Office of the Information and Privacy Commissioner during the mediation process". The applicant should not have included it in its submissions without the consent of the Ministry, which the Ministry did not give. I have neither read nor considered that letter.

[21] The "mediation material" to which the applicant objects consists of portions of its submissions, affidavits and exhibits (letters from the Ministry to the applicant). They include references to what the applicant describes as the release of 1,400 pages, the lowering of the fee, an offer to waive part of the fee at one point, a description of the records the applicant still required, the Ministry's view of the negotiations process, a

meeting held as part of the negotiation, letters and references to correspondence sent as part of the negotiations and attempts to negotiate a resolution without the need for an inquiry (including offers made by the Ministry). The applicant says these were all part of unsuccessful attempts to arrive at a settlement of the issues in dispute, *after* the applicant filed its request for review with this Office.

[22] Although the Portfolio Officer's Fact Report issued with the Notice of Written Inquiry refers to these events as having taken place "outside the FOI process" – and the Ministry says that these events did not involve my Office – there is no doubt that these events took place after my Office's receipt of the request for review. In my view, the items in question fall within the ambit of "record[s] provided by any party related to the mediation process" and, with a few minor exceptions, it would be improper for me to consider them in this inquiry. In this case, I have only taken into account factual matters such as the Ministry's lowering of its fee estimate, its disclosure of records and the accompanying fee waiver by the Ministry.

Ministry's Submission of a Second Reply

[23] The applicant also objected to the Ministry submitting a second reply, contrary to this Office's procedures for inquiries. This second reply clarified a few points from earlier submissions and also provided further argument on the issue of the inclusion of mediation material. I did not consider this second reply submission in this inquiry.

[24] **3.2 Discussion of Fee Waiver** – Section 75(5) permits the head of a public body to waive an otherwise applicable fee in certain circumstances. That section reads as follows:

> The head of a public body may excuse an applicant from paying all or part of a fee if, in the head's opinion,
>
> (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
>
> (b) the record relates to a matter of public interest, including the environment or public health or safety.

Commissioner's Authority to Excuse Fees

[25] I will first examine the commissioner's authority to confirm, excuse or reduce fees or order refunds, in the appropriate circumstances. As the applicant points out, at pp. 5-6 of its initial submission, the commissioner's authority in this area was reviewed in *British Columbia (Minister of Forests et al.)* v. *British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 1290. In that decision, Wilkinson J. said the following, at para. 16:

> … I see nothing in the *Act*, taken as a whole, or in section 58(3)(c), that indicates an intention to restrict the Commissioner to an inquiry as to whether the initial

> discretion was lawfully exercised or whether there was patent unreasonableness or error below.

[26] As I commented at p. 3 of Order No. 332-1999, my predecessor's approach evolved, over time, from deferring to a public body's decision on a fee waiver "to the point where he was prepared, in appropriate circumstances, to substitute his decision" for that of the public body. The applicant also cites my comment, on the same page of Order No. 332-1999, that "the legislative scheme of the Act as a whole leaves no doubt that s. 58(3)(c) gives the Commissioner the power to substitute his or her decision" for that of the public body.

[27] By contrast, the Ministry, after referring to these same comments in Order No. 332-1999, [1999] B.C.I.P.C.D. No. 45, argues as follows, at para. 4.09 of its initial submission:

> Notwithstanding the Commissioner's above statement that he may substitute his discretion for that of the Ministry, the Ministry submits that there should generally be some deference given to a decision of the head of the Ministry under section 75(5). Under the Act the capacity of the head to waive fees is permissive and not mandatory. The discretion is lodged solely with the head of the Ministry. It is the head of the Ministry who is most familiar with the contents of the records and possesses the expertise, knowledge, information and experience on a matter. The head of the Ministry will therefore be in the best position to determine whether the specific records requested relate to a matter in the public interest.

[28] The Ministry points out that the previous commissioner recognized the need to administer the Act in a cost-effective and pragmatic fashion. It says the following at para. 4.10 of its initial submission:

> … the reality is that the fees chargeable under the Act are only a fraction of the public bodies' actual costs in processing a request for access to records. The Ministry submits that there is generally a public interest in having applicants contribute financially to services received under the Act. The Ministry further submits that public bodies have a responsibility to manage public funds wisely.

[29] Essentially, the Ministry is of the view that this is not an appropriate circumstance in which to waive fees and argues that I should – despite *Ministry of Forests* and Order No. 332-1999 – defer to the head's fee waiver decision here.

[30] In this case, the issue is whether or not the subject matter of the records relates to a "matter of public interest" and, by extension, whether the applicant should pay the fees that the Ministry is otherwise allowed to charge. It is trite to say that public bodies should manage public funds wisely. But it misstates matters to say, as the Ministry does, that there is a public interest in having applicants shoulder some of the financial burden of administering the Act and therefore the applicant should pay fees despite s. 75(5).

