Office of the Information & Privacy Commissioner for British Columbia

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Order F18-04

INSURANCE CORPORATION OF BRITISH COLUMBIA

Chelsea Lott
Adjudicator

January 17, 2018

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Summary: The applicant requested all of his personal information from ICBC. The applicant requested a review of ICBC's decision to refuse to disclose information under ss. 13, 14, 15, 17 and 22 of FIPPA. The adjudicator confirmed in part ICBC's decision to refuse access to information under ss. 13, 14, 17 and 22 of FIPPA. The adjudicator found that ss. 15(1)(a) and 15(1)(d) did not apply. ICBC was ordered to disclose any information to which no FIPPA exceptions applied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, 13, 14, 15(1)(a), 15(1)(d), 17, 22, 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(h) and 22(4)(e); *Insurance (Vehicle) Regulation*, BC Reg 447/83.

Authorities Considered: B.C.: Order F16-38, 2016 BCIPC 42; Order F14-57, 2014 BCIPC 61; Order F08-19, 2008 CanLII 66913 (BC IPC); Order 01-53, 2001 CanLII 21607 (BC IPC); Order 02-01, 2002 CanLII 42426 (BC IPC); Order 01-46, 2001 CanLII 21600 (BC IPC); Order F16-38, 2016 BCIPC 42; Order O1-19, 2001 CanLII 21573 (BC IPC); Order F16-46, 2016 BCIPC 51.

Cases Considered: *College of Physicians of British Columbia v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665; *R v B*, 1995 CanLII 2007 (BC SC); *Canada v Solosky,* 1979 CanLII 9 (SCC); *General Accident Assurance Company et al v Chrusz et al*, 1999 CanLII 7320 (ON CA); *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795; *Maranda v Richer*, 2003 SCC 67; *School District No. 49 (Central Coast) v British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427; *Corp. of the District of North Vancouver v BC (The Information and Privacy Commissioner)*, 1996 CanLII 521 (BC SC); *Raj v Khosravi*, 2015 BCCA 49; *Hamalainen v. Sippola,* 1991 CanLII 440 (BC CA); *Blank v Canada (Minister of Justice)*, 2006 SCC 39; *Cahoon*

v Brideaux, 2010 BCCA 228; *John Doe v Ontario (Finance)*, 2014 SCC 36; *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025; *College of Physicians of British Columbia v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665; *Arsenovski v Bodin,* 2016 BCSC 359; *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31.

INTRODUCTION

[1] The applicant requested from the Insurance Corporation of British Columbia (ICBC) all of his personal information, which ICBC had collected, used or disclosed. ICBC provided the applicant with the records responsive to his request, but it refused to disclose some information in those records under ss. 13 (policy advice or recommendations), 14 (solicitor client privilege), 17 (harm to a public body's financial or economic interests), 21 (harm to third party business interests) and 22 (harm to third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review ICBC's decision. Mediation did not resolve the issues in dispute and the applicant requested an inquiry. At the outset of the inquiry, counsel for ICBC requested, and was granted, a general adjournment to reconsider its severing decision. ICBC provided a final disclosure package to the applicant withholding information under ss. 13, 14, 15, 17 and 22.

ISSUES

[3] The issues to be decided in this inquiry are:

1. Is ICBC authorized to refuse to disclose the information at issue under ss. 13, 14, 15 and 17?

2. Is ICBC required to refuse to disclose the information at issue under s. 22?

[4] Section 57 of FIPPA governs the burden of proof in an inquiry. ICBC has the burden of proving that the applicant has no right of access to the information it is refusing to disclose under ss. 13, 14, 15 and 17. However, the applicant has the burden of proving that disclosure of any third party personal information in the records would not be an unreasonable invasion of personal privacy under s. 22.

DISCUSSION

Preliminary matter

[5] The applicant's submissions and evidence do not address the issues in this inquiry. Instead, they deal with matters that are not properly before me. For

instance, the applicant submits that ICBC has fraudulently altered records and also failed to disclose records. He further submits that the OIPC has failed to investigate his complaints. He argues the present inquiry cannot proceed without a proper investigation into his allegations.

[6] The notice of inquiry, which was sent to the parties, outlined the issues to be decided in this inquiry. The only matter to be adjudicated is ICBC's severing decision in relation to the records in OIPC file F11-44632. This inquiry is not a forum for investigating or deciding the applicant's allegations and I decline to do so.

Information in dispute

[7] The applicant has had a number of claims with ICBC. The records before me indicate that he has been involved in at least four motor vehicle collisions which resulted in bodily injury claims. Two of those claims have settled and the other two are subject to ongoing litigation.[1]

[8] The responsive records relate to the applicant's ICBC claims. The majority of the records relate to his 2006 claim and ensuing litigation. The information in dispute is communication about the details of the case, ICBC's reserves for the claims,[2] litigation strategy and invoices.

[9] I note that the applicant has submitted unsevered copies of some of the information at issue, which he received in response to a separate FIPPA disclosure.[3] Also, ICBC submits that one of the records, at p. 59, was released to the applicant in relation to a separate FIPPA access request.[4] As the aforementioned information has been disclosed, it is no longer in issue and I have not considered it in this inquiry.

Solicitor client privilege – s. 14

[10] The majority of information at issue has been withheld pursuant to s. 14, so I have considered it first. Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor client privilege.

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[1] See pp. 2632, 2635, 2276 and 2186 of the records as well as evidence appended to ICBC's initial submissions: document titled "Consolidated Requestor Report Summary," November 23, 2016 email from defence counsel, November 24, 2016 email from defence counsel, and notice of application.

[2] Reserves are monetary amounts set aside for a potential future claims payments.

[3] Applicant's submissions at Tab 2, p. 27 (p. 80 in the inquiry records), Tab R, p. 38 (p. 91 in the inquiry records - one CWMS note dated July 4), and Tab S, p. 68 (p. 119 of the inquiry records – four CWMS notes dated May 5, May 6, and May 11).

[4] ICBC initial submissions at para. 43.

Section 14 encompasses both legal advice privilege and litigation privilege.[5] ICBC claims both types of privilege apply to all of the information it is refusing to disclose under s. 14.

