



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER

British Columbia  
Canada

May 12, 2000

Dear

**Complaint Under the *Freedom of Information and Protection of Privacy Act*  
Regarding ICBC's Collection of Personal Information – OIPC File 7524**

This letter responds to your complaint, dated September 9, 1998, that collection and disclosure by the Insurance Corporation of British Columbia (“ICBC”) of your weight, in connection with your licensing as a driver under the *Motor Vehicle Act*, is contrary to the provisions of the *Freedom of Information and Protection of Privacy Act* (“Act”).

After preliminary consideration by this office - including consultations with you, ICBC and other public bodies - I delegated to Philip Bryden, a Vancouver lawyer, the powers, duties and functions necessary to inquire into your complaint under the Act and to make recommendations to me as to its disposition. That delegation was effected, under s. 49 of the Act, by instrument dated February 4, 2000.

I have received Philip Bryden's report and recommendations, dated April 26, 2000. I have reviewed them and the material on which they are based. As recommended by Philip Bryden, your complaint is dismissed for the reasons he gives.

Allow me to add that I concur wholeheartedly with the views expressed in the conclusion to Philip Bryden's report.

Sincerely,

David Loukidelis  
Information and Privacy Commissioner  
for British Columbia

cc: Mark Francis, Insurance Corporation of BC  
B. Anderson, Chief Constable, Oak Bay Police Department  
Melissa Clark, Vancouver Police Department  
Clayton Pecknold, Victoria Police Department-for BC Assoc. of Chiefs of Police  
Philip Bryden, University of BC

**RECOMMENDATIONS TO THE INFORMATION AND PRIVACY  
COMMISSIONER FOR BRITISH COLUMBIA REGARDING COLLECTION  
AND DISCLOSURE OF PERSONAL INFORMATION BY THE INSURANCE  
CORPORATION OF BRITISH COLUMBIA**

**April 26, 2000**

**Philip Bryden**

**OIPC Complaint File 7524**

**1.0 INTRODUCTION**

On February 4, 2000, Information and Privacy Commissioner David Loukidelis delegated to me certain powers to prepare an independent assessment of the merits of the various submissions made in the matter identified as OIPC Complaint File 7524 and to make recommendations to him concerning the order he should make in relation to this file under section 58 of the *Freedom of Information and Protection of Privacy Act* (the “*FOIPPA*”). The file concerns a letter of complaint dated September 9, 1998, from Mr. P. L. (the “Complainant”), concerning his request to the Registrar of Drivers and Vehicles of the Insurance Corporation of British Columbia (“ICBC”) that his weight not be displayed on his driver’s licence. The Complainant alleges that by requiring applicants for driver’s licences to provide information concerning their weight, ICBC is collecting personal information in a manner that is inconsistent with section 26 of the *FOIPPA*. The Complainant also alleges that in displaying the information concerning the licence applicant’s weight on the license itself, ICBC is disclosing personal information in a manner that is inconsistent with section 33 of the *FOIPPA*.

**2.0 SUMMARY OF RECOMMENDATIONS**

My recommendation to the Commissioner is that both aspects of the complaint be dismissed and that the Commissioner make an order to this effect. In brief, with respect to the first aspect of the complaint, I am of the view that ICBC is authorized by section 25 of the *Motor Vehicle Act* to collect the personal information that is sought in this situation, and that it has therefore satisfied the requirements of section 26(a) of the *FOIPPA*. With respect to the second aspect of the complaint, I am of the view that ICBC does not “disclose” personal information for purposes of section 33 of the *FOIPPA* when it prints that information on the back of a driver’s licence and gives the licence to the person who applied for it. A more elaborate statement of the reasons for my recommendation follows.

### 3.0 RELEVANT LEGISLATION

The following provisions of the *FOIPPA* were referred to in the submissions and are relevant to my analysis of this case:

#### **Purpose for which personal information may be collected**

26. No personal information may be collected by or for a public body unless
- (a) the collection of that information is expressly authorized by or under an Act,
  - (b) that information is collected for the purposes of law enforcement, or
  - (c) that information relates directly to and is necessary for an operating program or activity of the public body.

#### **Disclosure of personal information**

33. A public body may disclose personal information only
- ...
- (c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34),
  - (d) for the purpose of complying with an enactment of, or with a treaty, arrangement or agreement made under an enactment of, British Columbia or Canada,
- ...
- (n) to a public body or a law enforcement agency in Canada to assist in an investigation
    - (i) undertaken with a view to a law enforcement proceeding, or
    - (ii) from which a law enforcement proceeding is likely to result,
- ...

The following provisions of the *Motor Vehicle Act* are also relevant:

- 25(1) The applicant for a driver's licence and for a driver's certificate must sign an application in the form required by the Insurance Corporation of British Columbia, complete an evaluation in the form required by the superintendent and deliver the application and the completed evaluation form to
- (a) the corporation,
  - (b) a government agent, or

- (c) a person authorized in writing by the corporation for the purposes of this section,

accompanied by the payment of the prescribed fee and insurance premium for the driver's certificate.