[31] Like my predecessor, I acknowledge that the Act should be administered in a cost-effective and pragmatic fashion. The manner in which the Act should be

administered does not, however, drive how the Act is to be interpreted — in this case, as regards the commissioner's authority respecting fee waiver reviews. Cost-effectiveness and pragmatism are laudable administrative guides, but they cannot supplant the plain meaning of the language used by the Legislature in the Act. I have no right to interpret its language to achieve cost-cutting goals. In Order No. 293-1999, [1999] B.C.I.P.C.D. No. 6, my predecessor assessed the commissioner's role in reviewing fee waiver decisions based on the plain language of the Act. In light of *Ministry of Forests*, it is clear the commissioner has the authority to substitute his or her decision for that of the public body's head, in appropriate circumstances, and that it is not necessary to find that the head of the Ministry has acted irrationally or in bad faith before the Commissioner can excuse a fee. I therefore apply my reasoning in Order No. 332-1999 in this inquiry.

Applicable Principles

[32] For convenience, I reproduce here the two-step process I set out at p. 5 of Order No. 332-1999:

> 1. The head of the Ministry must examine the requested records and decide whether they relate to a matter of public interest (a matter of public interest may be an environmental or public health or safety matter, but matters of public interest are not restricted to those kinds of matters). The following factors should be considered in making this decision:
>
>   (a) has the subject of the records been a matter of recent public debate?;
>
>   (b) does the subject of the records relate directly to the environment, public health or safety?;
>
>   (c) could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
>
>   (i) disclosing an environmental concern or a public health or safety concern?;
>
>   (ii) contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue?; or
>
>   (iii) contributing to public understanding of, or debate on, an important policy, law, program or service?;
>
>   (d) do the records disclose how the Ministry is allocating financial or other resources?
>
> 2. If the head of a Ministry, as a result of the analysis outlined in paragraph 1, decides the records relate to a matter of public interest, the head must still decide whether the applicant should be excused from paying all or part of the estimated fee. In making this decision, the head should focus on who the applicant is and on the purpose for which the applicant made the request. The following factors should be considered in doing this:

> (a) is the applicant's primary purpose for making the request to use or disseminate the information in a way that can reasonably be expected to benefit the public or is the primary purpose to serve a private interest?
>
> (b) is the applicant able to disseminate the information to the public?

[33] It should be emphasized here that the references in para. 1, above, to the environment and public health or safety do not exhaust the scope of what may be a matter of public interest. This is made clear by para. 1(c)(iii).

[34] The following discussion analyzes whether the applicant has made a case for a public interest fee waiver.

Summary of the Parties' Arguments

[35] It is convenient first to outline the parties' arguments on this issue. The applicant notes that the environment and public safety and health are non-exhaustive examples of matters of public interest for the purposes of fee waivers. It argues that its case is one that should otherwise be recognized as a matter of public interest. It says, at p. 10 of its initial submission, that it believes

> … the use of the information can reasonably be expected to yield a public benefit by contributing to the resolution of outstanding land tenure and land use issues between the government and First Nations specifically relating to roads issues.

[36] It elaborates as follows at p. 10 of its initial submission:

> As the ministry is well aware, many British Columbia First Nations are involved in negotiations with the government over land and roads which cross over reserves. The government has complete access to its records regarding such roads. The First Nations across whose reserve the road passes may have little or no information on whether the agreement creating the road was lawful, if the compensation for the road was fair, or if the province built the road in accordance with the agreement. In such cases, First Nations must specifically request records about the decisions made about their land through various ministries. Without those records, they cannot identify unlawful acts by the province and Ministry, much less prepare positions for negotiations or other dispute resolution procedures.
>
> The specific information requested in the decision under review was records regarding one road which crosses the Anaham Indian Reserve No. 1, Highway 20. The Anaham Band required this information as it had been involved in on-and-off negotiations with the Ministry regarding Highway # 20, and for developing the evidence for submitting a specific claim to the federal government. The Anaham Band could not effectively position itself for future negotiations with the Ministry, nor pursue the specific claim, without this information.
>
> This was the first request which the applicant had ever made regarding this road, and so had no records in its own archives upon which the Anaham Band could rely.

> The key public benefit of releasing such records is identifying and rectifying unlawful actions by the government. Both First Nations and the government benefit directly from the successful resolution of specific claims, and from First Nations being fully informed participants at the negotiating table when other types of issues arise.

[37] The applicant further argues, at p. 11, that the government "must at all times negotiate and carry itself in good faith and act in a manner which upholds the honour of the Crown". The applicant also suggests that the government has an obligation to act in good faith, with fairness and openness, even when it and a First Nation are involved in litigation, traditionally an adversarial endeavour. It cites in support three well-known court cases: *R.* v. *Van der Peet*, [1996] 2 S.C.R. 507, *Delgamuuk'w* v. *British Columbia* (1997), 153 D.L.R. (4th) 193 (S.C.C.) and *Montana Band* v. *Canada*, [1999] 4 C.N.L.R. 65 (F.C.T.D.).

[38] At page 12 of its initial submission, the applicant suggests that *Montana Band* provides

> … an informative parallel for establishing the duties of the Ministry, as a representative of the Crown, for the review at hand. The fiduciary obligation to deal fairly and openly with First Nations who must 'rely to a large extent upon the records of the government itself' is not met by a Ministry which refuses to waive fees for providing such records.

