



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F14-34

INSURANCE CORPORATION OF BRITISH COLUMBIA

Hamish Flanagan, Adjudicator

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Summary: The applicant requested information from ICBC relating to a claim she made concerning a motor vehicle accident. ICBC released some information but withheld other information under ss. 3(1)(c), 13, 14, 17 and 22 of FIPPA. ICBC is authorized to withhold most of the information it withheld under s. 14 of FIPPA because it is subject to solicitor-client privilege. ICBC is required to withhold some information it withheld under s. 22 of FIPPA because releasing the information would be an unreasonable invasion of third parties' personal privacy. Some information does not need to be disclosed because it is outside of the scope of FIPPA under s. 3(1)(c) of the Act. The remaining information must be disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1)(c), 13, 14, 17 and 22.

Orders Considered: BC: Order 01-15, 2001 CanLII 21569 (BC IPC); Order F11-17, 2011 BCIPC 23 (CanLII); Order 00-27, 2000 CanLII 14392 (BC IPC); Order 00-38, 2000 CanLII 14403 (BC IPC); Order 02-50, 2002 CanLII 42486 (BC IPC); Order F06-19, 2006 CanLII 37939 (BC IPC); Order 01-46, 2001 CanLII 21600 (BC IPC); Order 01-43, 2001 CanLII 21597 (BC IPC); Decision F06-06, 2006 CanLII 32975 (BC IPC); Order F11-13, 2011 BCIPC 18 (CanLII); Order F11-12, 2011 BCIPC 15 (CanLII); Order F09-25, 2009 CanLII 66957 (BC IPC); Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII); Order F08-09, 2008 CanLII 21701 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC). **ON:** Order PO-2034, 2002 CanLII 46436 (ON IPC); Order PO-1928, 2001 CanLII 26127 (ON IPC).

Cases Considered: *John Doe v. Ministry of Finance*, 2014 SCC 36; *Ontario (Ministry of Community and Social Services) v. Ontario (Information and Privacy Commissioner)* (2004) 70 O.R. (3d) 680; *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665; *R. v. B.*, 1995 CanLII 2007 (BCSC); *Solosky v. The Queen*, [1980] 1 S.C.R. 821; *Canada (Information Commissioner) v. Canada (Minister of Public Safety and Emergency Preparedness)* 2013 FCA 104.

INTRODUCTION

[1] This inquiry relates to a 2008 request by the applicant for records relating to a motor vehicle accident claim to ICBC, as well as ICBC manuals and similar corporate documents. The applicant previously submitted requests for a narrower range of records to ICBC in 2000 and 2003. In response to the 2008 request, ICBC released some information but withheld some information under ss. 3(1)(c), 13, 14, 17 and 22 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The applicant requested that the Office of the Information and Privacy Commissioner (“OIPC”) review ICBC’s decision to withhold some of the requested information. During and following mediation, ICBC released additional records to the applicant. The applicant was not completely satisfied with the records she received from ICBC and so the matter proceeded to this inquiry.

ISSUES

Preliminary Matter

[2] **Adequate response and adequate search**—The applicant raises questions in her submissions about whether ICBC conducted an adequate search for relevant records. I find that some of these questions relate to a previous request for records by the applicant in 2003, which the applicant chose not to pursue to an inquiry. As a result of this choice, the applicant’s 2003 file was concluded and closed and the opportunity to pursue matters relating to the request ceased. Consequently, those questions that re-visit the 2003 request for information are not appropriately within the scope of this inquiry.

[3] The applicant’s submissions also raise a related but separate issue of the adequacy of ICBC’s response to the current request that is the subject of this inquiry. ICBC replied to part of the applicant’s current request by saying that it had earlier responded to it. ICBC’s reply is a reference to records it says it provided in response to the applicant’s requests in 2000 and 2003. The applicant takes issue with the assertion that the records in question were provided earlier and says ICBC did not provide any evidence to support its position.

[4] Whether ICBC conducted an adequate search for relevant records in response to the applicant’s current request, and specifically whether it properly

responded to the applicant's current request by stating that it had earlier done so is a question of compliance with s. 6 of FIPPA. That section requires public bodies to respond without delay to each applicant openly, accurately and completely.

[5] Given the lengthy history of the applicant's requests for information to ICBC, it would have been my preference to achieve finality for both the applicant and ICBC by addressing all of the issues between the parties. However, the matters I have identified as relating to s. 6 of FIPPA were not identified as issues in the Notice of Inquiry. Moreover, the submissions of the parties do not provide me with sufficient information to address them here. As OIPC staff have advised the applicant, issues about the adequacy of ICBC's search and response to her current request need to follow a different process. As the OIPC has previously explained in correspondence with the applicant, this inquiry relates only to whether the information ICBC identified as being responsive to her current request is properly withheld.

[6] **Issues in this inquiry**—The issues in this inquiry are whether ICBC is authorized or required to withhold information in the records it identified as responsive to the applicant's 2008 request for information. In particular, this inquiry will consider whether information is properly withheld because disclosure:

1. would reveal information that is outside the scope of FIPPA under s. 3(1)(c) of FIPPA;
2. would reveal advice or recommendations under s. 13 of FIPPA;
3. would disclose information that is subject to solicitor-client privilege under s. 14 of FIPPA;
4. would disclose information which could reasonably be expected to harm the financial or economic interests of ICBC under s. 17 of FIPPA;
5. would be an unreasonable invasion of third parties' personal privacy under s. 22 of FIPPA.

DISCUSSION

[7] **Records in issue**—The withheld records comprise:

1. a report of the results of a review by ICBC staff of compliance with ICBC's Low Velocity Impact program;¹
2. the minutes of an ICBC committee meeting² (withheld in full);

¹ Pages 736-788 of the records.

² Pages 830-835 of the records.

3. extracts of ICBC policy manuals for dealing with personal injury claims, in particular extracts of the:
 - a. *Comprehensive Guide to Head Injury File Handling Manual* (“*Comprehensive Guide*”);
 - b. *Introduction to Handling Mild Head Injury Claims Manual*
 - c. *Head Office/Head Injury Claims Reporting Form/Reports/Letters Package* (“*Claims Reporting Package*”), including:
 - i. internal reports from ICBC claims examiners to an ICBC claims committee³
 - ii. an email between ICBC staff⁴
 - d. *Claims Customer Contact Manual*
 - e. *Telephone Claims Department (“TCD”) Procedures Manual*;
4. one page of an ICBC Claims Bulletin on changes to an ICBC claims committee;⁵
5. an email regarding an ICBC claims committee;⁶
6. extracts of two guidance documents on making submissions to ICBC claims committees;⁷
7. a letter from ICBC to the Ombudsperson; and
8. records related to the applicant’s motor vehicle accident claim.

[8] Most of the withheld information is in the *Comprehensive Guide*.

[9] **Records outside scope of FIPPA—s. 3(1)(c)**—ICBC submits that s. 3(1)(c) applies to ICBC meeting minutes,⁸ because the minutes relate to an Ombudsperson’s investigation, and to a letter from ICBC to the Ombudsperson.

[10] Under s. 3(1)(c), FIPPA does not apply to records when:⁹

1. an “officer of the Legislature” is involved; and
2. the record was either:
 - a) created by or for the officer of the Legislature; or

³ Pages 3548-3553 of the records.

⁴ Page 3538 of the records.

⁵ Page 3555 of the records.

⁶ Page 3558 of the records.

⁷ Pages 3558-3561 and pp. 3565-3567 of the records.

⁸ At pp. 830-835 of the records.

⁹ Order 01-43, 2001 CanLII 21597; Decision F06-06, 2006 CanLII 32975, at para. 5.

- b) is in the custody or control of the officer of the Legislature;
and
- 3. the record relates to the exercise of the officer's functions under an Act.

[11] I find the letter and parts of the minutes involve an "officer of the Legislature" as defined in Schedule 1 of FIPPA, who in this case is the Ombudsperson.

[12] With respect to the minutes, ICBC has not provided evidence that they were created by or for the Ombudsperson. The minutes concern an ICBC meeting about some ICBC guidelines. Ombudsperson staff were present and spoke about a completed investigation involving ICBC; however the meeting minutes were not created by or for the Ombudsperson but were created by ICBC for itself in order to record its discussion and action plans for reviewing an ICBC policy. The meeting minutes relate to a review by ICBC of its policy, not to the Ombudsperson's functions.

[13] As concerns the letter, it is clear that it was created for the Ombudsperson. Further, it relates to the exercise of the Ombudsperson's investigative functions, since the letter is ICBC's response to correspondence from the Ombudsperson to ICBC and an Ombudsperson's report, which were both the product of the Ombudsperson's investigatory function.

[14] In summary, I find that the minutes ICBC withheld under s. 3(1)(c) do not meet the three requirements of that section, so the record is not excluded from the scope of FIPPA. The letter ICBC withheld under s. 3(1)(c) does meet the three requirements of that section, so it is excluded from the scope of FIPPA.

[15] **Advice or recommendations— s. 13**—ICBC has withheld information in the records listed at 1.—6. in the description of the records in issue at para 7 above because they say the information contains advice or recommendations under s. 13. In particular, ICBC describe the manuals as internal policy documents which provide advice to staff and to legal counsel on how to handle claims.

[16] **Purpose and scope of s. 13(1)**—The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action within a public body, preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny. The principle underlying this exception has been the subject

of many orders, including Order 01-15 where former Commissioner Loukidelis said:

This exception is designed, in my view, to protect a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations.¹⁰

[17] The British Columbia Court of Appeal stated in *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)* that “advice” is not necessarily limited to words offered as a recommendation about future action. As Levine J.A. states in *College of Physicians* “advice” includes “expert opinion on matters of fact on which a public body must make a decision for future action.”¹¹ In *John Doe v. Ministry of Finance*¹² the Supreme Court of Canada found the word “advice” in s. 13(1) of the Ontario FIPPA includes policy options, whether communicated to anyone or not.

[18] Consistent with its purpose,¹³ s. 13 does not typically capture a manual because a manual is a record of a public body's settled policy or position about how to approach an issue, not advice or recommendations. This is the case even though a manual may be the culmination of considering several records that themselves contain advice or recommendations. Manuals provided to staff, contractors or others who are bound to follow them are directions to the recipient of the manual from the public body. A manual does not generally give the user of the manual (typically an employee) the latitude to accept or reject its contents required to fall within s. 13. While a manual generally must provide a degree of discretion to the intended user of the manual, it represents a settled position on the policy, approach, methodology or philosophy that a public body intends to take when faced with particular decisions. The utility of a manual is typically the uniformity, predictability and conformance to the manual that it commands of users. I note that a policy distinction for manuals is reflected in s. 70 of FIPPA, which requires public bodies to make manuals, instructions or guidelines issued to officers or employees of the public body and substantive rules or policy statements adopted by the public body available to the public without the need for a FOI request.¹⁴

¹⁰ Order 01-15, 2001 CanLII 21569 (BC IPC) at para 22; See also Order F11-17, 2011 BCIPC 23 (CanLII).

¹¹ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665.

¹² *John Doe v. Ministry of Finance*, 2014 SCC 36.

¹³ Articulated in the excerpt from Order 01-15 in para. 15 above.

¹⁴ Section 70(1) is not listed as an issue in the notice for this inquiry and the accompanying fact report nor is it addressed in the parties' submissions. Also s. 70(2) of FIPPA provides that the right of access in s. 70(1) is subject to the exemptions available to a public body in FIPPA. As ICBC has released large parts of the manuals in issue in this inquiry and is only withholding certain excerpts under ss. 13, 14, 17 and 22, its position is not inconsistent with having considered the application of s. 70 to the records, so I need not consider s. 70 further.

[19] An example of the prescriptive nature of a manual in communicating direction from a public body is found in the records themselves. The document withheld by ICBC at pages 830-835 of the records is an ICBC internal review of adjusters' compliance with an ICBC "file handling guideline."¹⁵ The compliance review document illustrates the operation of the typical expectation in organizations that manuals or guidance provide a "top-down" directive on how to operate and are expected to be followed. While the complexity of the claims ICBC's adjusters handle necessitates that they exercise considerable judgment and discretion, this does not equate with the manuals comprising mere advice or recommendations. In fact, in such a complex environment requiring considerable individual judgment, manuals serve to provide the needed conformity and boundaries to the exercise of independent judgment required for a large organization like ICBC to take a consistent approach to claims. The recipient of advice or recommendations is not obligated to follow the advice. In contrast, ICBC employees are expected to follow the manual.

[20] ICBC argues that Order 00-27¹⁶ supports its argument that s. 13 applies to the withheld information. Order 00-27 deals with a practise directive given to Crown counsel by a Ministry. The application of s. 13 to the practise directive in Order 00-27 must be understood in the context of the unique relationship of Crown counsel with the Ministry created by the need to respect the right of Crown counsel to exercise prosecutorial discretion.¹⁷ In short, the existence of prosecutorial discretion meant Crown counsel were not under the same obligation to follow a practise directive as ICBC employees are regarding the records in issue here. The manual was issued to ICBC employees by ICBC management, while in Order 00-27 the Ministry that provided the practise directive to the Crown prosecutors did not have the same degree of control over the actions of the Crown prosecutors. Order 00-27 has not been considered in subsequent cases involving policy manuals or other directive documents. In my view, this is because Order 00-27 does not stand for the broader principle on which ICBC seeks to rely on it for here.

[21] ICBC also submits that Order 00-38¹⁸ applies to the records here. Order 00-38 deals with annotations made to a collective agreement by and for WCB. The annotations to the WCB collective agreement withheld comprised:

- a. annotations concerning the various provisions in the collective agreement;

¹⁵ The guideline in issue is not the subject of this inquiry but is analogous to the manuals in issue.

¹⁶ 2000 CanLII 14392 (BC IPC).

¹⁷ I also note the entire document was found to be subject to solicitor-client privilege and therefore exempt from disclosure under s. 14 FIPPA so the decision did not need to rest on the s. 13 analysis.

¹⁸ 2000 CanLII 14403 (BC IPC).

- b. summaries of labour arbitration awards and other labour cases; and
- c. a series of frequently asked questions and answers relating to the interpretation of particular provisions in the collective agreement.

[22] WCB released a manager's manual about the collective agreement prior to the inquiry, while Order 00-38 determined that s. 13 applied to separate annotations from the manager's manual. In my view, the information at issue here is more similar to the manager's manual that was disclosed prior to the inquiry than the information that was withheld under s. 13 because the information that was withheld, viewed in context, was advisory rather than directive.

[23] I am not aware of any orders in BC where a public body relied on s. 13 to withhold a manual, only cases where a s. 13 claim over a manual or similar document was initially advanced but dropped.¹⁹ Ontario orders have declined to apply their equivalent of our s. 13 to manuals and related documents.²⁰

[24] In Order PO-1928, the Adjudicator found that s. 13(1) of the Act did not apply to records relating to interviewing techniques, procedures, and any policy, procedure or training manuals used by lawyers of the Office of the Children's Lawyer ("OCL"). Although these records were found to contain guidelines for OCL staff, the Adjudicator found that they did not constitute the type of advice or recommendations that may be accepted or rejected in the deliberative process of government decision-making and policy-making.

[25] In Order PO-2034²¹ the Adjudicator found that s.13 did not apply to a policy and procedure manual called *Manual for Counsel Representing the Director of the Family Responsibility Office* that covered matters related to default proceedings or to several documents created for training purposes and to communicate the public body's instructions to lawyers retained to represent the

¹⁹ In Order F11-13, 2011 BCIPC 18 (CanLII), the BC Coroners Service initially relied upon s. 13 to withhold some parts of two policy manuals. Prior to the close of submissions in the inquiry, the BC Coroners Service released all of the information it had withheld under s. 13, so that it only sought to withhold passages of one manual, and only relying on s. 15 FIPPA. In Order F11-12, 2011 BCIPC 15 (CanLII), the withheld record was BC Lottery Corporation's Casino Standards, Policies and Procedures Manual. The public body did not argue that s. 13 justified withholding it, instead relying on s. 15 and s. 17.

²⁰ I recognize that in Ontario, a narrower view of s. 13 has typically been taken compared to the approach in BC – see discussion in Order 02-38, 2002 CanLII 42472 (BC IPC). However the Ontario decisions are still useful in considering the application of s. 13 to manuals and like documents.

²¹ Section 13 analysis upheld on judicial review in *Ontario (Ministry of Community and Social Services) v Ontario (Information and Privacy Commissioner)* 2004 70 O.R. (3d) 680.

public body in hearings. In my view, the documents in that case served a very similar function to the records in dispute in this inquiry, in particular ICBC's *Comprehensive Guide*.

Section 13 application to the records

[26] **Low Velocity Impact Compliance Review**—Pages 736-788 comprise a report of an ICBC internal review of adjusters' compliance with ICBC guidance on low velocity impact claims. The record is dated May 29, 2000, and related to work completed from March 27-29 of that year. Section 13(3) provides that s. 13(1) does not apply to information in a record that has been in existence for 10 years or more. The record is more than 10 years old and therefore, under s. 13(3), s. 13(1) does not apply to the record.²²

[27] **ICBC meeting minutes**—Pages 830-835 comprise ICBC meeting minutes about some ICBC guidelines. The meeting minutes were created by ICBC to record its discussion and action plans for reviewing an ICBC policy. The record is dated June 29, 2000 and related to work completed the previous year and at the meeting held on the date of the record. It is more than 10 years old and therefore, under s. 13(3), s. 13(1) does not apply to the record.²³

[28] **Introduction to Handling Mild Head Injury Claims**—The Introduction to Handling Mild Head Injury Claims was copyrighted in 1998²⁴ and reflects work begun by an ICBC committee in May 1995.²⁵ It is more than 10 years old and therefore, under s. 13(3), cannot be withheld under s. 13(1).²⁶

[29] **Comprehensive Guide**—The Comprehensive Guide was copyrighted in 1998²⁷ and reflects work begun by an ICBC committee in May 1995.²⁸ It is more than 10 years old and therefore, under s. 13(3), cannot be withheld under s. 13(1).²⁹

[30] **Claims Reporting Package**³⁰—The withheld information in the *Claims Reporting Package*³¹ does not contain advice or recommendations. It contains

²² Section 13(3) did not apply at the date of the applicant's request because the record was not yet 10 years old.

²³ Section 13(3) did not apply at the date of the applicant's request because the record was not yet 10 years old.

²⁴ Page 839 of records.

²⁵ Page 840 of records.

²⁶ Section 13(3) did not apply at the date of the applicant's request because the record was not yet 10 years old.

²⁷ Page 865 of records.

²⁸ Paragraph 19 of ICBC submissions, p. 866 of records.

²⁹ Section 13(3) did not apply at the date of the applicant's request because the record was not yet 10 years old.

³⁰ Starts at p. 3505 of the records.

instructions and guidance to staff on when reports are required, steps to follow in preparing reports or instructions on the format and content of certain reports, and advice on changes to ICBC processes.

[31] **Claims Customer Contact Manual**—The withheld information in this Manual³² contains instructions to staff for following an established policy, not advice or recommendations.

[32] **TCD Procedures Manual**—The withheld information in this Manual³³ contains instructions to staff about established ICBC policies and procedures, not advice or recommendations.

[33] **Extracts of guidance documents**—Pages 3558-3561 and 3565-3567 are not advice or recommendations but extracts of ICBC documents that provide instructions to employees about ICBC policies and procedures.

[34] In summary, I am satisfied that the records withheld under s. 13 cannot be withheld under s. 13(1) of FIPPA.

[35] **Legal Advice – s. 14**—Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. This provision encompasses both legal advice privilege and litigation privilege.³⁴ ICBC submits that legal advice privilege applies to some of the withheld information.

[36] For legal advice privilege to apply, the following conditions must be satisfied:

1. there must be a communication, whether oral or written;
2. the communication must be confidential;
3. the communication must be between a client (or agent) and a legal advisor; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

[37] If these four conditions are satisfied, then the communication and the

³¹ Pages 3509-14, 3519-3520, 3522, 3525-6, 3527-8, 3531-3532, 3534, 3536, 3538, 3540-1, 3546, 3548-3553, 3555.

³² At pp. 1987-1989.

³³ At pp. 2128-30, 2642, 2747, 3448.

³⁴ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665, para. 26.

papers relating to it are privileged.³⁵

[38] ICBC submits that s. 14 applies to:

1. excerpts of the *Comprehensive Guide*, which they say provides instructions and advice to ICBC defence counsel,³⁶
2. memos in the Claims Reporting Package, which they say reflect legal advice provided on claims,³⁷ and
3. an excerpt of a guidance document,³⁸ which they say contains instructions to ICBC defence counsel.

[39] All the documents above meet the first requirement for s. 14 to apply, being written communications.

[40] The applicant argues that training manuals cannot have the requisite confidentiality for s. 14 to apply, because training manuals are shared with numerous employees, who are not protected by privilege. ICBC provided evidence that the relevant extracts of the *Comprehensive Guide* have been kept confidential between ICBC and its defence counsel, which is sufficient for confidentiality to be retained in the records. There is no evidence that the information in issue was shared outside of ICBC or its legal counsel. For the other documents, it is implicit from the nature of the records that they are confidential. The memos contain confidential information about actual claim files of third parties, and some excerpts of the guidance document contain information provided to defence counsel that ICBC would not want disclosed as it relates to ICBC defence strategy.

[41] I am satisfied that all of the excerpts of the *Comprehensive Guide* are between a lawyer and client and directly related to the seeking, formulating, or giving of legal advice. Several excerpts are in effect instructions to counsel, which previous orders have recognized are within the scope of s. 14.³⁹

[42] Some excerpts of the guidance document are between a lawyer and client and directly related to the seeking, formulating, or giving of legal advice.⁴⁰ Like the *Comprehensive Guide*, these excerpts are in effect instructions to counsel, which previous orders have recognized are within the scope of s. 14.⁴¹

³⁵ For a statement of these principles see also *R. v. B.*, 1995 CanLII 2007 (BCSC), para. 22 and *Solosky v. The Queen*, [1980] 1 S.C.R. 821, p. 13.

³⁶ At pp. 1012-1015, 1017, 1024, 1028-1030, 1032, 1035, 1037-1039, 1052-1054, 1058-1063.

³⁷ At pp. 3548-3550, 3552-3553.

³⁸ At pp. 3559-3661.

³⁹ Order F06-19, 2006 CanLII 37939 (BC IPC) at para 51; Order F09-25, 2009 CanLII 66957 (BC IPC) at para. 24.

⁴⁰ I have highlighted in the guidance document the information that is subject to s. 14.

⁴¹ Order F06-19 at para. 51; Order F09-25 at para. 24.

The parts of the guidance document that are not directly related to the seeking, formulating, or giving of legal advice are instructions to adjusters on preparing reports. These parts provide instructions to adjusters on their roles and responsibilities, including how to use information from legal counsel, but do not reveal advice or instructions to or from legal counsel.⁴²

[43] In addition, I am satisfied that some parts of the memos are between a lawyer and client. The purpose of the memos was to provide an ICBC committee with an overview of particular claims. From my review of the memos it is clear that, while authored by ICBC staff, some of the content of the memo repeats legal advice from ICBC's counsel.⁴³ Interactions within ICBC about legal advice remain privileged. However, ICBC did not provide evidence to show that all parts of the memos relate to interactions between ICBC staff and its legal counsel. For example, some parts appear to have been the memo author's own work, unassisted by legal input, so they do not satisfy the requirements of s. 14 and cannot be withheld under that section.

[44] **Disclosure harmful to ICBC's financial or economic interests—**
Section 17 states:

The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy.

[45] In Order 02-50, former Commissioner David Loukidelis set out the threshold to be met by a public body in order to refuse disclosure under s. 17:

General, speculative or subjective evidence is not adequate to establish that disclosure could reasonably be expected to result in harm under s. 17(1). That exception must be applied on the basis of real grounds that are connected to the specific case. This means establishing a clear and direct connection between the disclosure of withheld information and the harm alleged. The evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information.⁴⁴

[46] ICBC claims s. 17 applies to two pages of the *TCD Procedures Manual*⁴⁵ which contain reserve information. Reserve information is the amount that an insurer notionally sets aside based on the potential cost to settle a claim. ICBC

⁴² See for example *Canada (Information Commissioner) v. Canada (Minister of Public Safety and Emergency Preparedness)* 2013 FCA 104 at para 39. I have highlighted in the guidance document the information that is subject to s. 14.

⁴³ I have highlighted in the memos the information that is subject to s. 14.

⁴⁴ Order F02-50, 2002 CanLII 42486 at para. 137.

⁴⁵ Pages 2642 and 2747.

relies on Order F06-19⁴⁶ and Order F08-09,⁴⁷ where the Adjudicator was dealing with reserve information connected to an applicant's particular ICBC claims which were the subject of litigation. In Order F06-19, Adjudicator Trott found:⁴⁸

In the circumstances of this case, the disclosure of the reserve information, generated over time, taken together, and connected to specific events or assessments, could reasonably be expected to reveal ICBC's litigation strategy.

[47] In Order 01-46, which both ICBC and the applicant referenced, s. 17 was found to apply to the sum total of ICBC's reserve information because it was found to represent ICBC's total exposure to potential claims.⁴⁹

[48] The reserve information in issue here differs from the reserve information in the above orders in that it is just a default, generic dollar amount that ICBC is instructing employees to enter when receiving certain types of claims. It does not reveal anything about the merits of a particular claim, nor does it reveal ICBC's global exposure to potential claims. I also note that the type of claim in issue here has a relatively small total coverage limit and a correspondingly small default reserve dollar amount. Disclosure of the default reserve amount would not reasonably be expected to harm the financial or economic interests of ICBC.

[49] **Unreasonable invasion of a third party's privacy—s. 22**—ICBC is withholding some information it says contains claims information relating to third parties. Most of the information is information included in ICBC manuals as illustrative examples to assist with staff training. It says disclosing the information would be an unreasonable invasion of third parties personal privacy under s. 22 of FIPPA.

[50] The applicant is concerned about ICBC using s. 22 to withhold information that is actually about employees or contractors, not clients of ICBC. She also raises concerns about a breach of ICBC client's privacy through ICBC's use of client's personal information in training manuals. While this latter issue is outside the scope of this inquiry, I note that ICBC advises that it has ceased using client's personal information in training materials and I agree that this is the proper approach, particularly when ICBC has not obtained the consent of its clients to use their information in its training manuals.

Approach to s. 22

⁴⁶ Order F06-19, 2006 CanLII 37939 (BC IPC).

⁴⁷ Order F08-09, 2008 CanLII 21701 (BC IPC).

⁴⁸ At para. 130.

⁴⁹ Order 01-46, 2001 CanLII 21600 (BC IPC) at para. 11.

[51] Section 22 is a mandatory exception requiring ICBC to refuse to disclose personal information to the applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. The proper approach to s. 22 involves answering the following questions:⁵⁰

1. Is the information personal information?
2. If it is personal information, does it meet any of the criteria identified in s. 22(4), whereby disclosure would not be an unreasonable invasion of third-party personal privacy?
3. If none of the s. 22(4) criteria apply, do any of the presumptions in s. 22(3) apply, such that disclosure is presumed to be an unreasonable invasion of third-party privacy?
4. If any s. 22(3) presumptions apply, are they rebutted after considering all relevant circumstances, including those listed in s. 22(2)?
5. If no s. 22(3) presumptions apply, would disclosure would be an unreasonable invasion of a third party's personal privacy after considering all relevant circumstances, including those listed in s. 22(2)?

Personal Information and s. 22(4) Factors

[52] Section 22 only applies to the personal information of third parties. FIPPA defines personal information as recorded information about an identifiable individual other than contact information.⁵¹ Contact information is information that enables an individual to be contacted at a place of business. A small amount of information in the responsive records, viewed in its context, is contact information because it is names, email addresses, and pager or phone numbers that enable an individual to be contacted at a place of business.⁵² Also, a small amount of information⁵³ is, in context, not about an identifiable individual, so it too is not personal information under FIPPA and s. 22 does not apply to it.

[53] The remaining withheld information is personal information and includes claim file numbers, motor vehicle insurance coverage information including drivers' and claimants' addresses and driver licence numbers.

[54] Disclosure of some of the personal information withheld is not an unreasonable invasion of any third party's privacy under s. 22(4)(e) because it is an employee's name and relates to that individual's position or function as an

⁵⁰ Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII) et al.

⁵¹ Schedule 1 of FIPPA.

⁵² The withheld information at pp. 1564, 1566, 2913, 2947-8, 2953, 2969, 3164-3165, 3205 (this page appears to contain withheld information but is not listed in ICBC's submission as being withheld), 3328, p. 3206 except the home telephone numbers listed.

⁵³ At p. 230. Even if the withheld information was personal information, in my view it would not be an unreasonable invasion of privacy to release it.

employee of ICBC.⁵⁴ This information includes instances of an employee's name and screen shots of employee's email inboxes that contain only information related to their work functions.

Presumption of Invasion of Privacy — s. 22(3)

[55] Section 22(3) sets out circumstances in which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. It states in part:

A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

...

(d) the personal information relates to employment, occupational or educational history,

...

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness

[56] ICBC does not identify which of the information it has withheld under s. 22 is subject to a s. 22(3) presumption. From my review of the records, some of the withheld information is subject to one or more of the s. 22(3) presumptions.⁵⁵ The s. 22(3)(a) presumption applies to some of the withheld information because it contains details about injuries suffered and the medical prognosis of identifiable third party clients of ICBC who made claims. The s. 22(3)(d) presumption applies to some of the withheld information as it reveals details of the employment histories of ICBC clients. The s. 22(3)(f) presumption applies to some of the withheld information because it reveals ICBC clients' incomes and detailed financial information about payments made to settle claims or insured drivers indebtedness to ICBC.

Other Factors — s. 22(2)

[57] Where there is a presumption that disclosure of withheld information would be unreasonable, it can be rebutted. Section 22(2) states that public bodies must consider all relevant factors in determining whether disclosure of

⁵⁴ At pp. 1557-1559, 3503.

⁵⁵ Pages 745, first two boxes (highlighted), 746 (3rd box), 761 (1st box), 764 (top box and last 2 boxes), 770 (last box), 1418, 3519-20, 3522, 3525-6, 3527-8, 3531-2, 3536, some information on pp. 3548-3553 (highlighted).

personal information is an unreasonable invasion of privacy, including certain specific factors. ICBC does not identify which of the information it has withheld under s. 22 is subject to s. 22(2) factors. From my review of the records, factors listed in s. 22(2) that are relevant in this case are:

- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence

[58] As noted above, most of the information withheld under s. 22 is information that was used in ICBC training materials as illustrative examples to assist with staff training. Much of the information would have originally been supplied in confidence to ICBC for obtaining insurance and/or for processing claims. There is no indication that people who provided information for a claim or to obtain insurance consented to its use in an ICBC manual. Release of some of this information may expose third parties to harm as details of their medical, financial or other history is revealed. In short, considering all relevant factors, there are no factors favouring the release of the third-party personal information in the manuals, which comprise the vast majority of the records withheld under s. 22. The information is of no utility to the applicant and is only in issue in this inquiry because of ICBC's past practise of including actual claimant information where examples were used in manuals.

[59] A small amount of personal information withheld under s. 22 can be released where there is no harm in releasing it because the applicant has shown they already have a copy of the record.⁵⁶ While harm and confidentiality are not the only factors to consider under s. 22, I see no other factors to support withholding this information.

[60] Almost all of the remaining third party personal information comprises ICBC claimants' insurance information, including names of claimants. This information was used by ICBC in its manuals for training purposes but does not fall within any of the categories of information that are presumed to be an unreasonable invasion of a third-party's personal privacy under s. 22(3). Weighing all the factors, including those in s. 22(2), the information must be withheld, except where identifying information can be severed and the remainder of the withheld information on the page released.⁵⁷ As with the information subject to a s. 22(3) presumption, most of the information is of no utility to the

⁵⁶ Page 811.

⁵⁷ The information that can be withheld is the information withheld by ICBC on p. 23, p. 802, on pp. 743-788 the 2nd column only, which contains claim numbers, p. 801, 1401, 1420-1421, 1430-1436, 1439, 1447-1453, 1464, 1467, 1478, 1491, 1497-1505, 1522, 1541, 1567, 1579, 1625-1627, 1749, 1755, the highlighted information on p. 2128, 2245, 2248, 2251, 2407, 2449, 2557, 2730-1, 2771, 3042, the home telephone numbers on pp. 3206, 3424, 3526, 3527-8, the highlighted information on pp. 3511-12 which identifies the information with a specific individual, the information in the Identification section of p. 3522 (highlighted), some information on pp. 3548-3553 (highlighted).

applicant and is only in issue in this inquiry because of ICBC's past practise of including actual claimant information where examples were used in manuals.

Section 22(1)

[61] To summarize, most of the information withheld by ICBC under s. 22 contains personal information. A small amount of the third party personal information is subject to s. 22(4)(e) so disclosure is not an unreasonable invasion of personal privacy. The remaining information must be withheld, except where identifying information can be severed and the remainder of the record released.

CONCLUSION

[62] For the above reasons, pursuant to s. 58 of FIPPA, I make the following orders:

1. Subject to paras. 2-4 below, I require ICBC to give the applicant access to the records by **October 21, 2014**.
2. ICBC may continue to withhold the information withheld under s. 14 of FIPPA identified at footnote 36 and the information indicated at pp. 3548-50, 3552-3 and 3559-61 in the copy of these records that accompanies ICBC's copy of this Order.
3. ICBC must continue to withhold the information withheld under s. 22 FIPPA identified at footnotes 55 and 57 of this Order. Where the footnote identifies that only a highlighted portion of a record may be withheld, a highlighted copy of the record accompanies ICBC's copy of this Order.
4. ICBC may withhold the letter at pp. 1-3 of the records because it is excluded from the scope of FIPPA under s. 3(1)(c) of FIPPA.
5. ICBC must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with an electronic copy of the records.

September 8, 2014

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

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