- (2.1) For the purposes of making an application for a driver's licence under subsection (1), the Insurance Corporation of British Columbia may require the applicant for a driver's licence and for a driver's certificate to provide information and a signature in person, and in that event
  - (a) the corporation must enter the information electronically into a database for storage,
  - (b) the corporation must reproduce the information that has been stored in the database in a record that is in paper format and must give that paper record to the applicant to verify the accuracy of the entered information,
  - (c) if the applicant is satisfied that the information in the record is accurate, the applicant must
    - (i) sign the paper record, and
    - (ii) supply a signature by a means required by the corporation that allows the corporation to store the signature electronically in a database,
  - (d) a signature provided under paragraph (c) is evidence that the applicant who provided the signature also provided the information that is stored under paragraph (a), and
  - (e) a signature stored under this section may be used only
    - (i) as evidence under paragraph (d),
    - (ii) for the purpose of applying it to the driver's licence of the applicant, and
    - (iii) to compare signatures under sections 90.4 (3) and 95 (3).
- (3) For the purpose of determining an applicant's driving experience, driving skills, qualifications, fitness and ability to drive and operate any category of motor vehicle designated for that class of driver's licence for which the application is made, the applicant must
  - (a) submit to one or more, as the Insurance Corporation of British Columbia may specify, of the following: a knowledge test; a road test; a road signs and signals test,

- (b) submit to one or more, as the superintendent may specify, of the following: a vision test; medical examinations; other examinations or tests, other than as set out in paragraph (a),
  - (b.1) provide the corporation with information required to measure the applicant's driving experience, driving skills and qualifications,
  - (c) provide the superintendent with other information he or she considers necessary to allow the superintendent to carry out his or her powers, duties and functions,
  - (d) submit to having his or her picture taken, and
  - (e) if required by or on behalf of the corporation, identify himself or herself to the corporation's satisfaction.
- (4) If the applicant for a driver's licence has at any time before making the application held a driver's licence issued under this Act or in another jurisdiction, the applicant must with the application surrender the last driver's licence or duplicate of it held by him or her, unless the Insurance Corporation of British Columbia on cause shown to the corporation's satisfaction dispenses with its production.
- (5) At the same time that he or she has a driver's licence issued under this Act, a person must not have a driver's license issued by another jurisdiction or have another driver's licence previously issued under this Act.
- ...
- (7) On receipt, in the respective forms required under subsection (1), of the application and the evaluation, and on being satisfied of the truth of the facts stated in the application, and that the prescribed fees and insurance premium have been paid, and, subject to subsection (9), on being satisfied as to the driving experience, driving skills, qualifications, fitness and ability of the applicant to drive and operate motor vehicles of the relevant category, the corporation must cause to be issued to the applicant a numbered driver's licence in the form established by the corporation authorizing the applicant to drive or operate a motor vehicle of the category designated for the class of licence applied for and a certificate of insurance.
- (9) In issuing any driver's licence or driver's certificate, the corporation, for those aspects of fitness and ability examined, tested or reviewed by the superintendent, must abide by the superintendent's instructions.
- (13) The Insurance Corporation of British Columbia must ensure that a person's driver's licence reflects any restrictions and conditions imposed in respect of that licence by means of the appropriate statement in, endorsement on or attachment to that licence, in accordance with the requirements of the superintendent.

- (15) A person who violates a requirement, restriction or condition prescribed under this section in respect of the person's driver's licence or who violates a restriction or condition stated in, endorsed on or attached to a driver's licence issued to the person under this section commits an offence.

33(1) Every person, except

- (a) person driving or operating a motor vehicle exempted under section 2 (5) or section 8 or 10, or
- (b) a person driving or operating a motor vehicle of a fire department of a municipality,

must have his or her driver's licence ... in his or her possession at all times while driving or operating that motor vehicle on a highway, and must produce the licence . . . for inspection on demand of a peace officer.

- (2) If a driver's licence issued to a person under this Act is lost, mutilated or destroyed, he or she may obtain a duplicate licence on application in the form required by the Insurance Corporation of British Columbia and payment of the prescribed fee if he or she

- (a) surrenders to the corporation his or her existing licence if it is mutilated but not lost or destroyed, and
- (b) complies with the requirements of section 25 (3) (d) and (e).

(3) A person who has obtained a duplicate licence under subsection (2)

- (a) must, on finding that the licence in place of which the duplicate was issued was not lost or destroyed, or on finding or recovering the licence in place of which the duplicate was issued, immediately surrender the licence in place of which the duplicate licence was issued to the Insurance Corporation of British Columbia, and
- (b) must not by conduct, words or otherwise attempt to represent that the licence in place of which the duplicate was issued is his or her subsisting licence.

70(1) A person commits an offence if the person, while driving, operating or in charge of a motor vehicle on a highway does any of the following:

- (a) uses or is in possession of a driver's licence . . . belonging to another person, . . . or a fictitious or invalid licence . . . purporting to be issued or given under this Act;
- (b) refuses or fails to produce a subsisting driver's licence, . . . when requested by a peace officer or constable to do so, or refuses or fails to permit it to be taken in hand for the purpose of inspection by the peace officer or constable.