[39] The applicant goes on, at p. 12, to say the following:

> It is clearly in the public interest for the Ministry, as an agent of the government, to meet its obligations to act with good faith and in a manner which upholds the honour of the Crown. To encumber First Nations with fees for accessing government-held materials required by those Nations to identify and resolve land and road tenure issues about their own land with the government is offensive to these special obligations.

[40] The applicant further suggests that the Ministry's denial of a fee waiver "stalled the Anaham Band's initiatives to resolve its outstanding specific claims." It is of the view that this denial failed to uphold the honour of the Crown and was not "an action in fairness and good faith towards the resolution of outstanding First Nations issues."

[41] The applicant says that the British Columbia government has frequently stated publicly to Indian bands that it is committed to resolving issues regarding roads which cross over reserves. The applicant suggests, at p. 13 of its initial submission, that the government cannot fulfill these commitments unless First Nations have access to the records about roads which cross over their reserves:

> In many instances, they were not participants in agreements about roads, did not have a say on compensation, nor were they even given copies of agreements. The only way First Nations can learn about and document decisions made about their

> own reserve land is through records requests. The refusal to release such information without charging fees raises a serious issue of fairness, and brings the sincerity of the ministry in resolving these issues into question. It also undermines the stated intention of the provincial government to address lawful grievances.

[42] The applicant says that the Ministry's files contain specific and unique information about the creation, history and status of roads on reserves which are only available to it through the Ministry.

[43] As is discussed in more detail below, the applicant's initial submission contends the Ministry cited improper reasons for its fee waiver decision and fettered its discretion by relying on its fee waiver policy, without dealing with the merits of the applicant's fee waiver request (pp. 16-18, initial submission). At para. 6 of its reply submission, the applicant also points out that the Ministry's decision, as described in its initial submission in this inquiry, was based on a number of reasons not communicated to the applicant:

> The Applicant has the right to assume that the reasons provided were the reasons for the decision. The Ministry cannot make the Applicant guess what reasons will come out in an inquiry. The Ministry cannot rely on reasons of rejection which were not communicated to the Applicant when it rejected the request for a review.

[44] The applicant also objects to the reasons themselves, in particular the Ministry's statement that it had considered the factor that the applicant had not provided evidence of a specific claim. The applicant counters that it could not do so because the requested records were evidence needed to make a specific claim.

[45] The Ministry begins its initial submission by explaining that British Columbia's largely mountainous landscape restricts the area available for road-building and that such roads often cross Indian reserve lands. It has adopted negotiation as a method for resolving disputes in which it finds itself regarding roads across Indian reserves.

[46] The Ministry provided me with a description of the functions of the Aboriginal Relations Branch within the Ministry's headquarters. It says, at para. 4.04 of its initial submission, that the branch was created in 1992 to address outstanding public road tenure disputes with First Nations.

> The mandate of the Aboriginal Relations Branch is to provide the Ministry with any support, coordination, data and policy services required in order to foster a productive relationship with First Nations and to ensure continued safe and certainty of access to provincial road rights-of-way. The Branch reports directly to the Assistant Deputy Minister, Highway Operations. One of the Branch's core functions in support of this mandate is to support the Ministry's regional offices by providing road research services, policy advice, and negotiation support to resolve outstanding road tenure disputes with First Nations.

[47] The Ministry acknowledges that the applicant provides research services for First Nations and that, in this particular case, the applicant was evidently conducting research

on behalf of the Anaham Band, including research into road rights-of-way on reserve lands. It also acknowledges that such research can help support a First Nation's dealings and negotiations with government.

[48] On the public interest issues, the Ministry argues as follows, at para. 4.13 of its initial submission and supported by affidavit evidence from the Ministry's director of information and privacy:

> The remaining fee at issue in this inquiry, being $2,100, relates to the location, retrieval and preparation for disclosure of records held in the Ministry's regional and district files. The records requested by the Applicant relate to the history of the portions of Highway 20 that bisects the Anaham Indian Reserve. The following are the types of historical road records that are typically held in the Ministry's regional and district road files:
>
> - records dealing with the administration of the road maintenance contract;
> - information concerning road maintenance and construction, including information concerning grading done to the road, the installation of culverts and the plowing of snow on the road; and
> - complaints by residents about traffic on the road or other problems, such as dust problems or potholes;
> - records relating to the acquisition of property. This happens when the Ministry attempts to widen a right of way;
> - records relating to pole lines (hydro, telephone and others); and
> - requests to access the right of way, i.e., to construct a driveway on the right of way.

[49] The Ministry then says, at para 4.14, that

> … the test in section 75(5) is whether the ***records*** relate to a matter of public interest, including the environment or public health or safety. The records at issue are found in the Ministry's highway files and consist mainly of routine historical maintenance and construction records. In order to satisfy its burden of proof the Applicant must first establish that the records relate to a matter or public interest. The Ministry submits that the Applicant has not done so. [emphasis in original]

[50] The Ministry goes on, at para. 4.15, to acknowledge that settling of land claims generally is in the public interest. But it argues there is no reason to think that the records in issue here – which it characterizes as routine road maintenance records – relate to a matter of public interest. Going through the factors in the two-step process set out in Order No. 332-1999, the Ministry says the records do not relate to an existing public health or safety issue nor to an environmental concern. It is also of the view that dissemination or use of the information cannot reasonably be expected to yield a public benefit by assisting the public's understanding of an important policy, law, program or service. It also suggests that there is no reason to think that dissemination or use of the requested information could reasonably be expected to encourage public debate or understanding of a public interest matter.