Legal advice privilege

[11] The criteria necessary for legal advice privilege to apply are:

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

[12] Not every communication between client and solicitor is protected by solicitor client privilege. However, if the four conditions above are satisfied, then legal advice privilege applies to the communications.[6]

[13] ICBC has claimed legal advice privilege over a variety of records related to lawyers' fees and disbursements. I have considered those records under a separate heading below.

[14] ICBC submits that the information it has withheld would reveal:

> discussions during litigation strategy meetings where ICBC defence counsel was present, communications directly between ICBC counsel and ICBC staff relating to the seeking or giving of legal advice, notes taken in meetings with ICBC counsel, information reflective of litigation strategy and/or instructions to ICBC counsel, internal ICBC communications which reflect communications with ICBC counsel, communications between ICBC staff and ICBC internal legal counsel, legal opinions, or communications between ICBC counsel and the defendant insured named in the litigation.[7]

Communication between client and legal advisor

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[5] *College of Physicians of British Columbia v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 26.
[6] *R v B*, 1995 CanLII 2007 (BC SC) at para. 22. See also *Canada v Solosky,* 1979 CanLII 9 (SCC) at p. 13.
[7] ICBC initial submissions at para. 11. Footnote citations omitted.

[15] There are a number of different lawyers involved in the communications with ICBC. It is evident from the records that the lawyers were retained by ICBC at varying times to defend against the applicant's litigation. One of ICBC's in house lawyers is involved in a small amount of communication. From my review of the records, I am satisfied that the following categories of records would reveal communications between the client (ICBC) and its legal advisors:

- notes of conversations between ICBC and its defence counsel;
- notes revealing ICBC's instructions to its defence counsel;
- correspondence between ICBC and its defence counsel or defence counsel's assistants;
- correspondence from ICBC's defence counsel to ICBC with attachments referred to in the correspondence;
- correspondence from ICBC's defence counsel to the insured defendant;[8]
- notes and correspondence between ICBC employees and ICBC in-house counsel;
- notes and correspondence between ICBC employees discussing advice from ICBC legal counsel; and
- communications involving ICBC, its defence counsel and third parties.

[16] However, not all of the records would reveal communications between a client and legal advisor, specifically the following records:

- ICBC staff notes regarding internal administrative matters;[9]
- ICBC staff notes about the insurance claim and vehicle repairs for the insured defendant;[10]
- communication from a non-legal service provider to ICBC;[11] and
- ICBC staff notes about ICBC's discussion with the applicant's lawyer.[12]

[17] These four categories of information do not reveal communications between client and legal advisor and so do not satisfy the conditions necessary for legal advice privilege.

Confidential communication

[18] In order to attract privilege, communications between the lawyer and client must be made in confidence. From my review of the records, I am satisfied that the communications were intended to be confidential by those involved. The individuals are a small group of ICBC employees and ICBC defence counsel. It is

[8] The "insured defendant" is the person(s) the applicant is suing for injury or damage and is insured by a policy with ICBC.
[9] Page 2289.
[10] Page 2641.
[11] Pages 1821-1848.
[12] Page 2635.

evident from the content that they all had some involvement or responsibility for ongoing litigation involving the applicant. In addition, a number of the emails from ICBC and from its defence counsel have explicit markings of confidentiality.

[19] However, the exception to the above finding pertains to several records where third parties were included in the communication between defense counsel and ICBC. In my view, such communications are not confidential because of the involvement of third parties. This is not a case where the third parties were acting as agents to serve as a channel of communication between the client and solicitor which would attract privilege.[13] Rather, in this case the third parties have been retained by the client to do certain work other than communicating to obtain legal advice.

Directly related to the seeking, formulating or giving of legal advice

[20] ICBC has claimed legal advice privilege over communications which on their face satisfy me that they are directly related to the seeking, formulating or giving of legal advice. The type of information which has been withheld by ICBC is correspondence confirming retainers, reporting letters to ICBC, instructions from ICBC to counsel, discussions about defence strategy, assessments of the cases settlement matters and insurance coverage issues.

[21] In a few instances, ICBC defence counsel has forwarded to ICBC correspondence or documents from plaintiff counsel without any comment. While not strictly legal advice, the scope of solicitor client privilege extends beyond requesting or providing legal advice and includes communications that are "part of the continuum of information exchanged," provided the object of the communication is to seek or provide legal advice.[14] I consider these emails to be subject to solicitor client privilege as they form part of the continuum of information exchanged for the purpose of formulating or giving legal advice.

[22] There is one exception to my finding. ICBC has claimed privilege over an email from its defence counsel to ICBC which contains only a technical message generated by the email server.[15] The message contains no substantive communication between the parties, and I am unable to conclude that this email was directly related to the seeking, formulating or giving of legal advice.

Lawyers' fees and disbursement information

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[13] *General Accident Assurance Company et al v Chrusz et al.*, 1999 CanLII 7320 (ON CA) at para. 106.
[14] *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83, citing *Canada (Information Commissioner) v Canada (Minister of Safety and Emergency Preparedness)*, 2013 FCA 104 (CanLII) at para. 28.
[15] Page 1608.

[23] ICBC also claims legal advice privilege over information about lawyers' fees and disbursements. The courts have held that there is a rebuttable presumption that lawyers' billing information is privileged. The reason for the presumption was explained by the Supreme Court of Canada in *Maranda v. Richer*:

> Because of the difficulties inherent in determining the extent to which the information contained in lawyers' bills of account is neutral information, and the importance of the constitutional values that disclosing it would endanger, recognizing a presumption that such information falls prima facie within the privileged category will better ensure that the objectives of this time-honoured privilege are achieved.[16]

[24] In *School District No. 49 (Central Coast) v. British Columbia (Information and Privacy Commissioner)* the BC Supreme Court said that the correct approach to determining whether the presumption has been rebutted is to consider the following two questions:

1. Is there any reasonable possibility that disclosure of the amount of the fees paid will directly or indirectly reveal any communication protected by the privilege?

2. Could an assiduous inquirer, aware of background information, use the information requested to deduce or otherwise acquire privileged communications?[17]

[25] I will follow the approach set out in *Maranda* and *Central Coast*.

[26] ICBC submits that it has withheld ICBC defense counsel billings in respect of litigation. ICBC submits that these records contain information which the courts have repeatedly said are subject to legal advice privilege. It further argues that the applicant is an "assiduous, prolific and well-informed inquirer who could use the information in the records to deduce privileged communications."[18]

Does the presumption of privilege apply?

