



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

Order 03-23

INSURANCE CORPORATION OF BRITISH COLUMBIA

James Burrows, Adjudicator
June 4, 2003

Quicklaw Cite: [2003] B.C.I.P.C.D. No. 23
Document URL: <http://www.oipcbc.org/orders/Order03-23.pdf>
Office URL: <http://www.oipcbc.org>
ISSN

Summary: The applicant requested records relating to an investigation conducted by ICBC. He received a tape recording of an interview, but believed that the record had been altered. ICBC conducted an adequate search for records and there was no evidence of tampering.

Key Words: duty to assist – adequate search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 6.

Authorities Considered: B.C.: Order 00-26, [2000] B.C.I.P.D. No. 29.

1.0 INTRODUCTION

[1] In March 2002 the applicant made an access request to the Insurance Corporation of British Columbia (“ICBC”) under the *Freedom of Information and Protection of Privacy Act* (“Act”). The request was for “a recorded audio tape” of an interview between the applicant and ICBC conducted on January 30, 2002. The request arose from an investigation by ICBC into an insurance claim. The tape was created by an ICBC investigator as part of that investigation. It is a recording of an interview between the applicant and the investigator. It is my understanding that the claim is not resolved.

[2] ICBC found the audio tape and released a copy to the applicant on April 3, 2002. The applicant reviewed the tape and believed that it had been altered by ICBC. ICBC provided what it thought was a second copy to the applicant, with the same result.

[3] On June 21, 2002, the applicant requested that this Office review the way in which ICBC searched for a copy of the record. Further, the applicant believed that ICBC

had altered the copy of the record which he received. As mediation by this Office was not successful, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

[4] Before discussing the issues, I should mention here that I have a modest role here. My findings are strictly limited to the two above issues under the Act and should not be construed as expressing any views on the investigation conducted by ICBC or its conclusions.

2.0 ISSUES

[5] These are the issues I must consider here:

1. Did ICBC conduct an adequate search for records as required by s. 6(1) of the Act?
2. Was ICBC's response complete and accurate as required by s. 6(1) of the Act?

[6] Previous orders have established that ICBC bears the burden of proof on both issues.

2.0 DISCUSSION

[7] **3.1 Adequacy of ICBC's Search** – Section 6(1) of the Act reads as follows:

Duty to assist applicants

- 6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

[8] In a number of orders, the Commissioner has dealt with the issue of adequate search for records. The public body must undertake such search efforts as a fair and rational person would find acceptable in all the circumstances. This does not impose a standard of perfection. See, for example, Order 00-26, [2000] B.C.I.P.D. No. 29.

[9] An affidavit sworn by Tom McKinney, an ICBC investigator, establishes that he sent the audio tape to the office of ICBC's Special Investigation Unit ("SIU") on February 14, 2002.

[10] He deposes that he did not have any access to the tape from that time until the access request was made. He also deposes that when the applicant requested the audio tape, the SIU copied it and sent the copy back to him. He did not listen to the copy, but sent it to a Senior Information Officer for ICBC.

[11] An affidavit sworn by David Wedemire, an ICBC Information Officer, establishes that he packaged the audio tape and left it to be picked up by the applicant. The applicant

was not satisfied with the first copy of the tape and ICBC provided him with what it believed to be a second copy of the tape on or before May 24, 2002.

[12] It appears that the second tape ICBC provided to the applicant was actually the original tape recording, not a copy as ICBC intended. A second affidavit sworn by Tom McKinney establishes that ICBC can no longer find a copy of the audio tape and, from a photocopy of the actual tape cassette and envelope provided by the applicant in his submission, Tom McKinney has deposed that he “strongly suspects” that the original tape was provided to the applicant in error.

[13] The applicant does not allege that the copies of the tape provided to him are the wrong tape. He does not say they are tapes of interviews of other individuals or tapes recording other information. He believes, again, that ICBC has somehow doctored the tape of his interview. It is clear on the evidence that ICBC’s search for records was adequate and I find that ICBC has fulfilled its s. 6(1) duty to conduct an adequate search for records.

[14] **3.2 Complete and Accurate Response** – The second issue is whether or not ICBC provided an accurate and complete response to the applicant. Upon hearing the taped interview, the applicant was of the opinion that the copy that he had received from ICBC was not an accurate recording of the original interview. The applicant stated in his submissions that a particular phrase which the investigator had used during the interview was not on the recording.