[51] I pause here to note that the Ministry did not explain any of this in its letters to the applicant. Nor did it explain how it had exercised its discretion under s. 75(5), an issue that I discuss further below. Its October 1998 letter, subsequent explanation of November 1998 and later decision of October 1999 all dwelt exclusively on cost-recovery and budgetary issues and did not address the applicant's public interest arguments at all. In this light, it is perhaps not surprising that the applicant believed the Ministry had not dealt properly with its request for a fee waiver.

[52] I should also note at this point my concerns about the Ministry's argument, at para. 10 of its reply submission, that it is not required to provide reasons for its decision not to waive fees. True, the Act does not specifically require the provision of reasons in the way that it does under s. 8, which requires public bodies to provide reasons for refusing access to records. I do agree, however, with my predecessor's observation in Order No. 90-1996, [1996] B.C.I.P.C.D. No. 16, at p. 11, that "a Ministry should give written reasons for the full or partial denial of a fee waiver before an applicant is encouraged to request a review by my Office". The provision of reasons for a fee waiver denial is consistent with the duty to assist under s. 6(1) of the Act and is fair. As an aside, I urge public bodies to inform applicants of the need to provide argument and evidence to support a fee waiver request. The bar for meeting the public interest fee waiver test is fairly high, after all. When informing applicants of a fee estimate, therefore, public bodies should set out the two-step public interest fee waiver test as part of the fee estimate letter or in a separate sheet.

[53] Returning to the parties' submissions, in its reply submission the applicant rejects the Ministry's "attempt to distinguish between the purpose of the request and the documents required to fulfil that request" (para. 20). It contends that the Ministry recognizes the public interest in the outcome – the resolution of land or road tenure issues – but not the public interest in facilitating the process necessary to reach that outcome:

> 21. … It is for the First Nation to review and determine whether the requested documents support a potential claim and how the documents support its legal position *vis a vis* MoTH.
>
> 22. The Ministry's argument constantly returns to the position that because, in its opinion, the records have been thoroughly combed through, the retrieval of any missing or unknown documents would not make a difference to the First Nation developing its position. It is legally and morally wrong for the Ministry to suggest that it will decide when First Nations have as much information as they deserve in the public interest.

[54] The applicant considers a Road Research Report the Ministry disclosed to be a "synthesized secondary source". The applicant's researcher also deposed as follows:

> 8. The types of historical road records that are typically held in the Ministry's regional and district road files, as identified in para. 4.13 of the Ministry's Submission and para. 14 of Smith's Affidavit, would be important to my research. Files pertaining to road maintenance and construction, problems with the road, pole lines, and information regarding the Ministry's widening of a

> right of way are germane to the research projects I undertake on behalf of First Nation communities. With regard to the Information request under review, grading has been an ongoing contentious issue between the Band and the Ministry.

[55] For its part, the Ministry counters the applicant's public interest arguments as follows, in its reply submission:

> 5. … There has been no attempt by the Applicant to demonstrate that the actual contents of the records requested, which consist primarily of routine construction and maintenance records, relate to a matter in the public interest. Instead, the focus of the Applicant's argument has been on its role in assisting First Nations in land claims matters. The Ministry replies that this does not assist the Commissioner with respect to the first issue to be addressed, namely whether the responsive records relate to a matter in the public interest.
>
> 6. The Commissioner has previously found as relevant in fee waiver cases the extent to which other individuals or groups have an interest in viewing the requested records. For example, in Order No. 155-1997 the Commissioner held that it was relevant that a number of other parties, such as First Nations, local communities and forest companies, could use the information. However, in this case there has not been any interest shown in the contents of the requested historical highway files by anyone other than by the applicant, acting on behalf of the Anaham Band. In this case, it is questionable whether anyone other than the Applicant or the Anaham Band would have any interest in looking at the requested records. The Ministry submits that in order for the public interest requirement in section 75 to be met there should at least be some evidence that other segments of the public would be interested in the contents of the requested records. There is no such evidence in this case.

Discussion of the Public Interest Issue

[56] At first blush, the applicant's arguments that the requested records relate to a matter of public interest are attractive. Upon further consideration, however, I am of the view that they relate to the second step in the two-step process set out above and to some extent to fairness issues under s. 75(5)(a). In other words, the applicant's arguments are directed at an exercise of discretion in its favour, rather than whether the records relate to a matter of public interest.

[57] Both parties argue, and I agree, that settling aboriginal land claims is in the public interest. Does that necessarily mean that these particular records, because they might be used in a specific title claim, themselves relate to a matter of public interest? For the following reasons, I have concluded they do not.

