

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 109-1996
June 4, 1996**

INQUIRY RE: A request for records in the custody of the Insurance Corporation of British Columbia

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner in Victoria on April 3, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the Insurance Corporation of British Columbia to withhold certain records relating to an applicant and his former company (an automobile repair shop), and their relations with ICBC.

2. Documentation of the inquiry process

On June 15, 1995 the applicant requested from ICBC all information about himself and his former corporation from 1966 to date. In response, ICBC released some of the requested records. However, it refused access to other records on the basis of sections 13, 14, 16, 17, 19, and 22 of the Act.

On December 28, 1995 the applicant wrote the Office of the Information and Privacy Commissioner and requested a review of ICBC's decision to withhold the records in dispute.

During the process of mediation with my Office, ICBC decided to release additional material from the records in dispute to the applicant. Sixty separate records were originally withheld in whole or in part. At present, 52 remain in dispute: 7 have been severed in part and 45 have been withheld in their entirety on the basis of section 19 of the Act.

3. Issues under review in the inquiry and the burden of proof

The issues in this inquiry concern the applicability of section 19 of the Act to the records in dispute, the only section that ICBC now relies on. It reads as follows:

Disclosure harmful to individual or public safety

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

(b) interfere with public safety.

....

4. Burden of proof

Under section 57(1), where access to information in the record has been refused, it is up to the public body to prove that the applicant has no right of access to the record or part of the record. ICBC bears the burden of proving that the applicant has no right of access to the records in dispute under section 19 of the Act.

5. The records in dispute

The records in dispute consist of file notes, file handling notes and strategy, electronic mail, third party personal information, and a corporate law file involving the relationship from approximately 1989 to the present between ICBC and the applicant.

6. The applicant's case

The applicant explained that he began a bodyshop business in 1966 and subsequently added a partner, making the latter president. The applicant claims that he subsequently suffered "grievous harm" at the hands of ICBC, his ex-partner, and his ex-wife. He fears that the information that ICBC is not disclosing to him "is of a heinous nature and therefore a miscarriage of justice in terms of the applicant."

Finally, the applicant states that if he obtains the records he is seeking, he will "act upon the information in a most judicious and fiduciary manner," since his purpose in obtaining it is "to bring about understanding and to rest the applicant's mind."

7. The Insurance Corporation of British Columbia's case

ICBC made both an open and *in camera* submission. Its public case under section 19 of the Act is based on fears about public health and safety associated with the past and possible

future behaviour of the applicant. For this purpose, it relies on Order No. 7-1994, April 11, 1994, p. 6; Order No. 28-1994, November 8, 1994, p. 8; Order No. 39-1995, April 24, 1995, p. 8; and Order No. 78-1996, January 18, 1996, p. 4.

In the view of ICBC, there is “clear evidence” that the applicant has made harassing phone calls to ICBC employees and threatened physical harm to a number of individuals: “The applicant’s past behaviour supports the conclusion that disclosure of the withheld records could reasonably be expected to lead to further harassing and intimidating behaviour by the applicant towards ICBC employees, threatening their safety or health.” ICBC sought to further document this public statement in an *in camera* submission with accompanying affidavits.

8. Discussion

Section 19: Disclosure harmful to individual or public safety

ICBC is seeking to rely on this section only to deny access to the records in dispute. The applicant responded as follows:

At no time has [the applicant] been violent or hostile in conversations with ICBC; he has simply been trying to obtain the information regarding himself, his business and his God given right to do business. [The applicant] was only asking for the truth.

The basis for the public argument made by ICBC to withhold information under section 19 is:

- a) The applicant has a history of harassing ICBC employees by making repeated, lengthy, and demanding phone calls,
 - b) The applicant has threatened physical harm to a number of individuals, and
 - c) Others feel harassed and intimidated by the applicant due to his conduct.
- (Submission of ICBC, pp. 3, 4)

The applicant’s phone calls are further described as typically long, rambling monologues with references to the conspiracy against him. Some communications by the applicant to ICBC refer to catastrophic world events such as bomb explosions or war.

In my judgment, section 19 is not meant to be used as a shield to prevent difficult applicants from obtaining access to their files. While I appreciate that long, harassing phone calls are stressful for any staff, they alone do not form a basis for denial of access rights under the Act. Where harassing behaviour crosses to threatening actions, then section 19 may be invoked.

Readers should be aware that confidentiality requirements prevent me from disclosing relevant information that I have used in reaching my decision on the applicability of section 19 in this case, but that I cannot further disclose.

I find that section 19 of the Act does not apply to some of the information withheld by ICBC (as specified below). Thus, I find that ICBC has not met its burden of proof with respect to some of the records listed below.

Review of the records in dispute

I have reviewed each of the records severed or withheld by ICBC, and my conclusions on each of them follow. I follow the consecutive numbering scheme adopted by ICBC for the pages in dispute.

1. The only part of page 46 that has been withheld is the form directing ICBC staff what to do in response to a letter. This cannot be withheld under section 19.
2. Page 64 is an ICBC summary of a telephone call from the applicant. This page has been released to the applicant, except for eight lines of notes made during a conversation about statements made by the applicant. There is no reason under section 19 that his own statements should not be released to him.
3. The only part of page 76 that has been withheld is the form directing ICBC staff what to do in response to the letter. This cannot be withheld under section 19.
4. Pages 80 and 82: Information has been appropriately withheld on the basis of section 19.
5. Page 89 is an e-mail message from which one sentence has been severed. Although its release may be embarrassing to its author, there is no rationale for withholding it under section 19 of the Act.
6. Page 94 should be released to the applicant in its entirety.
7. The only part of page 128 that has been withheld is the form directing ICBC staff what to do in response to a letter. This cannot be withheld under section 19.
8. Page 15 has been appropriately withheld on the basis of section 19.
9. Page 37: I have severed information under section 19 and the rest can be released.
10. Page 38: I have severed information under section 19 and the rest can be released.
11. Page 72: This should be released to the applicant in its entirety.
12. Pages 83 and 84 are e-mail pertaining to the state of the relationship between the applicant and ICBC in 1989. They cannot be withheld under section 19.
13. Page 88: I have severed some information under section 19, and the rest can be released to the applicant.
14. Page 90: I have severed some information under section 19, and the rest can be released to the applicant.
15. Page 91: I have severed some information under section 19, and the rest can be released to the applicant.
16. Page 92: has been appropriately withheld on the basis of section 19.
17. Page 93 is a file note of ICBC's discussion of how to respond to the applicant and notes on a telephone conversation with him. There is no reason under section 19 that this cannot be released to the applicant.
18. Page 138 to 142 have been appropriately withheld on the basis of section 19.
19. Pages 144 - 146: Pages 144 and 146 can be released in their entirety. On page 145, I have severed some information under section 19.
20. Page 148 - 150 have been appropriately withheld on the basis of section 19.
21. Page 152 - 159 have been appropriately withheld on the basis of section 19.

9. Order

I find that the head of ICBC is authorized to refuse access to those parts of the records in dispute described above under section 19 of the Act. Under section 58(2)(b), I confirm the decision of the head of ICBC to refuse access to part of the records.

I also find that the head of ICBC is not authorized to refuse access under section 19 to other parts of the records described above. Under section 58(2)(a), I require the head of ICBC to give the applicant access to those parts of the records identified in this Order. For this purpose, I have prepared a newly-severed set of records for ICBC to release.

David H. Flaherty
Commissioner

June 5, 1996