[15] I have received an audio tape from the applicant. This is the second version ICBC sent the applicant, which it now believes to be the original tape. Based on the evidence of the ICBC investigator and my review of the audio tape provided to me, I find that ICBC did give the original audio tape to the applicant in error and that this is the tape that the applicant provided to me.

[16] The cassette is a Maxell microcassette MC-60UR numbered M91026. It is the type of tape which would be used in a Dictaphone, a small tape recorder or some similar device. I have physically examined the cassette and I find no signs of its being opened or otherwise tampered with. I have also examined the portion of the actual tape around the section where the altering of the tape is alleged to have occurred and I can find no evidence of splicing or other physical tampering.

[17] Further, in reviewing the audio tape, I noted that the background noise is relatively constant and that does not change throughout the section of the discussion that was transcribed. I have listened to the tape in its entirety and, based on the consistent background noises and the conversation throughout the tape, am satisfied there is no evidence that the tape has been altered.

[18] As noted earlier, the applicant has stressed in his submissions that a particular phrase that he believes the investigator used during the interview is not heard on the tape. This is the basis for his conviction that the tape was altered. The applicant believes that the investigator used the phrase “you took car” during the interview and the words “you

took” have been edited out of the tape. The investigator has deposed that he does not recall the details of the interview, but it is not his practice to make a direct accusation during an interview. Rather, he would frame the phrase in the form of a question.

[19] The applicant identified the specific passage of the interview which he believes was altered. The applicant provided his own transcription of this section in his reply submission. I also have had that portion of the tape transcribed and I have reviewed both transcriptions. The transcription done by this Office is provided below:

- 1) Investigator: So you, so you have financial problems? You owe money on this car?
- 2) Applicant: Yes.
- 3) Investigator: The car has got 350,000 kilometres on it?
- 4) Applicant: Yes.
- 5) Investigator: It's not road worthy.
- 6) Applicant: Yes.
- 7) Investigator: It's can't, it's un-drivable.
- 8) Applicant: Yes. (pause) Car, it's, uh, no, that statement not incorr... I have to correct very quickly here, no...
- 9) Investigator: ... I don't, I, sir, I don't accept the fact this car was stolen.
- 10) Applicant: Who do that? No, that statement incorrect too.
- 11) Investigator: It's not incorrect, it's my statement of my belief.
- 12) Applicant: Who took that vehicle, do you know fact?
- 13) Investigator: No.
- 14) Applicant: So I don't take, I don't take, it's absolute very, it's not investigate, I believe that this particular, now, uh, it is, meeting with you, that statement incorrect. My intelligent point of view ...
- 15) Investigator: You disagree with me?
- 16) Applicant: Yes.
- 17) Investigator: Okay.
- 18) Applicant: Reason is ...

- 19) Investigator: Did you take the car?
- 20) Applicant: No.
- 21) Investigator: Did you hire someone to take the car?
- 22) Applicant: No, I, I ...
- 23) Investigator: Why should I believe that?

[20] I believe that the above transcription by this Office is an accurate representation of the portion of the conversation between the applicant and the investigator which is at issue. This transcription differs only marginally from one that the applicant provided in his reply submission. The major point is that the applicant clearly believes that it is the investigator speaking at line 8. However, it is clearly the applicant who speaks the word "car" and then continues with the phrase "it's, uh, no, that statement not incorr..., I have to correct very quickly here" (line 8). It is clear from the tape that, just prior to the applicant replying with the word "car," the applicant has become upset by the line of questioning of the investigator and there is a natural pause before the applicant begins to speak again. I do not believe that this pause was the result of editing the tape.

[21] Based on my examination and review of the tape, as well as the evidence provided to me, I find that ICBC provided the applicant with an accurate and complete response as required under s. 6(1). In fact, as I stated before, I believe that ICBC provided the applicant with the original audio tape, not a copy.

4.0 CONCLUSION

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

1. Under s. 58 of the Act, I confirm that ICBC has performed its duty under s. 6(1) to assist the applicant by conducting an adequate search for records; and
2. Under s. 58 of the Act, I confirm that ICBC has performed its duty under s. 6(1) to assist the applicant by responding accurately and completely to the applicant's request.

June 4, 2003

ORIGINAL SIGNED BY

James Burrows,
Adjudicator