[58] I should first note that the nature of the Anaham Band's possible claim is not entirely clear. The applicant's argument refers in places to "land claims" and "specific claims", which may refer to claims within the treaty process or other claims for title. Yet it appears Highway 20 crosses land that is within a reserve under the *Indian Act*. Further, the applicant refers elsewhere in its argument to a claim related to the federal-provincial

agreement to use reserve land for Highway 20. If this is the nature of the Band's possible claim, it would appear to be a claim for damages for breach of fiduciary duty by the federal government, in allowing reserve land to be used for highway, or a claim for trespass by the province, or both. Whatever the precise nature of the Band's possible claim, it is a claim by the Band in its own right and its own interest.

[59] Turning to the public interest analysis, the Ministry says it has already provided the applicant with the most useful records. It argues that the remaining records – which are likely to be few in number and duplicates of previously disclosed records – for the most part will be of little use even to the applicant (para 4.19, initial submission). It describes the remaining records as routine historical maintenance and construction records, records related to telephone and hydro poles, rights of way and so on.

[60] The first step under s. 75(5)(b) turns on the question of whether a record relates to "a matter of public interest". The applicant seems to suggest that *any* record may relate to a "matter of public interest", as long as it will be used to accomplish the general aim of resolving land claims made by First Nations generally or by a specific First Nation. Such an argument comes dangerously close to saying that virtually any record "relates to a matter of public interest" if it will be used to achieve that goal. The fact that resolution of First Nations claims may be in the public interest does not mean that any record that a First Nation or its agent considers "relates" to that goal is a record elating to a matter of public interest. I do not believe the Legislature contemplated such a sweeping interpretation of s. 75(5). While I agree with the applicant that it is not exclusively for the Ministry to decide what the applicant will or will not find useful in its research, it is equally true that an applicant cannot alone determine or stipulate whether a specific record "relates to a matter of public interest".

[61] Based on the Ministry's description of the records – which the applicant accepts – I conclude they cannot be said, themselves, to relate to "matter of public interest". They relate, rather, to routine highway matters. The fact that the applicant believes they may be useful in advancing a possible claim by one First Nation respecting that highway does not alter that fact. Applying the principles set out in the first part of the Order No. 332-1999 analysis, I make the following observations:

- There is no evidence that the subject of the records – which are routine historical maintenance and construction records for Highway 20 only – has been a matter of recent public debate,

- The subject of the records does not relate directly to the environment or public health or safety or any other public interest matter such as, in this case, resolution of aboriginal land claims generally,

- There is no reasonable expectation that the use or dissemination of the records could yield a public benefit by:

- disclosing an environmental concern, public health or safety concern or, in this case, a concern related to the resolution of aboriginal land claims,

- contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue or, in this case, contributing to resolution of aboriginal land claims, or

- contributing to public understanding of, or debate on, an important policy, law, program or service or other issue, in this case, the resolution of aboriginal land claims, and

- There is no evidence that the records disclose how the Ministry is allocating financial or other resources.

[62] In my view, no other factors arise which would indicate that the records themselves relate to a public interest matter. The fact that the applicant says they will be used for a purpose that is in the public interest does not mean the records in and of themselves relate "to a matter of public interest".

[63] My finding on the public interest aspect of s. 75(5)(b) is similar to the finding at p. 10 of Order No. 332-1999, where I found that the requested records – the Minister's briefing book for the 1998 budgetary estimates for the Ministry for Children and Families – did not relate to a matter of public interest. I reached this conclusion even though I acknowledged that the factor in paragraph 1(a) of the analytical steps quoted above was present to some degree. In that case, the evidence also showed that the material in the briefing book was largely available elsewhere, so that the factor in paragraph 1(c)(iii) was not present. I said the following at p. 10:

> The evidence before me supports the Ministry's conclusion that the requested record is a relatively routine document. To find otherwise would come perilously close to saying the public dissemination, or use, of any records created by the Ministry that in any way explains, summarizes or comments on its activities, policies or challenges, in a given year, by definition assists public understanding of an important policy, law, program or service for the purposes of a s. 75(5) fee waiver. This would make it difficult, to say the least, ever to say that first part of the test has not been met. I cannot, in the end, conclude that dissemination or use of the information found in this briefing book can reasonably be expected to yield a public benefit by assisting public understanding of an important policy, law, program or service.

[64] These observations apply here as well.

[65] This case differs from Order No. 154-1997, [1997] B.C.I.P.C.D. No. 12, and Order No. 155-1997, [1997] B.C.I.P.C.D. No. 13, in which my predecessor found that the requested records themselves related to a matter of public interest – *i.e.*, the environment and land use in the Clayoquot Sound area, an issue that is still alive today. The previous commissioner also found that the public bodies in those cases had taken improper

considerations into account in deciding whether the records related to a matter of public interest.

[66] This case also differs from Order No. 293-1999, [1999] B.C.I.P.C.D. No. 6, in which the previous commissioner found that the requested records – correspondence between the provincial government and forest industry representatives on proposed changes to regulations under the *Forest Practices Code* – related to the environment and thus to a matter of public interest. While the applicant in that case also wished to use the records to accomplish a public interest goal – in part, to show that the environmental community had been left out of later consultations between the Ministry and industry and was thus unable to exercise its role as environmental watchdog – the commissioner found that the subject matter of the records in itself related to a matter of public interest.

[67] I should add, as well, that the fact that the public interest in the abstract favours resolution of First Nations claims does not mean that any records the Anaham Band may wish to use in a claim for damages or other relief qualify as records relating to a matter of public interest. The Band's pursuit of a specific claim of some kind is not, in my view, a matter of public interest simply because the public interest generally favours resolution of First Nations claims.

[68] I find that the records in this case do not relate to a matter of public interest and that, consequently, the applicant has not met the first part of the test for a s. 75(5)(b) fee waiver in the public interest.

Ministry's Exercise of Discretion

[69] In light of this finding, it is not, strictly speaking, necessary for me to consider the Ministry's exercise of discretion. I will, however, consider the issue because both parties addressed it at some length. It is again convenient to summarize the parties' arguments before discussing them.

[70] The applicant argues that, once it is decided that requested records relate to a matter of public interest, the head of the Ministry must then exercise her or his discretion and decide whether or not to waive the fee. As my predecessor said in Order No. 155-1997, at p. 4, the head must, in exercising the s. 75(5) discretion, "be guided by proper considerations in deciding whether or not to grant a fee waiver".

[71] The applicant lists as key factors the identity of the applicant and the purpose for which the applicant made its request. The applicant says, at p. 14 of its initial submission, that its purpose is, in general, to facilitate First Nations' activities

> … directed to identifying, understanding and developing informed positions on land and road tenure issues so that these issues can be effectively addressed and resolved. In this case, the specific purpose was to allow the Anaham Band to act as an effective participant in interactions with the Ministry regarding Highway # 20, and to develop the evidentiary base for a specific claim.

[72] The applicant is a non-profit organization that represents aboriginal groups – in this case, the Anaham Band. The applicant says that neither it nor the Band has the ability to pay for the requested information. It also points out that the previous commissioner recognized that First Nations deserve special consideration in requests for fee waivers. The applicant says the previous commissioner found, at p. 6 of Order No. 155-1997, [1997] B.C.I.P.C.D. No. 13, that the fact that requested information would be of the value and interest to aboriginal peoples weighed in favour of granting a fee waiver request. The key question, the applicant suggests, is whether a reasonable person would conclude that the proposed use of the record can reasonably be expected to benefit a public interest? It says the answer to this question is yes.

[73] The applicant submitted affidavit evidence from its researcher on the applicant's goals and activities and the purposes for which she was researching land claims issues with the Ministry, as follows:

> 5. The UBCIC is a non-profit organization, founded by a diversity of Indian Bands from British Columbia in 1969. Its goal is to support First Nations in their on-going efforts to have aboriginal rights recognized, and to work for greater respect for First Nations cultures, through acting as a voice for aboriginal interests. UBCIC pursues this goal at community, national, and international levels.
>
> 6. The Research Program is a component of UBCIC which primarily assists First Nations in identifying and developing claims for the federal specific claims process.
>
> 7. Specific claims are claims relating to whether the federal government fulfilled its lawful obligations to aboriginal peoples. In particular, they address whether the federal government met its obligations under treaties and the *Indian Act*, or properly administered and disposed of band funds, Indian reserve lands, and other assets such as timber or mineral rights.
>
> 8. The federal government developed a formal process for addressing specific claims in 1973. This created an alternative for First Nations who wanted to resolve their claims without going through the expense and time involved in litigation.
>
> 9. The first step in the process is for the First Nation to submit its claim to Specific Claims Branch of the Department of Indian Affairs and Northern Development. If a claim is accepted for negotiation by the government, then the government will loan the First Nation funds to cover their costs in negotiating a settlement. However, there is no financial assistance or loan program to assist the First Nation in preparing the initial submission.
>
> 10. The First Nation's ability to make use of this alternative dispute resolution procedure rests upon the thoroughness with which it makes its initial submission. The initial submission must include historical documentation which supports the claim, including maps and plans.

[74] The researcher also described her job as determining how First Nations can piece together what has happened, by locating documents such as copies of agreements, survey maps and plans. UBCIC researchers are familiar with what kinds of records are relevant to claims processes and, when they make access requests, focus those requests on specific items. UBCIC researchers also assist First Nations in turning records into a specific claim submission. The researcher deposed that UBCIC is a non-profit organization with limited funds to assist bands in understanding the process and developing their positions on outstanding and suspected grievances.

[75] The researcher also deposed that her organization requested records on behalf of the Anaham Band because the Band has, she says, a "right" to information about roads which cross over its reserve. She says the Band has no copies of agreements or survey plans and does not recall having participated in the federal-provincial agreement which resulted in Highway 20. The Band has been involved in "interactions" with the Ministry regarding that highway and needs to know about the agreement under which the road was constructed.

[76] The Band also wants to try to resolve outstanding grievances by participating in the federal government's specific claim process, the researcher says, and without these records it is at a serious disadvantage when negotiating with the Ministry regarding the highway. The researcher says the Band's specific claim submission has been stalled since late 1998. Neither the Band nor the research program has the resources to pay the $2,100 fee estimate (paras. 24-25).

[77] The applicant also argues, at pp. 16-18 of its initial submission, that the Ministry's reasons for rejecting a fee waiver were improper. It says that nothing in the two decision letters it received suggested that the decision was based on the merits of the actual requests. Rather, the Ministry cited only its cost recovery policies, which the applicant argues are an improper basis for rejecting its fee waiver request. The applicant argues that the Ministry improperly fettered its discretion in relying on policies, as opposed to exercising its discretion on the merits of the specific case. The applicant also suggests the Ministry did not actually turn its mind to considering whether the fee waiver request was in the public interest.

[78] The applicant points out that the previous commissioner, in Order No. 293-1999, [1999] B.C.I.P.C.D. No. 6, rejected the argument that a head can reject waiver requests on the grounds of expense. The applicant says the previous commissioner found that proper considerations for a head include the nature of the applicant, the public interest served by the applicant's activities and the public interest involving the public in the political process. It says he found that proper considerations should not include cost-recovery regimes or policies.

[79] I consider that the applicant's status as an aboriginal organization and its role in assisting aboriginal groups with research and claims preparation are relevant in the exercise of discretion. My predecessor agreed, at p. 7 of Order No. 90-1996, that the fact that a request is made on behalf of a First Nation gives added weight to the request for a

fee waiver. I agree, as far as it goes, but do not consider that this is a determining factor. Not every fee waiver request made on behalf of a First Nation is deserving of a waiver because it comes from, or would assist, a First Nation. I decline to make a general finding on the issue of fee waivers for First Nations requests, as the applicant asks me to do at p. 19 of its initial submission. Each request for a fee waiver merits individual attention, regardless of who seeks it. I note that my predecessor also declined to make a general finding in a similar area, at p. 5 of Order No. 90-1996.

[80] Supported by affidavit evidence from the official charged with deciding the fee waiver request, the Ministry describes, at pp. 10-12 of its initial submission, how the Ministry exercised its discretion. Its evidence is that the Ministry considered the following factors in deciding not to waive or reduce the remaining fee (I have numbered and slightly paraphrased those quoted factors):

1. The Ministry had waived approximately 35 % of the total fee already.

2. The Ministry had already provided approximately 1,400 pages of records without charge.

3. The applicant's contention that settling land claims was in the public interest, that it had insufficient funding to pay the fee assessed and that fees should not be required for government documents relating to aboriginal land claims.

4. The request was for records relating to roads crossing Anaham I.R. No. 1, including files in the Ministry's Aboriginal Relations Branch and regional and district offices.

5. The applicant had not provided any evidence to demonstrate that it could not afford to pay the fee.

6. The applicant receives funding from the federal government and it is the federal government's responsibility to fund research activities undertaken by the applicant, under section 91(24) of the *Constitution Act, 1867*.

7. While settling valid aboriginal land claims is in the public interest, there is no reason to think that the requested records themselves relate to a matter of public interest; the regional and district office records are primarily routine historical road maintenance and construction records.
8. The records do not relate to an existing public health or safety issue nor to an environmental concern.

9. There was no reason to think that dissemination or use of the requested information could reasonably be expected to yield a public benefit by assisting the public's understanding of an important policy, law, program or service.

10. There was no reason to think that dissemination or use of the requested information could reasonably be expected to encourage public debate or understanding of an issue in the public interest.

11. The applicant had provided no evidence of a specific land claim in relation to the requested records.

12. The real cost of providing access to the records would be significantly higher than the remaining fee estimate due to internal copying and shipping costs, the time spent reviewing the records and the time spent conducting consultations.

13. The amount of search time involved (70 hours) in order to search district and regional records, despite the fact that there would probably be considerable duplication of the records already made available to the applicant and that there was reason to believe that most of the responsive records would be of little use to the applicant.

14. District and regional staff at the Ministry would need to be reassigned from normal duties to conduct the search, which could be detrimental to highway operations.

15. The Ministry had not met some of the time frames for processing the requests.

16. The proportion of records relating to the Anaham Indian Reserve in relation to the volume of records staff would have to search (all those related to Highway 20 in any way) would be small.

17. The remaining fee estimate relates only to locating and retrieving regional and district records. The applicant had already received records held by the Aboriginal Relations Branch (including a Road Research Report in relation to Highway 20) at no cost and those records would be of most use to the applicant. Further, many of the records found in any subsequent search of regional and district records would likely be duplicates of the records already made available to the applicant.

[81] The last factor that the Ministry considered related to events that took place during mediation and I have therefore not included it here and have not considered it in reaching my decision.

[82] As I also noted earlier, the Ministry's decision letters failed to provide reasons for the Ministry's decision that the requested records did not relate to a matter of public interest. Nor did they explain how the Ministry had exercised its discretion. Rather, they cited cost-recovery and budgetary issues as the primary reasons for deciding against the applicant. As I also noted earlier, the applicant argues (at p. 16 of its initial submission) that these reasons for denying the fee waiver request were improper, as they did not take into account the merits of the request:

> The Ministry did not turn its mind to the rightful considerations: Is the request in the public interest. Would a reasonable person conclude that the proposed use could reasonably be expected to benefit a public purpose? What is the nature of the applicant? When an applicant exclusively represents the interests of First Nations, what special duties arise?