[27] ICBC has withheld information about lawyers' fees and disbursements which appear in three different categories of records. They are statements of account, fees and disbursement reports and notes in ICBC's claim tracking system (CWMS notes).

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[16] *Maranda v Richer*, 2003 SCC 67 at para. 33.
[17] *School District No. 49 (Central Coast) v British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 427 at para. 104.
[18] ICBC initial submissions at para. 22.

[28] The statements of account consist of a cover letter, the amount due and describe the work done by the lawyers for ICBC on a particular file.

[29] The fees and disbursements reports list the fees and disbursements paid to a law firm for all of their files over a certain time period.[19] It is not a gross amount paid to the firm, but rather a line by line listing of each invoice. It includes amongst other information, the date of the invoice, the style of cause, the name of the responsible lawyer and the amount paid to the law firm. The report covers litigation involving the applicant as well as other unrelated lawsuits. Unlike the statements of accounts listed above, the reports do not detail the work done by the lawyer, rather they indicate litigation expenses for a particular file.

[30] The CWMS notes contain information about legal bills. More specifically, there are entries indicating the date and amount paid for specific invoices. The entries contain the law firm's file number and some include the style of cause. All of the entries relate to the applicant's litigation.

[31] I find that all of the three above categories of information is the type of lawyers' billing information that the courts say is presumptively privileged. It either directly reveals confidential client communications or would allow accurate inferences and so indirectly reveal such information.

[32] ICBC has also claimed legal advice privilege over fees and billing information from service providers other than lawyers.[20] These service providers did not provide legal advice. There is no presumption that this information is privileged. Further, it does not otherwise meet the requirements for legal advice privilege to apply as it is not a communication between a solicitor and his or her client.

Has the presumption been rebutted?

[33] In my view, the applicant is an assiduous inquirer and could use the information in the statements of account, fees and disbursement reports and CWMS notes to deduce legal advice.

[34] It is evident that the applicant is familiar with access to information requests pursuant to FIPPA as the applicant refers to a number of files with the OIPC in his submissions.[21]

[35] The applicant is persistent in his pursuit for information as evidenced by the amount of effort he has put into his submissions and evidence which total

[19] For example p. 2457.
[20] Pages 950, 951, 960 and 961.
[21] Applicant initial submissions at p. 1.

125-pages. The applicant is knowledgeable about the civil litigation process as he has participated in litigation, as both a represented and unrepresented party.

[36] I have no doubt that the applicant could learn about the matters that are not his own which are listed in the billing reports, through research at the courts and pursuant to FIPPA. With such background information, he could use the information contained in the report to draw conclusions about privileged legal advice sought or received by ICBC.

[37] In conclusion, I find that the presumption that billing information in the statements of account, fees and disbursement reports and CWMS notes is privileged has not been rebutted, and ICBC may rely on s. 14 to withhold the billing information.

Litigation privilege

[38] ICBC has also claimed that litigation privilege applies to many of the records, more specifically: 2006 claim information, copies of documents, information about the applicant's vehicle and special investigation unit information.

[39] Litigation privilege protects communications and documents created for and used in the process of preparing for and engaging in litigation. The purpose of this type of privilege is to permit a party to investigate, prepare and develop their case free from intrusion from the opposing party.[22] The test for litigation privilege was set out by the Court of Appeal in *Raj v. Khosravi*:

> In summary, to succeed in a claim of litigation privilege over a document the person seeking to invoke the privilege has the onus of establishing that: (i) litigation was "in reasonable prospect" when the document was produced; and (ii) that the "dominant purpose" of the document was to obtain legal advice or was to conduct or aid in the conduct of the litigation.[23]

Was there a reasonable prospect of litigation?

[40] The test for determining whether litigation was "in reasonable prospect" is objective. As expressed by the Court of Appeal in *Hamalainen v. Sippola* (*Hamalainen*):

> In my view litigation can properly be said to be in reasonable prospect when a reasonable person, possessed of all pertinent information including that peculiar to one party or the other, would conclude it is

[22] *Raj v Khosravi*, 2015 BCCA 49 at para. 7 relying on *Blank v Canada (Minister of Justice)*, 2006 SCC 39.
[23] *Ibid* at para. 20.

> unlikely that the claim for loss will be resolved without it. The test is not one that will be particularly difficult to meet.[24]

[41] As previously discussed, the applicant is involved in ongoing litigation arising from a September 2006 motor vehicle collision. ICBC submits that litigation from that claim was contemplated as of February 2007.[25] ICBC cites a specific withheld CWMS note in support.[26]

[42] ICBC also argues that because of applicant's "extensive ICBC litigation claims history, it was reasonable to expect that he would litigate his claim."[27] ICBC asserts that prior to the 2006 motor vehicle accident, the applicant had had numerous ICBC claims, and in some of them he was represented by counsel and at least one which resulted in litigation.

[43] The information in dispute confirms ICBC's argument and also indicates that the applicant had retained counsel in early 2007. I am satisfied based on the applicant's claim history, as well as the CWMS note referred to by ICBC, that litigation was anticipated by February 2007.

[44] ICBC has claimed litigation privilege over information about the 2006 collision which predates February 2007.[28] ICBC cannot rely on litigation privilege to withhold this note because litigation was not in reasonable prospect at the time it was created.

[45] ICBC has also claimed litigation privilege over some information related to litigation which had settled prior to the 2006 collision.[29]

[46] Although a lawsuit has concluded, information related to the concluded litigation can still be subject to litigation privilege when it is related to an ongoing proceeding. What is considered a "related proceeding" was described in *Blank v Canada (Minister of Justice)*:

> [a]t a minimum, it seems to me, this enlarged definition of "litigation" includes separate proceedings that involve the same or related parties and arise from the same or a related cause of action (or "juridical source"). Proceedings that raise issues common to the initial action and share its essential purpose would in my view qualify as well.[30]

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[24] 1991 CanLII 440 (BC CA) at p. 13.
[25] ICBC initial submissions at para. 24.
[26] ICBC initial submissions at para. 24 and footnote 11.
[27] ICBC initial submissions at footnote 12.
[28] Page 1350.
[29] Pages 2292, 2466 and 2472.
[30] *Blank v Canada (Minister of Justice)*, 2006 SCC 39 (CanLII) at paras. 39.

[47] In its submissions, ICBC has not argued that the earlier, settled claim was related to the 2006 collision claim. Further, the pleadings from that already settled claim are not in evidence. I am unable to conclude that the two claims are related proceedings. As a result, the information which relates to the settled litigation cannot be withheld on the basis of litigation privilege.

What was the dominant purpose of the records?

[48] The second step of the test requires the party claiming privilege to prove that the dominant purpose of the document, when it was produced, was to obtain legal advice or to conduct or aid in the conduct of litigation.[31]

[49] In the context of insurance claims, there is no set delineation between the adjusting, information gathering and litigation stages. The focus may shift to litigation at any point along the continuum between the preliminary information gathering stage and the final litigation stage. As such, a finding that the dominant purpose of a document was litigation may occur at any point along the continuum depending upon the circumstances and the context in which it was produced.[32]

[50] I will start by discussing the information related to the 2006 claim file.

2006 Claim information

[51] For the reasons that follow, I find that ICBC has met the onus of establishing that the majority of the records that were created on or after February 6, 2007 were created for the dominant purpose of obtaining legal advice or to aid in the conduct of litigation. Further, based on my review of the records, that was the sole purpose for the creation of most of the records.

[52] The information relates to assessment and analysis of the applicant's claim, planning litigation strategy and defences. The types of records and information which fit into this category include:

- adjusters' summaries and analyses of the case;
- CWMS notes regarding experts, strategy, and defences;
- information about adjusters and claim centers handling the case;
- analysis of the case for new adjusters;
- adjusters' review of the applicant's litigation documents;
- communication about retaining defence counsel;
- ICBC internal discussion of strategy and the case;
- ICBC reserves; and
- defence counsel's communication with third parties.

[31] *Hamalainen* at p. 13.
[32] *Raj v Khosravi*, *supra* at paras. 18-19.

The above noted information and records were created for the main purpose of anticipated, or ongoing litigation and s. 14 applies.

[53] However, I find that litigation privilege does not apply to a small amount of the 2006 claim information. I am referring to information about adjusting a third party's insurance claim and vehicle damage.[33] This information was not created to obtain legal advice or to conduct, or aid in the conduct of, litigation. Rather, its dominant purpose was adjusting the third party's insurance claim. In addition there is one CWMS note and email which did not have litigation as their dominant purpose.[34]

[54] In addition, I find that litigation privilege does not apply to an online article about health issues. No explanation about the relevance of the article has been given, nor from what I can discern, does the topic have any relation to the applicant's alleged injuries or his general health.[35] Lastly, I am unable to determine the dominant purpose of an email containing only a computer system generated error.[36]

Copies of documents

[55] ICBC claims litigation privilege over copies of documents gathered by third party professionals and ICBC defence counsel, even though the original documents were not created for the purpose of litigation.[37] The Court of Appeal has stated that copies of documents which were gathered for the purpose of providing advice about litigation or conducting litigation are themselves privileged.[38]

[56] In this case the copies of the documents are enclosed with a summary and analysis of those records.[39] It is clear that the copies were obtained using knowledge, skill and judgment for the purpose of providing advice about, or conducting, the ongoing litigation. I find that s. 14 applies to these copies.

Applicant's vehicle damage and repair records

[57] ICBC claims litigation privilege over information which relates to the applicant's vehicle damage and repairs. The information consists of internal ICBC communications about the vehicle damage, as well as communication with some third parties.

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[33] Page 2641.
[34] Page 85, top of page and p. 1346.
[35] Pages 547–551.
[36] Page 1608.
[37] For example pp. 1863-1865.
[38] *Cahoon v Brideaux*, 2010 BCCA 228 at para. 35 aff'g *Hodgkinson v Simms*, 1988 CanLII 181 (BC CA).
[39] Duplicate copies found elsewhere in the claim file and not attached to the communications.

[58] It is evident from the records that ICBC early on formed the opinion that the applicant's vehicle was not damaged in the collision. After it denied his claim, much of the withheld information relates to communications and actions taken to further investigate ICBC's position that the applicant's vehicle sustained no damage. In my view, it is fair to characterize the dominant purpose of this type of information as preparation for litigation as ICBC's position was that it would not indemnify the applicant for any vehicle repairs.

[59] However, I find that litigation privilege does not apply to all of the vehicle damage information. A small amount is notes of conversations between ICBC and a repair shop, and a vehicle rental office, regarding ICBC's denying the applicant's claim. One of the notes records a meeting between ICBC and the applicant.[40]

[60] In my view, the dominant purpose of these communications was adjusting the insurance claim rather than obtaining legal advice or conducting litigation. ICBC is not authorized to rely on s. 14 to withhold this information.

Special Investigation Unit information and records

[61] ICBC has claimed litigation privilege over records and information related to its Special Investigation Unit (SIU).[41] ICBC describes the information as "communications between ICBC Special Investigations Unit staff and the RCMP or information about such communications."[42] ICBC asserts that the communications occurred when litigation was anticipated, and states that it is clear from some withheld information that they relate "at least tangentially (if not directly) to the applicant's personal injury claim."[43]

[62] The SIU records have been withheld in their entirety and so I am limited in what I can say about the investigation. It is evident from the records that ICBC's SIU is a separate department from its claims adjusting department. The SIU records are separate from the claims adjusters' records and have a unique file number. The records indicate that the SIU investigator had access to data bases which are for law enforcement and not accessible by civilians. I also note that the SIU investigator communicated with law enforcement, for purposes other than the ongoing litigation.[44]

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[40] Pages 68, 83 (two CWMS notes), 85 (one CWMS note), 86 (two CWMS notes) and 1350.
[41] The SIU records are at pp. 2705-2828. Other information about the SIU involvement is found at pp. 69, 71, 81, 87, 88, 1345, and 1821-1848. I have already concluded that information on the following pages may be withheld pursuant to legal advice privilege or litigation privilege and have not considered them here: pp. 2709, 2712, 2713, 2726, 2728 and 2806-2818.
[42] ICBC initial submissions at para. 36.
[43] *Ibid*
[44] Page 2721.

[63] I find that only some of the SIU information and records were created for the primary purposes of the applicant's civil litigation. More specifically, it is notes about a pre-trial meeting with defence counsel, a claims adjuster's summary and analysis of the case, and an email between ICBC employees discussing their lawyer.[45] This information can be withheld on the basis of litigation privilege.

[64] There are also two documents which SIU had involvement with, but which were addressed and provided to the tort adjuster.[46] The tort adjuster, rather than SIU, looked after payment for the documents.[47] Their contents are material to the applicant's litigation. I am satisfied that the dominant purpose of these two documents was for the anticipated litigation and they may be withheld on that basis, as well as information related to payment for, or communications about, the two documents.[48]

[65] However, I am not convinced that the dominant purpose for the creation of the balance of the SIU records was for the civil litigation relating to the applicant's 2006 claim or any other litigation. ICBC has not argued that they were created in contemplation of any other potential litigation. I have no affidavit evidence from the SIU investigator, or from any of the claims adjusters explaining the connection of the SIU investigation to ongoing litigation.

[66] In my view, the balance of the SIU records relate primarily to an investigation. Although they could be relevant to the applicant's litigation, they were not produced primarily for the purpose of the ongoing litigation. ICBC's characterization of the records being "tangentially (if not directly)" related to the applicant's personal injury claim is telling.

[67] Further, a number of the records relate to third parties and I am not persuaded that the dominant purpose for their creation was litigation. It is not clear to me how the information about the third parties would have any bearing on or relevance to the applicant's litigation or any other litigation, nor has any explanation of a connection been given. Finally, it is not clear to me that SIU shared the information it obtained in the investigative process with the tort adjuster or defence counsel.

[68] In conclusion, only a small portion of the information related to SIU was created for the dominant purpose of litigation and may be withheld under s. 14.

Section 13 – policy advice or recommendations[49]

[45] Pages 2708 (top of page), 2710, 2714-2719, 2788 and 2819.
[46] Pages 1821-1848.
[47] Page 1345.
[48] Pages 69 (one sentence), 71, 87, 88, 950, 960-961 and 1345.
[49] When I have concluded that an exception under FIPPA applies to information, I have not gone on to consider whether any of the remaining exceptions apply.

[69] Section 13 authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister, subject to certain exceptions. Section 13 states, in part, as follows:

> 13(1) The head of 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.

[70] The Supreme Court of Canada has stated that the purpose of exempting advice or recommendations from disclosure "is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice."[50]

[71] Previous orders and court decisions have found that s. 13(1) applies to information that directly reveals advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.[51] In addition, the BC Court of Appeal has held that the word "advice" should be interpreted to include "an opinion that involves exercising judgment and skill to weigh the significance of matters of fact."[52]

[72] In determining whether s. 13 applies, the first consideration is whether disclosing the information "would reveal advice or recommendations developed by or for a public body or a minister."

[73] ICBC submits that it has withheld "advice and recommendations relating to the handling of [the applicant's] personal injury claims by ICBC adjuster or pertains to reserve information."[53] ICBC has withheld information related to the applicant's claims before the 2006 collision. All of it, save two pages, is contained in CWMS notes.[54]

[74] I can deduce from the records that when someone makes a claim with ICBC, ICBC assigns an adjuster to handle and make decisions about that claim. Sometimes the claims are transferred between adjusters and/or claims centres, but there is always one primary adjuster responsible for a particular claim.

[75] The steps taken during the claim, whether administrative or substantive, are recorded into the CWMS notes. The adjusters also record information and assessments about the claim in the notes. Each note contains the date and the

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[50] *John Doe v Ontario (Finance)*, 2014 SCC 36 at para. 43.
[51] For example, Order F14-57, 2014 BCIPC 61 at para. 14 and *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at para. 52.
[52] *College of Physicians of British Columbia v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 113.
[53] ICBC initial submissions at para. 35.
[54] Pages 2319 and 2472.

"work type." The work types indicate for example, when ICBC makes a payment, changes reserves, administrative tasks, adjuster notes, file reviews by managers, and vehicle estimator's actions.

[76] I have reviewed the information withheld under s. 13, and I am satisfied that one note at the bottom of p. 2634 constitutes advice or recommendations. The note records a manager's review of the file. It contains the supervisor's advice and recommendations about the claim to the handling adjuster.

[77] However, I find that the balance of the information withheld under s. 13 would not reveal advice or recommendations.

[78] For instance, ICBC has withheld instructions from one ICBC employee to another employee.[55] Instructions are directions to do something and, by their nature, are not advice or recommendations. In one instance, ICBC withheld the names of preferred mediators in an email from the adjuster to ICBC's alternative dispute resolution department (ADR).[56] However, the adjuster is not recommending these mediators, rather she is instructing ADR to schedule a mediation with one of the named mediators.

[79] The CWMS notes also contain entries by the handling adjuster and others about the progress of the claim, decisions about liability, information and assessments of the claim, past claims, and future tasks. They are in chronological order and detail the claim's day-to-day progress.

[80] The notes, on their face, appear to be the working notes and file history for a particular claim. I fail to understand how they could be classified as advice or recommendations, as they document the day-to-day progress and actions on the claim. This information does not reveal, inferentially or otherwise, advice or recommendations.

[81] ICBC argues that s. 13 applies to information about reserves. Reserves are the amount ICBC sets aside for a claim based on its view of the upper range of potential damages and expenses which may be necessary to settle a claim. Claims adjusters revise the amount as new information becomes available.[57] Reserves consist of a dollar amount which ICBC organizes by Kind of Loss (KOL) codes which as the name suggests, categorizes the type of loss (e.g. bodily injury, property damage).[58]

[55] At pages 2275, 2288, 2289 and 2291.
[56] Page 2472.
[57] Order F08-19, 2008 CanLII 66913 (BC IPC) at para. 51.
[58] Order 01-46, 2001 CanLII 21600 (BC IPC) at para. 14.

[82] Certainly the proposed or actual amount of a reserve can be advice and recommendations.[59] However, ICBC has not withheld that kind of information quantifying reserves. The information is only whether ICBC created a reserve and what KOL codes is associated with it. I do not understand how this factual information could allow an accurate inference regarding advice or recommendations, and ICBC did not explain.

[83] Finally, ICBC is also withholding codes which categorize the applicant's injuries in an insurance claim application.[60] I don't consider this type of information to be advice or recommendations. Rather it is an adjuster's assessment and decision about the applicant's injuries.

Exceptions - 13(2)

[84] I have considered whether the small amount of information at the bottom of page 2634, which I have found would reveal advice or recommendations, is excluded from s. 13(1) because it falls within a category listed in s. 13(2). I have considered the categories in s. 13(2) and am satisfied that none of them apply.

Section 15 – law enforcement

[85] ICBC says that it is relying on ss. 15(1)(a) and/or (d) to withhold information from the SIU records, as well as one CWMS note documenting SIU's conversation with the RCMP.[61] The severing in the records only identifies that information was withheld under s. 15 in general, so I have considered the application of ss. 15(1)(a) and (d) to all of it. Those provisions state:

> 15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (a) harm a law enforcement matter,
> …
> (d) reveal the identity of a confidential source of law enforcement information

[86] Section 15(1) requires that the subsequently listed harms "could reasonably be expected to" occur. The appropriate standard of proof for this test was set out by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* as follows:

> This Court in *Merck Frosst* adopted the "reasonable expectation of probable harm" formulation and it should be used wherever the

[59] Order F16-38, *supra* at para. 104.
[60] Page 2319.
[61] Page 81.

> "could reasonably be expected to" language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground: paras. 197 and 199. This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences": *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, at para. 40.[62]

I will apply the above approach to determine if ICBC is authorized to withhold information pursuant to s. 15.

Section 15(1)(a)

[87] Section 15(1)(a) requires a public body to prove that a "law enforcement matter" could be harmed. The term "law enforcement" is defined in FIPPA as meaning:

> (a) policing, including criminal intelligence operations,
>
> (b) investigations that lead or could lead to a penalty or sanction being imposed, or
>
> (c) proceedings that lead or could lead to a penalty or sanction being imposed;[63]

[88] ICBC submits the information it has withheld consists of communications with between SIU and the RCMP or information about such communications. However, it is not clear to me what law enforcement matter ICBC is referring to, or how it could possibly be harmed. I have no affidavit evidence from the investigator, nor is it explained in ICBC's submissions.[64] The only evidence before me is the records themselves.

[89] Some of the records relate to an employment issue and others contain the SIU investigator's research about third parties. It is not apparent from the records what the law enforcement matter is in any of these communications.

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[62] 2014 SCC 31 at para. 54.
[63] Schedule 1.
[64] For instance, ICBC does not submit that the records relate to charges under the *Insurance (Vehicle) Act* as was the case in *Arsenovski v Bodin,* 2016 BCSC 359.

[90] In conclusion, I am unable to determine what law enforcement matter ICBC says could be harmed by disclosure of the information. As a result, ICBC has not satisfied me that s. 15(1)(a) applies.

15(1)(d) – confidential source

[91] Section 15(1)(d) permits a public body to withhold information which would reveal the identity of a confidential source of law enforcement information. ICBC provided no argument or evidence about how disclosure of the information could reasonably be expected to result in harm under s. 15(1)(d).

[92] From reviewing the records, it is evident that some of the information being withheld under s. 15 came from a confidential source. It is a record of a phone conversation with a named individual. However, I am not convinced that this individual was a source of "law enforcement information." The information provided by the source does not on its face relate to "law enforcement" as that term is defined. I conclude that s. 15(1)(d) does not apply.

[93] In summary, I find that neither ss. 15(1)(a) or (d) apply to the information in dispute.

Section 17 - Harm to Financial or Economic Interests

[94] Section 17 authorizes the head of a public body to refuse to disclose information if it could reasonably be expected to harm the financial or economic interests of a public body. Section 17 includes a non-exhaustive list of the types of information which are captured by this exception. ICBC is withholding information under s. 17 but does not reference any of the specific subsections.

[95] The standard of proof under s. 17 is the same as for the other harms based exceptions that use the phrase "could reasonably be expected to" cause harm. Public bodies must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to meet the standard.

[96] The determination of whether the standard of proof has been met is contextual, and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[65]

[65] *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 54, citing *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3 (CanLII).

[97] ICBC submits it has withheld information which reveals ICBC litigation strategies or containing reserve or quantum assessment information.[66]

Reserve information

[98] I will first address the reserve information ICBC is withholding. As previously mentioned, reserves consist of a dollar amount which ICBC sets aside to settle a claim associated with a particular KOL.

[99] Previous orders have considered whether reserve information may be withheld under s. 17.[67] Those orders provided that where there is ongoing litigation, reserves are subject to s. 17. This is because if the opposing party knew the public body's views on its risk, it would be detrimental to its negotiating position and litigation strategy.

[100] Past orders have also found that reserves are not subject to s. 17 after claims have settled or have otherwise been concluded. That is because reserve information is based on the particular facts of a case, which would have little relevance to future cases. ICBC has applied s. 17 to reserve information which relates to ongoing claims. I have already concluded that ICBC may withhold that type of reserve information pursuant to litigation privilege, so I have not considered the application of s. 17.

[101] ICBC did not claim litigation privilege for a small amount of reserve information related to ongoing claims. ICBC is authorized to withhold the amount of its reserves for ongoing claims under s. 17, for the reasons stated above.

[102] However, KOL codes do not reveal ICBC's reserve amounts, rather they show how ICBC allocates its reserves to different types of losses. I find that the KOL codes on their own could not reasonably be expected to harm ICBC's financial interests if disclosed.

[103] Finally, the balance of the withheld reserve information relates to claims which have already concluded. Section 17 does not apply to any of that type of reserve information.

Litigation strategies

[104] ICBC submits that the remaining information withheld under s. 17 concerns ICBC's defence strategies. Given the ongoing litigation, ICBC says that

[66] ICBC initial submissions at para. 37.
[67] Order F06-19, 2006 CanLII 37939 (BC IPC); Order 01-46, 2001 CanLII 21600 (BC IPC); Order F08-19, 2008 CanLII 66913 (BC IPC); Order F16-38, *supra*; Order F14-34, 2014 BCIPC 37.

disclosing information about strategies for handling the applicant's claim could reasonably be expected to harm ICBC's financial interest.[68]

[105] Only a small amount of the information pertains to the applicant's ongoing claim. Most of it is contained in CWMS notes. The notes are from early in the claim and do not pertain to litigation; rather they are about early insurance claim decisions or matters extraneous to the litigation.

[106] One record which is not a CWMS note is an administrative checklist for file transfers. I fail to see how any of this information could reveal litigation strategies or how it could in anyway harm ICBC's financial interests if disclosed.

[107] The remaining information that ICBC says is about litigation strategies pre-dates the 2006 accident. Much of it is about third parties' insurance claims. ICBC has withheld *inter alia*, information such as details about insurance coverage, initial reporting about a claim, KOL codes, injuries and settlement information. A lesser amount of the information pertains to the applicant's claims which had settled prior to the 2006 accident.

[108] All of the information is particular to certain claims and would not be relevant to other claims. Further, it does not reveal ICBC-wide policies about defending litigation. ICBC does not provide evidence or argument other than to say that disclosure would reveal its litigation strategies. I am not satisfied that the information withheld could reasonably be expected to harm the financial or economic interests of ICBC within the meaning of s. 17.

[109] In conclusion, I find that s. 17 only applies to the reserve information which relates to ongoing claims.

Section 22 – Personal Privacy

[110] ICBC is refusing to disclose information to the applicant under s. 22. Section 22 requires a public body to refuse to disclose information "if the disclosure would be an unreasonable invasion of a third party's personal privacy."

[111] ICBC asserts that the information is "clearly protected from disclosure under s. 22," but does not say anything further.[69]

[112] The applicant, pursuant to s. 57(2), has the burden of proof regarding third party personal privacy. He did not provide argument or evidence on the issue. Nevertheless, I have considered ICBC's application of s. 22 to ensure it has been

[68] ICBC initial submissions at para. 39.
[69] ICBC initial submissions at para. 41.

applied correctly. Public bodies can only withhold information that falls within one of the enumerated exceptions in Part 2 of FIPPA.

Personal information

[113] The first step in the s. 22 analysis is to determine if the information in dispute is personal information.

[114] Personal information is defined in Schedule 1 of FIPPA as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."

[115] Most of the information being withheld under s. 22 is personal information because it is about identifiable third parties, such as ICBC claimants. ICBC also withheld information about its employees, such as names, work locations, emails and their work related activities. It also withheld some information about third parties which is in printouts from databases searched by ICBC employees and from the internet.

[116] Some of the information ICBC is refusing to disclose under s. 22 is solely the applicant's personal information. Disclosing the applicant's personal information to the applicant would not be an unreasonable invasion of third party personal privacy under s. 22. In some instances, however, the applicant's personal information is intertwined with third parties' personal information.

[117] Some of the emails which have been withheld contain signature blocks with information like names, position, location and phone number. There is also a web search results for a business phone number. Lastly, ICBC has produced lists from its customer directory which include business names, addresses and phone numbers. This type of information is contact information rather than personal information within FIPPA.

[118] Where ICBC has redacted entire pages under s. 22, only small amounts of information is personal information. For instance, a number of the records are ICBC forms which have been filled in with information specific to a claim. The information which has been entered into the form is personal information, but the forms themselves are not, as they are standard form ICBC documents and not about identifiable individuals. ICBC has also withheld in its entirety the front of a file folder, a publication, emails with repeated parameters requesting searches and database search results. As with the forms, these records contain some third party personal information, but much of the record is not personal information.

Section 22(4)

[119] The next step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If it does, disclosure would not be an unreasonable invasion of personal privacy.

[120] Section 22(4)(e) which states that disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's privacy, is relevant. A third party's personal information, that relates to job duties in the normal course of work related activities falls into s. 22(4)(e).[70]

[121] A significant amount information is about identifiable ICBC employees carrying out their ordinary work tasks associated with handling claims or investigations and s. 22(4)(e) applies to it. In addition, two records contain the names and signatures of ICBC employees documenting the location of files. Lastly, there is one email between an ICBC employee and another public body employee related to their work duties.[71] The foregoing is all clearly information which comes within s. 22(4)(e).

[122] However, in some instances the type of information to which s. 22(4)(e) might apply is intermingled with information about the third party claimants such as their injuries and settlements. In my view, it is not possible in those instances to sever third party claimants' information from information about ICBC employees performing their job functions. As a result, s. 22(4)(e) does not apply to information about ICBC employees where it is inextricably mixed with third party personal information.

Presumptions and relevant circumstances

[123] The third step in the s. 22 analysis is to determine whether any of the s. 22(3) presumptions apply to the third party personal information. If so, disclosure is presumed to be an unreasonable invasion of third party privacy. In my view, the following presumptions are relevant:

> 22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
>
> …

[70] Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 40.
[71] Page 2721.

> (d) the personal information relates to employment, occupational or educational history,
>
> …
>
> (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

[124] Some of the withheld information is about third parties' injuries. Section 22(3)(a) creates a presumption against disclosure of information about medical diagnoses, condition, treatment or evaluation and accordingly, the provision applies to this type of information.

[125] There is a small amount of personal information that describes the occupation or employment of third parties with ICBC claims and I find that s. 22(3)(d) applies to this information. It is in a professional regulator's news release detailing the outcomes of professional disciplinary proceedings against third parties. Personal information relating to professional disciplinary matters falls under the presumed unreasonable invasion of personal privacy created by s. 22(3)(d).[72]

[126] Some of the third party personal information is financial in nature. There is information which details third party's insurance policies, which previous orders have held to come within s. 22(3)(f).[73] I agree. There is also information about ICBC payments to third parties which is their financial history, so I find that s. 22(3)(f) applies to it as well.

Relevant circumstances

[127] The fourth step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those in s. 22(2). It is at this step that any presumptions may be rebutted.

[128] The factors listed in s. 22(2) which play a role in this case are as follows:

> 22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
> …
> (f) the personal information has been supplied in confidence,
>
> …

[72] Order 02-01, 2002 CanLII 42426 (BC IPC) at paras. 121–122.
[73] Order 01-46, *supra* at paras. 42–43.

> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, …

[129] Section 22(2)(f) is a factor that applies if personal information is supplied in confidence. Individuals insured by ICBC are required to give ICBC written notice, with all particulars of any accidents they are involved in, any claim made in respect of the accident and to cooperate with ICBC in the investigation, settlement or defence of a claim or action.[74]

[130] Accordingly, some of the third party personal information was supplied to ICBC pursuant to an insured's statutory duty to cooperate with ICBC or to enable third parties to obtain compensation for loss and damage caused by ICBC insureds.[75]

[131] Despite the fact that insureds and claimants must disclose certain personal information to ICBC, in Order F16-38, the adjudicator nevertheless found that s. 22(2)(f) weighed in favour of withholding the third party information:

> [131] In my view, there is ordinarily an expectation of privacy to some degree when people submit information to an insurer with respect to an insurance claim, at least until the dispute escalates. As an extreme example of this point, I expect that it would be contrary to the reasonable expectations of the person supplying the information if the insurer posted the claims information on its website. Therefore, absent evidence on this point, in my view it is reasonable to expect that the third parties would have supplied this information in confidence to ICBC, with the understanding that it may be provided to other people whose rights and obligations (insurance liability or otherwise) may be impacted by the claim. While the applicant is one of these people, in my view this does not vitiate the applicability of s. 22(2)(f) because – in contrast to disclosure to another party in the course of a proceeding (which ordinarily have undertakings of confidentiality or limited use) – orders of this office have consistently determined that disclosure to an applicant is disclosure to the world.[76]

[132] I agree with this reasoning and conclude that s. 22(2)(f) is relevant. I find that the third parties who were involved in accidents or purchased insurance, supplied their personal information in confidence to ICBC.

[133] I have also considered s. 22(2)(h), which captures information that may unfairly damage the reputation of any person referred to in the record. One third party referred to in the records was the subject of inquiries by law enforcement. Although the third party was not alleged to have engaged in illegal activity, in my

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[74] *Insurance (Vehicle) Regulation*, BC Reg 447/83 at s. 73.
[75] Order F16-38, 2016 BCIPC 42 at paras. 129–132.
[76] 2016 BCIPC 42 at para. 131.

view, given the nature of the inquiries this information could negatively impact the third party's reputation.[77]

[134] There are also web searches and a news article about charges brought against a third party. Lastly, there are printouts from a law enforcement database which contains information such as arrests, charges and warnings about third parties' behaviour. The disclosure of this type of third party personal information may unfairly damage the reputation of those referred to. This is because the records contain unproven allegations. Further, the records do not include third parties' responses, which are needed to counter-balance any negative impression given by this specific information.

Applicant's connection to the information

[135] Previous orders have considered the applicant's connection to the personal information when determining whether disclosure would be an unreasonable invasion of personal privacy.[78] The applicant in this case was involved in the same accidents as the third parties who have made claims with ICBC, so he has some connection to the information, particularly the circumstances of any accidents.

Section 22 conclusions

[136] Section 22 requires a determination of whether disclosure to the applicant would be an unreasonable invasion of a third party's personal privacy.

[137] Some of the information that ICBC withheld under s. 22 is not personal information so s. 22 does not apply to it.

[138] Some of the personal information is solely the applicant's personal information or the type of personal information to which s. 22(4)(e) applies. Disclosing those types of personal information would not be an unreasonable invasion of third party personal privacy.

[139] Regarding the balance of the personal information in the records, there is a presumption that disclosure of some of it would be an unreasonable invasion of personal privacy. This presumption applies to information about third parties' medical histories, diagnoses, conditions, treatments or evaluations (s. 22(3)(a)), employment or occupational histories of third parties (s. 22(3)(d)) or financial information (s. 22(3)(f)).

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[77] I include instances where ICBC has not applied s. 22 to this individual's information eg. pp. 69, 2722 and 2723 in this finding because s. 22 is a mandatory exception.

[78] See for example: Order O1-19, 2001 CanLII 21573 (BC IPC) at para. 47 and Order F16-46, 2016 BCIPC 51 at paras. 57–58.

[140] I also found that that s. 22(2)(f) favours withholding the personal information that was supplied by certain third parties to ICBC because it was supplied in confidence. In addition, some of the information about third parties, if disclosed, could unfairly damage the reputation of those individuals and s. 22(2)(h) favours withholding this information.

[141] I have concluded that the applicant's connection to information about the accidents that he was involved in favours disclosure of that sort of information; however, that circumstance is balanced by s. 22(2)(f) because the third parties supplied the information to ICBC in confidence.

[142] Weighing all of the circumstances, I conclude that it would be unreasonable in this case to disclose the majority of the third party personal information and ICBC must withhold it under s. 22.[79]

[143] The only exceptions are instances of information about individuals performing their routine work functions. These individuals are not employees of a public body within the jurisdiction of FIPPA, but they are in the federal public service. This is the same type of information that s. 22(4)(e) applies to when the employee works for a public body. In my view, given the nature and context of this information, disclosing it would not be an unreasonable invasion of these individuals' personal privacy.

[144] A further exception applies to any references to the applicant's lawyer where he was communicating on behalf of the applicant. In my view it would not be an unreasonable invasion of his privacy to disclose such information.[80]

CONCLUSION

[145] For the reasons provided above, under ss. 58, I order that ICBC is:

a) authorized to refuse to disclose some of the withheld information under ss. 13, 14 and 17 of FIPPA;

b) not authorized to withhold information under ss. 15(1)(a) or 15(1)(d); and

c) required to refuse to disclose some of the information under s. 22 of FIPPA;

d) required to give the applicant access to the records at pp. 68, 73, 547–551, 1346, 1608, 2275, 2319, 2658, 2705–2707, 2720, 2721, 2725, 2729,

[79] This includes the instances where the applicant's personal information is inextricably intermingled with third party personal information. ICBC must withhold some information on pp. 69, 77, 1350, 2292 and 2632 under s. 22, although it had not initially applied s. 22.
[80] See pp. 77 and 2731 as an example.

2731, 2733, 2736, 2742, 2743, 2760–2762, 2765, 2784, 2785, 2802–2804, 2825, 2828 in their entirety;

e) required to give the applicant access to the information I have not outlined in red in the excerpted pages of the records that will be sent to ICBC along with this decision as no exception of FIPPA applies;

f) ICBC must give access to the information described in paragraph (d) by March 1, 2018. ICBC must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

January 17, 2018

ORIGINAL SIGNED BY

Chelsea Lott, Adjudicator

OIPC File No.: F11-44632