- (2) A person who contravenes subsection (1) (a) commits an offence and is liable to a fine of not less than \$100 and not more than \$2 000 or to imprisonment for not less than 7 days and not more than 6 months, or to both.

#### 4.0 SUBMISSIONS OF THE PARTIES

The Complainant's initial letter of complaint took the position that, while sections 25(2.1) and 25(3) of the *Motor Vehicle Act* authorized the collection of information, they did so only for the purpose of making an application for a driver's licence (section 25(2.1)) and for the purpose of determining the applicant's fitness or ability to drive (section 25(3)). The Complainant argued that the applicant's weight is not relevant for either of these purposes, at least as a general proposition. Accordingly, he submitted that the information at issue was not collected in accordance with section 26(a) of the *FOIPPA*. The Complainant also took the position that the information was not collected for purposes of law enforcement and therefore was not collected in accordance with section 26(b) of the *FOIPPA*. In his words:

In spite of the claim that the police require this information to assist them in the prevention of driver's license fraud I am hard pressed to come up with the pragmatic scenario in which this would be true. The licenses have photos on them, of what value is a guesstimate of the person's weight?

Finally, the Complainant noted that there had been no indication from the ICBC officials to whom he had spoken that the information in question related to and was necessary for an operating program or activity, and therefore section 26(c) was inapplicable.

With respect to the second branch of the complaint, the Complainant's initial letter of complaint stated the position relatively succinctly:

Driver's licenses are used as a common means of identification by most public bodies and the majority of private sector companies. I can find no grounds for the disclosure of my weight under section 33 of the Act.

The materials provided to me set out a number of pieces of correspondence to and from Mr. Michael Skinner of the Office of the Information and Privacy Commissioner, which I take it represented information that was generated with an eye to the resolution of the complaint on a mutually satisfactory basis without the necessity of an inquiry. While I have reviewed all of this material and found it informative, it seems to me that the clearest articulation of the final positions of the parties is found in the Complainant's letter to Mr. Skinner dated December 2, 1999 and in the letter from Mr. David Clancy, of ICBC's Corporate Legal Department, to Mr. Skinner dated January 24, 2000.

The Complainant's letter of December 2, 1999 concentrated on the collection aspect of the complaint rather than the disclosure aspect. In this letter, the Complainant emphasized the social stigmatization of people because of their height and weight and

argued that this magnifies the invasion of privacy that is associated with the requirement that applicants for drivers licences provide information about their weight that will be recorded on the license itself. He criticized the argument, that section 25(2.1) of the *Motor Vehicle Act* authorizes the collection of this information, on the basis that ICBC's position was overly simplistic. Since this represents, in my view, the key element of the Complainant's submission on this point, it is worth setting it out in detail:

... This section provides for four things

- that ICBC may require that application be made in person,
- that ICBC must verify the accuracy of the information and signature provided by the applicant,
- that ICBC must store the information and signature electronically, and
- it sets out the uses that can be made of the stored version of the applicant's signature.

Even if one could stretch the language of this section to include the view that it provides some authority to collect information, that collection is limited to information that is '[f]or the purpose of making an application for a driver's license.'

Information that would reasonably be required for the purpose of making an application for a license would be information that such as positive identification of the applicant, the applicant's place of residence, his or her age, and information about any condition that would restrict the applicant's ability to operate a motor vehicle. This may not be an exhaustive list but I don't believe that an applicant's weight, height, sex or hair colour has any relevance to making an application for a driver's license, nor has ICBC shown the relevance. Therefore there is no authority to collect this information in the *Motor Vehicle Act*.

The Complainant then addressed the issue of whether the information in question could legitimately be collected for purposes of law enforcement pursuant to section 26(b) of the *FOIPPA*. He took the position that information about a licensee's weight was not necessary for police officers to determine whether the licence being presented by an operator of a motor vehicle actually belonged to that individual. He then observed that an alternative explanation for the presence of information about a licensee's weight on his or her driver's license was to facilitate the use of the driver's licence by the police as a universal identity card. The Complainant took the position that the collection of information for this purpose was not countenanced by the *FOIPPA*.

Mr. Clancy's submission on behalf of ICBC, dated January 24, 2000, addressed both aspects of the complaint. With respect to the collection of information, ICBC argued that section 25 of the *Motor Vehicle Act*, and in particular sections 25(1) and 25(2.1), give ICBC the authority it needs to collect the information and that the requirements of section 26(a) of the *FOIPPA* are satisfied. After quoting these sections, the letter stated:



This broad legislative power allows ICBC to determine the form of application and to require information of an applicant. The legislation does not require that the form of application or information collected be limited solely to information required in order to assess an individual's ability to drive a motor vehicle, and ICBC submits that the collection of identifying characteristics to assist in the prevention of fraudulent use of a driver's licence is reasonably connected to the application process.

ICBC also submitted that the collection of weight information is necessary for law enforcement purposes, and therefore meets the requirements of section 26(b) of the *FOIPPA*. ICBC relied on a number of statements by police officials that are in the materials submitted to me and to which I will refer later.

In contrast to the Complainant's submissions, the bulk of ICBC's final submission was devoted to the questions of whether ICBC "discloses" information for *FOIPPA* purposes by printing it on a driver's licence and, if so, whether that disclosure is authorized by the *FOIPPA*. ICBC's position was that printing personal information on a driver's licence that is then returned to the licensee does not constitute a disclosure of personal information, since the individual licensee retains control over when and to whom the information on the licence will be provided. According to ICBC, the only time a licensee is actually required by law to produce their driver's license is to identify themselves to a peace officer when they are driving, and this disclosure, pursuant to section 33 of the *Motor Vehicle Act*, if it can be characterized as having been made by ICBC, is authorized by sections 33(c), 33(d) and 33(n) of the *FOIPPA*.

In the alternative, ICBC argued that if printing the licensee's weight on the driver's licence does constitute disclosure, that disclosure is reasonably necessary in the circumstances. Once again, the ICBC submission relied on information submitted by various policing organizations and noted:

In particular, the printing of identifying factors including weight on the license is cited as useful in the detection of fraudulent use of a driver's licence, especially in circumstances where an officer may be unable to access central information systems.

Although the ICBC submission does not say so expressly, I assume that this argument was designed to support a position that the disclosure was made only for the purpose for which the information was obtained or compiled, and was thus authorized by section 33(c) of the *FOIPPA*, or that the disclosure was made for a use consistent with that purpose and therefore was authorized by section 33(c) in combination with section 34 of the *FOIPPA*.

I have made reference earlier to a number of statements by police officials that were made in support of the position that ICBC ought to be entitled to print the weight of the driver and other identifying information on the driver's licence. In my view it is unnecessary to provide an exhaustive summary of these statements, since I do not believe

it is necessary for me to address the issue of whether the information in question is collected for purposes of law enforcement within the meaning of section 33(b) of the *FOIPPA*. Nevertheless, it is useful to make two observations about these statements.

The first is that the police statements, in my view, support the proposition that the existence of multiple descriptors, including weight, assists in establishing whether a person who presents a driver's licence to police officers for identification purposes is or is not the person to whom the driver's licence belongs. In particular, I found the memo from Sergeant Novakowski of the Abbotsford Police Department, dated August 21, 1999, and the memo from Neil Hogg of the Courtenay RCMP, date stamped August 9, 1999, persuasive on this point. I am also convinced by the observation made by Chief Constable Andersen of the Oak Bay Police Department in his letter, dated April 6, 1999, to the effect that even though an individual's weight may vary, weight is not unique among identifying characteristics in this respect and it does not lose its utility as an identifying characteristic because of it. In Chief Constable Andersen's words:

It is true that the weight of an individual may vary between licence renewals, however the same can be said of facial hair, hair loss and colour and in fact height may vary significantly in the case of still growing adolescents. All of these factors assist the police in determining true identity, which can really only be established through the use of biometric identifiers.

That observation having been made, it does not seem to me that the police material demonstrates that the weight information is essential for identification purposes in the sense that the system could not function without the collection of this information. Indeed, as far as I can tell, the information was not adduced with that purpose in mind, but simply to make the point that the collection of the information has a legitimate law enforcement purpose in that it is useful for verifying identity in at least some situations.

The second point is that the police information indicates that the identifying information printed on driver's licences is used for a variety of law enforcement purposes, many of which are not connected with enforcement of the *Motor Vehicle Act*. The letter dated September 8, 1999, from Ms. Melissa Clarke, Information and Privacy Coordinator for the Vancouver Police Department, illustrates this point. Some of the comments from police officers referred to in Ms. Clarke's letter indicated that the weight information was of little or no value; some indicated that it was of some value in relation to enforcement to motor vehicle offences (though it is interesting to note that that members of the Vancouver Police Traffic Section are among those who do not make use of the weight information on driver's licences); and some of the comments most supportive of the retention of the weight indicator were from the Drug Squad, the Vice/Gaming Unit and the Financial Crime Unit.

Finally, I should note that the material supplied to me included two reporting letters from Mr. Skinner to the Complainant, the first dated January 21, 1999 and the second dated June 30, 1999. In these letters Mr. Skinner reveals his research relating to comparable practices in other jurisdictions and makes some recommendations with respect to whether or not the continued collection of weight information for driver's licences is a justifiable

practice. I would have thought that it was relatively unusual for such reporting letters to be introduced into evidence in an inquiry, but I assume that the parties have agreed to this procedure. I found Mr. Skinner's research and conclusions interesting and have taken account of this material in my deliberations. With the greatest of respect to Mr. Skinner, however, it seems to me that the task of making recommendations with respect to whether or not the continued collection of weight information is appropriate for purposes of assisting in the possible settlement of this complaint is somewhat different than my task on this inquiry.

As I understand it, my role is to make recommendations to the Information and Privacy Commissioner with respect to whether or not ICBC's practices meet the obligations imposed on it by the *FOIPPA*. As the analysis I conduct below reveals, I believe that ICBC has a certain amount of discretion in deciding how much personal information to collect and record in meeting its obligations under the *FOIPPA* and the *Motor Vehicle Act*. If this is so, it might also be the case that it would be preferable from the perspective of the protection of privacy if ICBC were to decide to cease collecting weight information (or other forms of personal information) and recording that information on driver's licences. That is a different matter than the issue I have been asked to address, which is whether ICBC is in breach of its legal obligations under the *FOIPPA* when it collects an applicant's weight and records that information on his or her driver's licence.

## 5.0 ANALYSIS

As I stated at the outset of my reasons, my recommendation is that both aspects of the complaint be dismissed. It is, however, convenient to analyze each ground separately.

### 5.1 Unauthorized Collection of Personal Information

There is no dispute that the information in question is "personal information" within the meaning of that term given by the *FOIPPA* and that ICBC is a "public body" governed by the legislation. Thus, it is not disputed that ICBC may only collect the information if it does so for one of the purposes identified in section 26 of the *FOIPPA*.

The parties did not make reference to any decisions interpreting section 26 of the *FOIPPA*. This is not surprising since there appears to be a dearth of relevant authority, especially with respect to the interpretation of section 26(a). The only Commissioner's decision interpreting section 26 that I have been able to discover is *Inquiry re: A decision by the Workers' Compensation Board (WCB) to withhold personal information relating to an investigation*, Order No. 194-1997, which is of little assistance since it dealt with section 26(c) rather than section 26(a). Likewise, discussion of section 26 in the Information and Privacy Commissioner's Investigation Reports tends to focus on section 26(c) rather than section 26(a). The one exception I have been able to discover is Investigation Report P98-012, *Video surveillance by public bodies: a discussion*, in which the following observations are made about section 26:

Section 26 of the Act recognizes a public body's need to collect personal information in order to carry out its mandate and to provide services, but restricts

that collection to a defined set of circumstances. Section 26 also acknowledges that public bodies which engage in law enforcement activities need more flexibility in the scope of their collection of personal information. ... When a public body considers implementing a video surveillance system, it should review the requirements of section 26. Is the surveillance expressly authorized by legislation? Is the surveillance conducted for law enforcement purposes? Is the surveillance directly related to and necessary for an operating program or activity? If the answer to these questions is ‘no,’ then the surveillance is likely not justified.

Section 26 of the Act reads as follows:

26. No personal information may be collected by or for a public body unless:

- (a) the collection of that information is expressly authorized by or under an Act\*,
- (b) that information is collected for the purposes of law enforcement, or
- (c) that information relates directly to and is necessary for an operating program or activity of the public body.

\* Note: the legislation in question may expressly authorize the collection of personal information. Usually, however, the legislation will only give authority for a particular program, with only implied authority for the collection of personal information.

The note I have just referred to is consistent with the discussion of section 26(a) found at heading D.3.1 of the Information, Science and Technology Agency’s *Policy and Procedures Manual*, which discusses the phrase “expressly authorized by or under an Act” in section 26(a) in the following terms:

The legislation in question may authorize the collection of certain elements of personal information. Usually, however, the legislation will only give authority for the program. Public bodies must then determine the exact elements of personal information they need to administer the program during the design of forms, questionnaires, or other collection instruments.

**Examples: authority for collecting specific personal information**

- Where the holder of a driver’s licence issued under the *Motor Vehicle Act* changes her/his name (due to marriage or otherwise), subsection 27(2) of that Act requires the driver to notify the superintendent in writing of the former name and the new name.
- Section 3 of the *Vital Statistics Act* requires that all births in British Columbia be registered in accordance with the form prescribed by regulation which, under Section 2, requires details on the date and place of birth and the given and surnames of the parents.

**Examples: authority for a program for which personal information is needed**

- Section 3 of the *Shelter Aid for Elderly Renters (SAFER) Act* authorizes the payment of shelter aid to a person who is entitled to aid according to eligibility criteria established by Section 4 of the SAFER Regulation. In order to determine an applicant's eligibility for aid, the ministry responsible for housing needs information on the applicant's age, residential status and income. The ministry determines the exact details needed from an applicant to verify eligibility.
- Section 10 of the *Insurance (Motor Vehicle) Act* gives the Insurance Corporation of British Columbia (ICBC) the authority to require an insured driver to provide the necessary reports and statements to make or approve a claim. ICBC determines the specific personal information it needs for those reports and statements.

I realize that the interpretation of section 26(a) found in the *Policy and Procedures Manual* is not authoritative. At the same time, I note that in the past the Information and Privacy Commissioner has found it to be of assistance, especially in the absence of more authoritative guidance. See, for example, *Inquiry re: Ministry of Finance and Corporate Relations/Public Service Employee Relations Commission*, Order No. 1-1994.

It seems to me that this general approach to the interpretation of section 26(a) is adopted by both ICBC and (albeit grudgingly) the Complainant. In other words, both ICBC and the Complainant appear to accept the proposition that section 25(2.1) of the *Motor Vehicle Act* constitutes express authorization for the collection of some kinds of personal information within the meaning of section 26(a) of the *FOIPPA*, even though section 25(2.1) of the *Motor Vehicle Act* makes no specific mention of what personal information ICBC is entitled to collect under this authority.

I should observe that this is not the only possible approach to the interpretation of section 26(a) of the *FOIPPA*. Indeed, there have been a number of decisions adopting a more restrictive interpretation of the analogous provision of the Ontario *Freedom of Information and Protection of Privacy Act*, section 38(2), which reads as follows:

No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

For example, in Order P-867, *Re Ministry of Health* (February 17, 1996), Adjudicator Fineberg made the following observations about the interpretation of the words "expressly authorized by statute":

In Compliance Investigation Report I90-29P, the following comments were made about the interpretation of the phrase 'expressly authorized by statute' as found in section 38(2) of the Act:

The phrase ‘expressly authorized by statute’ in subsection 38(2) of the Act requires either that specific types of personal information collected be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute, i.e., in a form or in the text of the regulation.

In Order M-292 I applied this interpretation to the phrase ‘expressly authorizes’ as it is found in section 14(1)(d) of the Municipal Freedom of Information and Protection of Privacy Act, the equivalent of section 21(1)(d) of the provincial Act. I also adopt this approach in the present case.

This strict interpretation is consistent with one of the fundamental purposes of the Act, namely to protect the privacy of individuals with respect to personal information about themselves held by institutions ... .

If this approach were to be adopted to the interpretation of section 26(a) of the British Columbia *FOIPPA*, the requirements of section 26(a) would only be met if the specific types of personal information to be collected were set out in the statute itself or in delegated legislation made pursuant to the statute. With respect, however, I prefer the interpretative approach to section 26(a) set out in the British Columbia materials described above and proposed by the parties themselves. I do so for the following reasons.

First, it seems to me that a literal approach to the words “expressly authorized by or under an Act” in section 26(a) is capable of supporting the broader interpretation I prefer. On this view, all the Legislature needs to do to satisfy the words “expressly authorized by ... an Act”, is pass legislation that explicitly authorizes the collection of personal information it does not have to say explicitly what kinds of personal information are to be collected. Likewise, all the Legislature needs to do to satisfy the words “expressly authorized ... under an Act” is to pass legislation creating a program under which, by implication, personal information would have to be collected. From the perspective of textual analysis it is significant, in my view, that the words “under an Act” which appear in the British Columbia legislation are not present in the Ontario legislation.

Second, I am of the view that this approach is more consistent with a realistic approach to legislative drafting, whereby details about what types of personal information need to be collected in order to meet the needs of a program would be left to those implementing the program, and would be subject to modification on an ongoing basis without the need for legislative or Cabinet approval. I recognize that there will be times when the Legislature wants to explicitly require persons to provide certain specific types of personal information – for example, the requirement found in section 25(3)(d) of the *Motor Vehicle Act* that an applicant for a driver’s licence submit to having his or her picture taken – but it seems to me that it is unreasonable to expect this degree of legislative attention to detail in every instance in which authority to collect personal information is needed to implement a statutory scheme.

Finally, it is by no means obvious to me that the restrictive interpretation of section 26(a) that would flow from an adoption of the Ontario approach is needed to serve the interests of the protection of privacy. It seems to me that the key protection offered by section 26 is that the collection of personal information be restricted to information that is reasonably related to the legitimate governmental purposes outlined in the section, and that it is not necessary to artificially restrict section 26(a) to the collection of specific types of information identified explicitly in legislation or delegated legislation.

For these reasons, therefore, I am prepared to accept the approach to section 26(a) put forward by the parties, which is that the personal information at issue can legitimately be collected by ICBC as long as it is a type of information that falls within the scope of the authority to collect information found in section 25(2.1) of the *Motor Vehicle Act*. Where ICBC and the Complainant appear to part company is with respect to the conditions that are placed on the collection of personal information by section 25(2.1) of the *Motor Vehicle Act* itself.

The Complainant places heavy reliance on the opening words of the section, which are:

**25(2.1) For the purposes of making an application for a driver's licence**  
under subsection (1), the Insurance Corporation of British Columbia  
may require the applicant for a driver's licence and for a driver's  
certificate to provide information and a signature in person ... .  
[emphasis added]

In part of the passage from his letter of December 2, 1999 quoted above, the Complainant took the position that these qualifying words restrict ICBC's collection of personal information in the following manner:

Information that would reasonably be required for the purpose of making an application for a license would be information that such as positive identification of the applicant, the applicant's place of residence, his or her age, and information about any condition that would restrict the applicant's ability to operate a motor vehicle. This may not be an exhaustive list but I don't believe that an applicant's weight, height, sex or hair colour has any relevance to making an application for a driver's license, nor has ICBC shown the relevance.

As I understand ICBC's submissions, ICBC does not object to being restricted to the collection of personal information that is undertaken for the purpose of enabling a person to make an application for a driver's licence. Its view, as expressed in part of the passage from Mr. Clancy's letter dated January 24, 2000 quoted above, is that "... the collection of identifying characteristics to assist in the prevention of fraudulent use of a driver's licence is reasonably connected to the application process."

With all due respect to the Complainant, I agree with ICBC's submission on this point. The Complainant appears to draw a distinction between the information that is required to make a positive identification of an applicant for a driver's license at the time of an initial licence application, and information that might be used to identify an individual

presenting a licence at some later stage when there is a doubt about whether an individual who relies on a driver's licence to demonstrate that he or she has legal permission to drive a motor vehicle is the person to whom that licence was issued. It seems to me that the Complainant's position overlooks the purpose of the licence document itself. If ICBC only needed a positive identification of an individual at the time a person applied for a driver's licence, it would simply collect that information and store it in its information banks. The point of giving a successful applicant a licence document is to enable that individual to demonstrate at some later date that he or she has been authorized to drive. For the licensing system to work effectively, it is not enough for ICBC itself to have information that demonstrates that a particular individual is authorized to drive a motor vehicle. The licence document itself must contain identifying information that can be used to verify that the person who is carrying the licence document while driving a vehicle is the person to whom that licence was issued.

In my opinion, this view of the *Motor Vehicle Act's* licensing scheme is confirmed by a number of the subsections of section 25 of the *Act* that I quoted above. Section 25(4) obliges an applicant for a driver's licence to surrender any licence issued from another jurisdiction or any previous or duplicate licence held by the applicant. Section 25(5) is designed to prevent an individual from holding more than one driver's licence at the same time. Section 25(13) obliges ICBC to ensure that a person's driver's licence reflects any restrictions or conditions imposed on the licence holder and section 25(15) makes it an offence to violate a restriction or condition stated in, endorsed on or attached to a British Columbia driver's licence. It seems to me that these provisions, all contained in the section of the *Motor Vehicle Act* dealing with licence applications, are evidence of an intention on the part of the British Columbia Legislature to make the driver's licence a unique document, to ensure that it can be used by law enforcement officials to determine that a person driving a motor vehicle is the person to whom the licence was issued and that the person is respecting the conditions set out on the licence document itself. This view of the role of the licence document in the scheme of the legislation is reinforced by the provisions of section 33 requiring a person to have his or her driver's licence in his or her possession at all times while driving a motor vehicle on a highway, to present the driver's licence for inspection on demand of a peace officer, and to surrender any duplicate licence document. It is further reinforced by the offence provisions of section 70, which make it an offence to use a driver's licence belonging to another person or to use a fictitious or invalid licence, or to refuse to or fail to produce a driver's licence when requested by a peace officer.

Thus, the collection of personal information from an applicant in order to put that information on a licence document that can be used to identify that individual as a person authorized to drive a motor vehicle is, in my view, a type of information collection contemplated by section 25(2.1) of the *Motor Vehicle Act*. For purposes of section 26(a) of the *FOIPPA*, therefore, the issue is whether information about the applicant's weight would, in the Complainant's words, "reasonably be required" for that purpose. It seems to me that the answer to that question is yes.



I say this for two reasons. The first is that, as the information supplied by the police indicates, the existence of a number of identifying characteristics recorded on the licence document is likely to make the document more reliable for identification purposes than a single identifier such as an address or even a photograph. In my view, this is true even though the identifying characteristic (whether it be weight or hair colour or appearance in a photograph) is subject to variation. The second is that recording weight, as opposed to other (possibly more reliable) physical characteristics such as fingerprints or retinal images, is a relatively non-intrusive manner of collecting identifying information from the point of view of the protection of privacy. I accept the Complainant's argument that some people will be embarrassed by the reaction others may have to the statement of their weight on their driver's licence. Unfortunately, this is true of other identifiers such as height, or age, or even a photograph. While an argument for the elimination of any one of the identifying characteristics on the licence document can be made on that basis, I find it difficult to see why weight should be put in a separate category of especially sensitive personal information that makes it inappropriate for use as an identifying feature. To put it another way, a plausible case can be made for the proposition that, in at least some situations, every one of the identifying characteristics recorded on a driver's licence is capable of causing embarrassment to some individuals. It seems to me that eliminating all of these identifying characteristics would be inconsistent with the scheme of the *Motor Vehicle Act*, and I am not convinced that any difference between weight and other identifying characteristics is sufficiently fundamental that the elimination of the use of weight as an identifying characteristic in this setting is mandated by the *FOIPPA*.

In coming to this conclusion, I accept the observations made by Mr. Skinner in his letter of June 30, 1999 that there are other jurisdictions that do not make use of weight as an identifier on driver's licences. Indeed, it is evident from this letter that photographs were not used on driver's licences in this province prior to 1972 and that weight and height data was not collected prior to that time. It seems to me, however, that it can be inferred from the information provided by policing authorities that those systems do not work as well as the current system in British Columbia in enabling police to detect certain motor vehicle offences, and in particular violations of section 70(1)(a) of the *Motor Vehicle Act*.

In my view, the *Motor Vehicle Act* and the *FOIPPA* give ICBC some discretion in deciding what personal information to collect in order to balance effective enforcement of the *Motor Vehicle Act* with the privacy interests of British Columbia motorists and I am not persuaded that ICBC has exceeded its authority in making the choice it has with respect to the collection of information about the weight of applicants for driver's licences. Accordingly, I recommend that the first aspect of the complaint be dismissed.

These observations having been made, it is not necessary for me to address the issue of whether the information in question was collected for the purposes of law enforcement and therefore authorized by section 26(b) of the *FOIPPA*.

## 5.2 Unauthorized Disclosure of Personal Information

The second branch of the complaint is, in my view, more difficult to address. I have not been referred to any authority dealing with the way in which the *FOIPPA* regulates the use of personal information on what might be described as identity cards. These documents include such things as library cards, student cards, and employee security cards. Their characteristic is that they are issued to an individual to enable that individual to identify himself or herself as a person entitled to certain benefits or entitled to be in a certain place. Since they are in the hands of individuals, they can, of course, be put to a variety of other uses beyond those for which they were originally designed or intended. As the Complainant points out, a driver's licence is often used by individuals as a form of identification when they cash a cheque or engage in other personal transactions. This is true whether or not the licence was not designed for this purpose. Indeed, it seems to me that a significant aspect of the present complaint is the Complainant's view that the driver's licence contains more personal information than is needed for these collateral uses of it as a form of identification. If this aspect of the complaint is to be upheld, however, it must initially be determined that ICBC is responsible under the *FOIPPA* for these collateral uses of the personal information contained in the record it has created.

Section 3(1) of the *FOIPPA* states: "This Act applies to all records in the custody or under the control of a public body...". It seems to me that the driver's licence document itself is no longer in the custody or under the control of ICBC once it has been issued to the licensee. Thus, I do not see how ICBC could be required to produce the licence document itself in response to a request for access to information under Part 2 of the *FOIPPA*. Part 3 of the *FOIPPA* refers, however, primarily to "personal information" rather than to "records". To take just one example, section 30 of the *FOIPPA* states that "The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal." On the face of it, this seems to me to represent an obligation to take reasonable steps to protect not only the records containing the personal information but the personal information itself.

The question before me, however, is not whether ICBC has some obligation under section 30 to take steps to prevent an individual from using his or her own personal information as recorded on a driver's licence for a purpose for which it was not intended, or what those steps might be if there were such an obligation. Rather, the complaint was that ICBC engaged in unauthorized disclosure of personal information within the meaning of section 33 of the *FOIPPA*. It seems to me that ICBC is correct when it submits that placing an individual's personal information on a document that it returns to the individual does not constitute a "disclosure" of personal information under the *FOIPPA*.

In determining whether or not this activity constitutes a "disclosure" within the meaning of section 33 of the *FOIPPA*, I have once again found it useful to have reference to the Information, Science and Technology Agency's *Policy and Procedures Manual*, which

refers, under heading D 3.8, to the following definition of disclosure of personal information:

To “disclose” personal information is to release, transmit, reveal, show, provide copies of, tell of, expose or give personal information by any means (*e.g.*, on paper, verbally, electronically, on magnetic or other non-textual media) to:

- the person whose information it is, **in response either to a formal Freedom of Information (FOI) request under the Act or to a routine request for personal information;**
- other public bodies, other levels of government (*e.g.*, the federal government) or non-governmental organizations, in the routine activities of the public body; or
- people other than the person concerned either as a routine release or in response to a formal request under the Act. [emphasis added]

Again, I realize that the *Manual's* approach is not authoritative. Nevertheless, it seems to me that this approach does correspond to the general structure of the *FOIPPA*, which is designed to deal with the obligation to release an individual's personal information to him or her in response to a request, as distinct from situations where an individual's personal information is used as part of the public body's ordinary dealings with that person. For example, every time a public body sends a letter to an individual at his or her address, the inclusion of the individual's mailing address on the letter constitutes a transmission of that individual's personal information to him or her. These are not, in my view, situations that are encompassed as disclosures of information by section 33 of *FOIPPA* and neither is giving an individual a document containing personal information that the individual may choose to use as an identity card. Of course, if the police (or anybody else) seek confirmation from the records in ICBC's data banks of the validity of the personal information contained on the driver's licence, any decision by ICBC to release this information would constitute a disclosure and ICBC would be bound by the limits on disclosure found in section 33.

It seems to me that the decision by individuals to use their driver's licences to identify themselves in a variety of circumstances cannot be attributed to ICBC. It may be that in some circumstances the collection of personal information contained on driver's licences by public bodies other than ICBC is not authorized by the *FOIPPA*, but that issue is not before me.

## 6.0 CONCLUSION

For the reasons set out above, I recommend that both aspects of the complaint be dismissed. In doing so, I recognize that the Complainant has raised a legitimate concern about the privacy consequences of the design of what might be described as identity cards, and the use of such cards for purposes for which they were not intended. It seems to me, however, that ICBC has designed the driver's licence document in a manner that is consistent with its obligations under the *FOIPPA*. It might well be argued that more

stringent rules ought to be adopted to govern the creation and use of different forms of identity cards. If that is the case, however, it seems to me that it ought to be the result of legislative action after an informed policy debate rather than the result of an expansive interpretation of the privacy protections currently afforded by the *FOIPPA*.

Philip Bryden  
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April 26, 2000