[83] The applicant also argues that the Ministry fettered its discretion in relying on the government's fee policy and by apparently allowing that policy to dictate the outcome of its decision. A decision-maker may adopt a general policy for guidance in exercising a discretionary power, the applicant says, but it is only lawful to do that if the decision-maker decides each case on its own merits. The applicant also argues that the Ministry's decision was "legally insufficient", in that it did not disclose a reason and it substituted a recital of policy guidelines for reasons. The applicant cited, at pp. 17 and 18 of its initial submission, various legal authorities in support of its contention that the Ministry had failed to exercise its discretion properly.

[84] As discussed, I have found that the Ministry correctly determined that the records did not relate to matter of public interest, although I am concerned about its exercise of discretion and the way in which it communicated its decision. I also agree with the applicant that a public body's policies on cost-recovery cannot be applied, in deciding a fee waiver request, to the exclusion of a proper consideration of the applicable circumstances. Unquestioned adherence to public body policies, without considering the circumstances of each case, is not appropriate. The s. 75 authority and discretion must be exercised in each case, on its merits. Had it been necessary for me to make a finding on this aspect of the matter, I might have found that the Ministry had failed to exercise its discretion properly, on the basis that it exercised its discretion based only on the Ministry's policy for cost recovery, not the circumstances of the case. In saying this, I am aware that the Ministry has, in this inquiry, provided other grounds for its exercise of discretion. In view of my finding that the requested records do not themselves relate to a matter of public interest, however, I need not decide whether this is an appropriate circumstance, under s. 58(3)(c) of the Act, in which to set aside the Ministry's fee waiver decision aside on this ground.

[85] **3.3 Other Grounds** – As I indicated above, both parties' submissions to some degree canvass whether the applicant should be given a fee waiver because it cannot afford to pay the fee or because it is otherwise fair to excuse it, as contemplated by s. 75(5)(a) of the Act. That section says the head of a public body

> … may excuse an applicant from paying all or part of a fee if, in the head's opinion,
>
> > (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, …

[86] The above discussion of the public interest issue refers to the applicant's arguments about its alleged inability to pay the estimated fee. In essence, the applicant says that neither it nor the Anaham Band can afford the fee. At p. 12 of its initial submission, the applicant says they "could not afford the estimated fees". At p. 14, it is said "the Applicant is unable to pay the fee." The applicant also says (at p. 14) that its status as a non-profit entity raises the issue of "the Applicant's ability to pay for the requested information." At p. 16, the applicant says that, in asking the Ministry for the

waiver, it "was clear" that it was a non-profit entity "operating with a limited budget" on behalf "of First Nations who also have limited funds."

[87] The researcher's affidavit also speaks to ability to pay issue. At para. 9, she deposed that the federal government does not loan money to, or otherwise financially assist, a First Nation with its claim unless the claim is accepted for negotiation. She goes on to say, at para. 13, that the applicant's resources "for assisting bands" are, in light of its non-profit nature, "extremely limited." She deposed that, in the 11 other requests she had made to the Ministry over five years, the fees had always been waived. She was therefore surprised to receive a fee estimate from the Ministry.

[88] The applicant's November 9, 1998 response to the Ministry's fee estimate referred to its non-profit status. It said that the applicant works for "many First Nations" and receives "limited funding to undertake the necessary research." In a January 25, 1999 letter to the Ministry, the applicant again referred to its "limited budget".

[89] In my view, the applicant has not established that it cannot afford to pay the estimated fee. General assertions, even in affidavit form, that the applicant has a "limited budget" or "extremely limited" financial resources, do not establish an inability to afford this particular fee. The applicant did not provide any details as to its financial situation that would allow one to conclude that it could not afford the fee. I find that the applicant has not established that it cannot afford to pay the estimated fee.

[90] Nor has the applicant established any other reason that it is fair to excuse payment under s. 75(5)(a). Its arguments on the s. 75(5)(a) grounds and s. 75(5)(b) grounds meld together, as the applicant acknowledges in its initial submission. I have already addressed the applicant's public interest arguments as they relate to s. 75(5)(b). To the extent those same arguments may be advanced by the applicant for the purposes of s. 75(5)(a), I find that the applicant has not established that it is fair for any other reason to excuse the payment of this fee.

[91] **3.4 Fee Waivers Generally** – As the above discussion indicates, the applicant's arguments in this case effectively contend that, where First Nations applicants are involved, fees should not be levied. I have, of course, found that the applicant has not, in this case, established that a public interest or other fee waiver is warranted. Each case must, in my view, be addressed on its merits. Having said that, it appears the Ministry in the past may not have charged fees to First Nations doing research into existing or possible claims. There may have been a shift in overall policy respecting fees, but I strongly encourage the Ministry, the UBCIC and other First Nations groups to work together to fashion a protocol or policy on fees that accommodates the Ministry's duties of financial responsibility and the interests of First Nations.

4.0 CONCLUSION

[92] For the reasons given above I confirm the decision of the head of the Ministry not to waive the estimated fee and therefore, under s. 58(3)(c) of the Act, I confirm the fee estimated by the Ministry.

June 4, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia