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

Order 01-28

INSURANCE CORPORATION OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
June 14, 2001

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Summary: ICBC is authorized by s. 13(1) to withhold some of the information it severed from a consultant's report on distance-based insurance pricing, but much of the withheld portion of the report is "factual material" under s. 13(2)(a) and must be released.

Key Words: advice or recommendations – factual material – plan or proposal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 13(1), ss. 13(2)(a) and (l), s. 25(1).

Authorities Considered: B.C.: Order 00-08, B.C.I.P.C.D. No. 8; Order 01-15, [2001] B.C.I.P.C.D. No. 16; Order 01-17, [2001] B.C.I.P.C.D. No. 18; Order 01-20, [2001] B.C.I.P.C.D. No. 21.

1.0 INTRODUCTION

[1] In December 1999, the applicant – the news editor for the *Georgia Straight* – wrote to the Insurance Corporation of British Columbia ("ICBC") and requested, under the *Freedom of Information and Protection of Privacy Act* ("Act"), copies of any reports done for ICBC between January 1998 and December 1999 on "the implications of basing automobile insurance rates on kilometres or miles driven." That request referred to a report the applicant understood had been written for ICBC by a consultant. The applicant also asked for copies of any memorandums by senior ICBC management, between the same dates, in response to any such reports.

[2] I CBC responded in two stages. In April 2000, it disclosed a severed copy of a January 1999 report called 'Distance-Based Vehicle Insurance Potential for Implementation in British Columbia', sub-titled 'General Report'. It also severed and disclosed an accompanying report of the same name, but sub-titled 'Technical Report'. Of the 169 pages in the two parts of the report which I refer to below collectively as the "report", ICBC disclosed approximately 8 pages in full, severed approximately 9 pages and withheld approximately 152 pages. In May 2000, ICBC responded to the second part of the request by denying access to 13 pages of e-mail messages and internal memorandums. ICBC applied ss. 13(1) and 17(1) of the Act in both stages of its response.

[3] The applicant requested a review, under s. 53 of the Act, of ICBC's response. In doing so, he disputed ICBC's application of s. 17(1) and also argued that s. 13(2)(l) applied, thus excluding s. 13(1). He based the latter contention on a conversation he had had with an ICBC employee. That employee, the applicant said, told him that ICBC was not considering distance-based vehicle insurance. He also cited two media articles in which Cabinet ministers were quoted as having said publicly that they did not endorse such a system. He also argued that s. 25 of the Act applies, on the basis that the report would reveal to the public the fact that "distance-based automobile insurance has the potential to save many human lives per year".

[4] Mediation was not successful in resolving the issues in dispute, so I held a written inquiry under s. 56 of the Act. After I had received initial and reply submissions from the parties, I sent a letter to ICBC's legal counsel requesting clarification of some s. 17(1) issues, which ICBC provided, adding that "[t]he release of this information would be catastrophic to ICBC." ICBC's letter nonetheless concluded by saying that ICBC had decided, in light of recent decisions on s. 17, to abandon its application of s. 17(1) to the records in dispute. ICBC said that it continued to claim the benefit of s. 13(1).

2.0 ISSUES

[5] The issues in this inquiry are as follows:

1. Is ICBC authorized to withhold information under s. 13(1) of the Act?

2. Does s. 25(1) require ICBC to disclose the records in this case?

[6] Under s. 57(1) of the Act, ICBC has the burden of proof with respect to s. 13. Previous decisions have established that the applicant bears the burden of proof regarding s. 25(1).

3.0 DISCUSSION

[7] **3.1 Information in Dispute** – I will briefly describe the disputed records before turning the merits.

[8] Again, the report has two parts. The first is a 46-page general report dated January 7, 1999 and the second is a 123-page technical report of the same date. Both are

marked as being drafts. The general part of the report begins by explaining, in a portion that ICBC disclosed, that it "summarizes the results of a study of the feasibility, benefits and costs of converting to distance-based motor vehicle insurance strategies." The general part also says that a "technical report is available that describes the research and analysis in greater detail." This refers to the second part of the report.

[9] The other disputed records consist of four e-mail messages, two handwritten memoranda and four typed memoranda, the last of which has a three-page attachment.

[10] **3.2 Disclosure Clearly in the Public Interest** – I will first consider whether s. 25(1) applies to the requested records. That section reads as follows:

> **Information must be disclosed if in the public interest**
>
> **25**(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
>
> (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
>
> (b) the disclosure of which is, for any other reason, clearly in the public interest.

[11] The applicant has this to say about s. 25, at p. 1 of his initial submission:

> I ask that the commissioner consider if section 25 of the Act–and the intent of the legislature when it approved that section–overrides the decision by ICBC. Specifically, if the report in question states that British Columbians' lives could be saved by adopting distance-based vehicle insurance, and this was severed or withheld in the copy sent to me, I would argue that the act wasn't applied correctly. Section 25 was included in the act specifically for this purpose.

[12] His reply submission contains similar arguments.

[13] At para. 37 of its initial submission, ICBC says that s. 25(1)

> … has been interpreted as setting a high threshold for disclosure … This stems from the language of s. 25(1)(a) which speaks to a risk of 'significant harm' to the environment or health or safety of the public and the language of s. 25(1)(b) which requires that disclosure must be 'clearly in the public interest' … .

[14] ICBC cites a number of British Columbia and Ontario orders, in which it was found that certain records did not meet the test for public interest disclosure that s. 25 requires. ICBC concludes as follows in its initial submission:

> 41. The public body considered the application of s. 25(1)(b) to the information in dispute. The public body concluded that it should not release the information in dispute under s. 25(1)(b) in the circumstances of this inquiry. The issue of whether or not to release a draft report on one of a number of options currently under consideration for alternative pricing, is not one which gives rise to a clear and urgent public interest as to

> require disclosure without delay. The greater public interest is served by permitting the public body to complete the investigations which are necessary for its deliberative process in a manner which ensures confidentiality. The public body submits that the Applicant has failed to discharge the burden of proof in relation to s. 25 and that there is no basis upon which to interfere with the public body's conclusion.

[15] On p. 1 of its reply submission, ICBC counters the applicant's initial submission on s. 25 by saying the report

> … provides analysis of the costs and benefits of distance-based pricing as a potential pricing alternative for vehicle insurance. The fact that this type of pricing scheme has implications for traffic demand management does not bring it within the ambit of s. 25(1)(a) or (b) of the Act.

[16] The disclosed portions of the report suggest that distance-based pricing may reduce the numbers of kilometres driven, in turn reducing crashes and leading to insurance cost savings. It seems to me, possibly, the applicant already has the information which he suggests should be disclosed under s. 25(1)(b).

[17] In any case, there is a difference between identifying a general public interest in disclosure of certain information and concluding that the public interest is so clear, and there is such an urgent or compelling need for disclosure, that the information must be disclosed without delay under s. 25(1)(b). At paras. 38 and 39 of Order 01-20, [2000] B.C.I.P.C.D. No. 21 – which was released after the submissions were filed in this case – I said the following:

> Section 25 applies despite any other provision of the Act, whether or not an access request has been made. It requires disclosure "without delay" where information is about a risk of significant harm to the environment or to the health and safety of persons or where disclosure is for any other reason clearly in the public interest. Although the words used in s. 25(1)(b) potentially have a broad meaning, they must be read in conjunction with the requirement for immediate disclosure and by giving full force to the word "clearly", which modifies the phrase "in the public interest".
>
> Even if I assume, without deciding, that disclosure of contractual and financial information is capable of being "clearly in the public interest" within the meaning of s. 25(1)(b), the required elements of urgent and compelling need for publication are not present in this case. Again, the applicant believes the agreement should be disclosed because UBC is a publicly-funded educational institution, such that the student body, general public and media ought to have the widest ability to scrutinize an exclusive commercial commitment by UBC to substantial funding from a private source. Even if this position is well-founded as a matter of public policy, it does not give rise to an urgent and compelling need for compulsory public disclosure despite any of the Act's exceptions. In my view, no particular urgency attaches to disclosure of this record. Nor is there a sufficiently clear and compelling interest in its disclosure.

[18] If the safety benefits of distance-based pricing are as the applicant says they are, we would expect there to be other sources of data – including derived from research done elsewhere – that would prove those benefits. The report is not, I can reasonably conclude on the material before me, the only source of information on this topic. Nor am I

persuaded that there is any urgency, or a sufficiently clear and compelling reason, for disclosure of this information without delay. I find that s. 25(1)(b) does not require ICBC to disclose the disputed information.

[19] **3.3 Advice or Recommendations** – ICBC applied s. 13(1) to all of the withheld information. That section creates a discretionary exception to the right of access, by providing that a public body

> … may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[20] I have considered s. 13(1) in a number of orders. Most recently, for example, in Order 01-15, [2001] B.C.I.P.C.D. No. 16 and Order 01-17, [2001] B.C.I.P.C.D. No. 18, I confirmed that s. 13(1) permits a public body to refuse to disclose advice or recommendations on a proposed course of action, on a policy choice or on the exercise of a power, duty or function. I apply here the same reasoning and principles as in my previous decisions.

[21] ICBC presented much of its discussion of s. 13(1) to me on an *in camera* basis. In the covering letter to its initial submission, ICBC said disclosure of this *in camera* information could reasonably be expected to harm ICBC's financial or economic interests and that it would reveal "highly sensitive and confidential information" apparently under s. 13(1). ICBC also said that it wanted part of one affidavit to be received *in camera*, because it contained information that ICBC believed should be protected under s. 22 of the Act. I have decided that the *in camera* material is properly received on that basis.

[22] ICBC's s. 13 submissions begin by saying that it has, since 1998, been looking at other ways "to improve service and products in light of its broad statutory mandate". It says it retained the report's author in April 1998 to prepare a report on distance-based insurance pricing. At para. 12 of its initial submission, it quotes from p. 1 of the report, as follows:

> Distance-based pricing converts insurance from a fixed cost into a variable cost with respect to vehicle mileage. Thus, insurance on a vehicle driven 10,000 kilometres annually is significantly lower than if it were driven 20,000 kilometres, all else being equal. Distance-based pricing returns to individual motorists the insurance cost savings that result when they drive less. This direct connection between an individual's driving and their insurance costs creates a positive reward for reducing mileage and crashes.

[23] According to ICBC, distance-based pricing has "significant implications both from the perspective of traffic demand management and insurance pricing in a competitive industry." ICBC says it provided the report's author with its own frequency and severity data for crashes and also with other corporate data. It says, at paras. 13-16 of its initial submission, that the report's author

> … submitted a draft report on the feasibility of converting the current rate-based insurance pricing scheme to a distance-based pricing scheme. … The draft report provides advice on the potential costs and benefits of converting to a distance-based pricing scheme and recommendations on the implementation of such a scheme. The

> information contained in the draft report, while incomplete, provides a foundation for the development of a distance-based pricing scheme.

[24] ICBC argues that the draft report lays out alternatives for ICBC to consider in reviewing the current rating process and that the report recommends certain courses of action. It says that it conducted a line-by-line review in considering the applicant's request and disclosed factual information. It also says it exercised its discretion in applying s. 13(1).

[25] ICBC supplied a partially *in camera* affidavit from Terry Condon, Vice-President, Southern Interior, and cited paras. 2-6 and 10 in that affidavit as supporting its s. 13(1) arguments. In the public parts of his affidavit, Terry Condon deposed as follows:

> … ICBC, in its continual pursuit of better practices, started to look at other ways to improve its service and products … ICBC entered into a written contract with [the author] … for preparation of a report on the feasibility of distance-based pricing. The contract provided that the purpose of the study 'was to provide ICBC executive and directors objective information to assess the impacts of distance-based automobile insurance pricing options on ICBC, ICBC's customers, and the provincial population as a whole.'

[26] Terry Condon further deposed that the report, once completed, contained errors and required revision. The rest of his affidavit as it relates to s. 13(1), both open and *in camera*, is intended to support ICBC's arguments on this section.

[27] ICBC provided a partially *in camera* affidavit sworn by David Hunter, its Manager of Product Research, and cited paras. 4, 6 and 7 of that affidavit as supporting its s. 13(1) arguments. In an open part of para. 7 of his affidavit, David Hunter deposed that " … the executive of ICBC have not yet considered, approved or rejected the recommendations contained in the draft report".

Is the Report A Plan or Proposal?

[28] The applicant submits that s. 13(2)(1) applies to the records in question. Section 13(2)(l), reads as follows:

> 13(2) The head of a public body must not refuse to disclose under subsection (1)
>
> …
>
> (l) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body, …

[29] The applicant argues, in his initial submission, that s. 13(2)(l) applies because ICBC is not now considering implementing distance-based insurance pricing. He says an ICBC employee told him this in a conversation in February 2000. He says he is not aware of any Cabinet ministers having spoken publicly about wanting to implement such a policy and that ICBC has not, to his knowledge, issued any public statements to this effect.

[30] ICBC says that its evidence contradicts the applicant's contention about his conversation with the ICBC employee. It has submitted an affidavit from the employee, in which he deposes that he does not remember such a conversation. ICBC also reiterates that its executive has not yet approved or rejected any recommendations in the draft report.

[31] In my view, even if one assumes, for the purposes of argument, that the report has to do with a "program", as required by s. 13(2)(l), I do not think it is a "plan or proposal" within the meaning of that section. The report discusses distance-based insurance pricing generally and sets out three options for implementing it if ICBC decides to pursue that kind of pricing in future. The report was written in response to ICBC's request for an examination of such a pricing structure. It was not intended to, and does not, either propose or lay out any plan for implementation of that kind of insurance pricing. The fact that three options are included in the report does not transform the report into a plan or proposal. I find that the report is not a plan or proposal under s. 13(2)(l).

[32] In any case, even if the report did constitute a plan or proposal, as contemplated by s. 13(2)(l), I accept ICBC's evidence that its executive has not yet made a decision on this issue. ICBC cannot, therefore, be said to have approved or rejected any plan or proposal regarding distance-based pricing. On this basis alone, I would find that s. 13(2)(l) does not apply.

Factual Material

[33] Section 13(2)(a) says that a public body cannot refuse, under s. 13(1), to disclose "factual information". ICBC did not address this provision in its submissions, except to say in para. 17 of its initial submission that it had disclosed all s. 13(2)(a) information. Nor did the applicant, other than by submitting that ICBC's decision to sever and withhold information under s. 13 has no "merit whatsoever." For the reasons given below in relation to specific records in dispute, I have decided that s. 13(2)(a) applies to some of the disputed information and that ICBC must disclose it. In each case, I have considered the disputed information itself, and the evidence supplied by ICBC, and have concluded that, subject to exceptions specified below, the information is not, explicitly, advice or recommendations and does not indirectly, or derivatively, disclose advice or recommendations. It is, instead, "factual material" under s. 13(2)(a).

[34] The first group of records, numbered as pp. 170-183, consists of four e-mail messages (pp. 170-171, 173, 178 and 183), two handwritten memoranda (pp. 172 and 174) and four typed memorandums, the last with a three-page attachment (pp. 175, 176, 177, 179-182). ICBC does not specifically address these records in its submissions.

[35] The first e-mail message (pp. 170-171) is essentially five paragraphs of text. The bottom three paragraphs discuss factual matters in another jurisdiction which have nothing to do with the topic of the report. They fall within s. 13(2)(a) of the Act. The top two paragraphs contain no advice or recommendations. They consist of a request for information and the response to that request. They fall under s. 13(2)(a). I find that s. 13(1) does not apply to either item.

[36] The second e-mail message (p. 173) is a series of five short messages between two individuals, beginning with the first person requesting information, followed by the second person responding and so on. This record is factual material under s. 13(2)(a). It contains no advice or recommendations. I find that s. 13(1) does not apply to it.

[37] The third e-mail message (p. 178) contains six paragraphs of text, of which only the fifth concerns the report. This fifth paragraph contains factual material and no advice or recommendations. The other four paragraphs similarly contain only factual material. I find that s. 13(1) does not apply to this material.

[38] The fourth e-mail message (p. 183) deals with another topic, but is cross-referenced to the report. The second sentence of this record contains what I consider to be a recommendation and falls under s. 13(1). The rest of the message is factual material and is therefore not protected under s. 13(1).

[39] The first handwritten memorandum (p. 172) contains no advice or recommendations. It contains an instruction from one person to another and some other factual material. I find that s. 13(2)(a) applies and, therefore, that s. 13(1) does not apply to this record.

[40] The second handwritten memorandum (p. 174) contains five short comments, by an ICBC employee, on the structure and content of the report. The memorandum contains no advice or recommendations, but is factual material, and I find that s. 13(1) does not apply to it.

[41] The first two typed memorandums (pp. 175-176) are short, routine items that contain no advice or recommendations. They merely request comments. Section 13(1) does not apply to them. The third typed memorandum (p. 177) is longer, but is again routine – it also requests comments – and contains no advice or recommendations. Section 13(1) does not apply to it.

[42] The last typed memorandum (p. 179) is simply a covering note for its attachment (pp. 180-182). The attachment outlines the way in which ICBC intended to carry out certain inquiries; it begins with background information, followed by objectives, methodology and responsibilities. Much of this information, particularly in the background section, is factual. The rest contains no advice or recommendations except where it mentions the options examined in the report. I find that s. 13(1) applies only to those options but not to the rest of this record.

The Report

[43] ICBC disclosed some factual material from this record, principally descriptions of ICBC and of the purpose of the report, as well as information on why ICBC is interested in distance-based pricing. It also released some research material. Although ICBC withheld the majority of the rest of the report, I can say that the withheld portions include research material, discussions of the implications of distance-based pricing generally, cost/benefit analyses and implications of the three options it discusses, and concerns and

conclusions with respect to distance-based vehicle insurance, both generally and with respect to the three options. Given the nature of the report, it is hardly surprising that the rest of the report contains such material.

[44] Again, ICBC says it provided its own crash frequency and severity data to the author of the report for analysis. Numerous footnotes and references in the body of the report make it clear that the author also drew much of his research from other sources, including his own past work. In my view, this research material – which deals with distance-based pricing generally (which, as I have said, the applicant knows ICBC is considering) – is all factual material within the meaning of s. 13(2)(a) and must be disclosed. This finding applies to pp. 5-14, 48, 49, 51-53, 56-66, 69 and 71.

[45] Other parts of the report discuss the implications, and costs and benefits, of distance-based pricing, but do so in general terms in relation to that kind of pricing (as opposed to how it would or might work, in a specific form, if ICBC in particular adopted it). ICBC argues that these parts provide advice and recommendations on the costs and benefits of distance-based pricing. There is considerable overlap here, in my view, with factual and research material in the report. In my view, these parts do not advise on or recommend a particular course of action, decision or policy choice. Rather, they provide information to ICBC on implications of, and concerns that may be associated with, implementation of distance-based pricing. This information is drawn from research done elsewhere and from studies of such pricing undertaken elsewhere. This material sets out background and then says things like 'Experience elsewhere has shown that distance-based pricing may cause … ' or 'Research tends to support the conclusion that distance-based pricing leads to … '. The author does not, in these parts of the report, explicitly or implicitly say things like 'In light of what has been experienced elsewhere, I suggest you do X.' I find that these portions of the report are not protected under s. 13(1).

[46] I made a similar finding at pp. 37-38 of Order 00-08, [2000] B.C.I.P.C.D. No. 8, regarding expert medical opinions, findings and conclusions communicated to the College of Physicians and Surgeons of British Columbia. I found that the experts had not laid out alternatives for the College to consider. They had, rather, provided expert findings on technical issues that the College could then use to assess whether it should lay disciplinary charges against a doctor. I also found that the experts did not provide advice, in that they did not recommend or advise the College to choose one course of action over another. Similar reasoning applies to the material just described. With the exception of the occasional mention of individual options (which are protected by s. 13(1)), this finding applies to pp. 2-4, 5-7, 40-44, the bottom of p. 45 to 46, pp. 48, 64-66, the bottom of p. 114 to p. 126, p. 127, the bottom of p. 128 to p. 129 and pp. 150-169. As contemplated by the orders made below, I have indicated on ICBC's copy of the disputed records which portions of these pages are protected by s. 13(1).

[47] I note here that ICBC disclosed some information in one part of the report (p. 2) that is the same as, or very similar to, information that it withheld on p. 49. I find that s. 13(1) does not apply to this latter portion of the report, on p. 49.

[48] By contrast, the parts of the report that deal individually with the description or evaluation of the benefits and cost implications for the three options for distance-based

pricing found in the report do fall under s. 13(1). I refer here to pp. 15-39, any options mentioned on pp. 40-43 and p. 46, the top of p. 45, pp. 72 to the top of p. 114, any options discussed on p. 115, the bottom of p. 117 to the top of p. 119, the bottom of p. 119 to p. 120, pp. 122-126, 128-129, the top of p. 128, pp. 131-146, the bottom of p. 147 to p. 149 and any options mentioned or discussed on pp. 156-158, 160, 162, 164 and 167-169. These parts of the report lay out alternatives for ICBC to consider, should it implement distance-based-pricing, and implicitly recommend on the best way to implement distance-based pricing. The report also finds that one of the three options is the best strategy. In that sense, all of these parts of the report may be said to give advice on alternatives and also an implicit recommendation that ICBC pick a particular option over the others, if it chooses to implement distance-based pricing at all. Although these parts strike me as containing innocuous information similar in nature to the other parts of the report, I have decided that s. 13(1), strictly speaking, applies to them. This is consistent with what I said at pp. 37-38 of Order 00-08, where I said that recommendations and advice include the laying-out of alternatives or of suggested courses of action and setting out which is preferred or desirable.

4.0 CONCLUSION

[49] As I have found that s. 25 does not require ICBC to disclose the records it has withheld in this case, it is not necessary for me to make an order in respect of s. 25.

[50] For the reasons given above, I make the following orders:

1. Subject to the order in paragraph 2, below, under s. 58(2)(a) of the Act, I require ICBC to give the applicant access to the portions of the records that it withheld under s. 13(1), and

2. Under s. 58(2)(b) of the Act, I confirm the decision of ICBC that it is authorized by s. 13(1) to refuse to disclose the information that is highlighted on the copy of the records provided to ICBC with its copy of this order.

June 14, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

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

Order 01-28

CORRECTION

INSURANCE CORPORATION OF BRITISH COLUMBIA

June 15, 2001

To the parties:

ICBC has drawn to my attention an error in Order 01-28, issued yesterday. As a result of that error, Order 01-28 does not correctly state my reasoning and conclusions in this matter. This supplementary document corrects that error and completes my disposition of the matter. This document is to be read in conjunction with Order 01-28.

In Order 01-28, I incorrectly stated that ICBC had entirely abandoned its reliance on s. 17(1) of the *Freedom of Information and Protection of Privacy Act* ("Act"). That is not correct. ICBC continues to rely on s. 17(1) in relation to the following portions of the disputed records: Figure 3 on p. 10, Figure 5 on p. 11 and accompanying text, pp. 52, 58-60, 62, 63 (collectively, "Crash Data"). It also continues to rely on s. 17(1) in relation to the following material: heading E and Table 8 on p. 74, heading and Table 18 on p. 95, and Table 21 on p. 104 (collectively, "Other Information"). ICBC abandons its reliance on s. 17(1) in relation to the rest of the disputed records. Because I found in Order 01-28 that all of the Other Information was properly withheld under s. 13(1), I need not consider s. 17(1) in relation to that information.

Section 17(1) of the Act reads as follows:

> **Disclosure harmful to the financial or economic interests of a public body**
>
> **17**(1) 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, including the following information:

> (a) trade secrets of a public body or the government of British Columbia;
>
> (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
>
> (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
>
> (e) information about negotiations carried on by or for a public body or the government of British Columbia.

Having noted that it competes with private sector insurers respecting all insurance products other than the mandatory basic third party liability coverage, ICBC says the Crash Data could be used by its competitors to reverse-engineer ICBC's rates. It notes, at para. 24 of its initial submission, that its

> … rates for mandatory and optional coverage are based on frequency and severity data by rate class compiled over 25 years. The same core information is used to determine both mandatory and optional coverage. Frequency and severity data are analysed with respect to premium income, and claims and loss experience, in order to adjust rates. The data is also used to make changes to underlying business assumptions and to determine which insurance products are more profitable than others.

As ICBC puts it, at para. 25 of its initial submission, disclosure of the Crash Data would enable its competitors to

> … determine whether a class of business has favourable loss experience or not (ie. in which premium income exceeds losses). An actuary could determine whether, based on ICBC's premium income and loss experience in private passenger automobile excess liability insurance, that area is a good business risk and worth pursuing. A competitor would be able to identify and evaluate better than average risks in ICBC's excess liability business to pick and choose (ie. take the better-than-average risks while leaving the poorer-than-average risks).

ICBC argues that this use of the Crash Data would give its competitors an unfair competitive advantage and could lead to appropriation of some of its business. It says that use of the Crash Data would "negatively affect" its profitability and could lead to

premium increases for some motorists. It cites Order No. 15-1994, [1994] B.C.I.P.C.D. No. 18, where my predecessor found that disclosure of information to a competitor could reasonably be expected to harm ICBC's financial interests in a similar way. It also relies on Order No. 312-1999, [1999] B.C.I.P.C.D. No. 25, where it was held that ICBC properly refused to give the Insurance Bureau of Canada access to the number of insured vehicles in each class, total premium income in each class and total claims expenses in each class, for each of ICBC's rate classes.

In support of its case here, ICBC relies on an affidavit sworn by Terry Condon, its Vice-President, Southern Interior and formerly Vice-President, Insurance. It also relies on an affidavit sworn by David Hunter, its Manager of Product Research. Both individuals have extensive experience in the motor vehicle insurance industry and in areas related to the s. 17(1) harm issues before me.

First, although the applicant is a journalist, not a competitor's representative, disclosure to him should be treated, in this case, as disclosure to the world at large and therefore to ICBC's competitors. My analysis of the s. 17(1) issue proceeds on that basis.

In light of the value the information would have for a competitor of ICBC, I find that the Crash Data qualifies as commercial information that is reasonably likely to have monetary value, as contemplated by s. 17(1)(b) of the Act. It is not necessary for me to decide whether it is also a trade secret within the meaning of the Act, although I am inclined to think it is not.

The remaining question is whether ICBC has established a reasonable expectation of harm from disclosure of that information. As I noted in Order 00-42, [2000] B.C.I.P.C.D. No. 46 – an order that involved ICBC – the standard set by s. 17(1)

> … is that of a reasonable expectation of harm. The feared harm must not be fanciful, imaginary or contrived and evidence of speculative harm will not satisfy the test, although it is not necessary to establish a certainty of harm. The quality and cogency of the evidence presented must be commensurate with a reasonable person's expectation that disclosure of the requested information could cause the harm specified in s. 17(1).

In light of the affidavit evidence before me, and ICBC's arguments as to how the Crash Data could be used, I accept ICBC's contention that its disclosure could reasonably be expected to harm ICBC's financial interests. Use of the Crash Data to reverse-engineer ICBC's rates would have a direct impact on its competitiveness. (I should say here that it does not matter, in my view, that some of the data relate to the mandatory basic liability coverage offered only by ICBC. As my predecessor said in Order No. 312-1999, the fact that ICBC enjoys a monopoly in that market does not preclude the possibility of harm to ICBC's financial interests. As ICBC has argued here, that information could well be used in ways that affect ICBC's overall profitability, thus causing it harm.) Some of the Crash Data relate to optional coverages and not just the mandatory basic coverage and use of the data to discover ICBC's rates, and other valuable information, would be especially harmful to ICBC.

For the reasons given above, under s. 58(2)(b) of the Act, I confirm ICBC's decision that it is authorized by s. 17(1) of the Act to refuse to disclose the Crash Data to the applicant.

June 15, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia