



Order F22-03

INSURANCE CORPORATION OF BRITISH COLUMBIA

Celia Francis
Adjudicator

January 11, 2022

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Summary: A journalist asked the Insurance Corporation of British Columbia (ICBC) for records related to a news release on fraud cases that ICBC had investigated. ICBC disclosed the records in severed form, withholding information under s. 22(1) (unreasonable invasion of third-party privacy). ICBC later argued that many of the records were court records and thus excluded from the scope of FIPPA under s. 3(1)(a) (now s. 3(3)(a)). The adjudicator found that s. 22(1) applied to the information in dispute (drivers' names and court and police file numbers) and ordered ICBC to refuse the journalist access to this information. The adjudicator also found that the issue of whether s. 3(1)(a) applies to some of the records was moot, as ICBC had already disclosed them in severed form.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3, 22(1), 22(3)(b), 22(2)(a), (e) and (h).

INTRODUCTION

[1] The applicant, a journalist, requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to records related to six fraud files that were the topic of a news release the Insurance Corporation of British Columbia (ICBC) issued in 2016. He requested the following items:

... The full names of the parties who were charged and/or sued, the dates of the incidents, the municipalities in which the incidents occurred, the ICBC file numbers, the police and/or court file numbers, the status or disposition of the civil and/or criminal cases, the amount of any funds recovered by ICBC.

[2] ICBC disclosed the records in severed form, withholding information under three FIPPA exceptions: s. 13(1) (advice or recommendations); s. 15(1) (harm to law enforcement); and s. 22(1) (unreasonable invasion of third-party privacy). The journalist asked that the Office of the Information and Privacy Commissioner (OIPC) review ICBC's decision to withhold information.¹

[3] During mediation of the request for review, ICBC disclosed more information. ICBC also decided that s. 3(1)(a) of FIPPA excluded many of the responsive records from the scope of FIPPA. Mediation did not resolve the matter and it proceeded to inquiry.

[4] ICBC said in its initial submission that it had disclosed all of the information it initially withheld under ss. 13(1) and 15(1).² Thus, the issues remaining for the inquiry were ss. 3(1)(a) and 22(1).

PRELIMINARY MATTERS

Court record – s. 3(1)(a), now s. 3(3)(a)

[5] ICBC argued that s. 3(1)(a) excludes 26 of the 37 pages of responsive records from the scope of FIPPA. Section 3 was recently amended as part of the Bill 22-2021 changes to FIPPA that came into force November 25, 2021.

[6] Section 3(1)(a) used to read as follows:

3 (1) This Act does not apply to the following:

- (a) a court record; a record of a judge of the Court of Appeal, Supreme Court or Provincial Court, a record of a master of the Supreme Court, a record of a justice of the peace, a judicial administration record or a record relating to support services provided to the judges of those courts;

...

[7] The amended provision, s. 3(3)(a), states that FIPPA does not apply to a court record. The effect of both s. 3(1)(a) and s. 3(3)(a) is to exclude a court record from the scope of FIPPA and, thus, an applicant cannot use FIPPA to gain access to it.

[8] I find it would not serve any useful purpose to consider if s. 3(1)(a) (now s. 3(3)(a)) applies to the 26 pages because ICBC treated them as if FIPPA does

¹ The journalist also said ICBC had not provided all the records he asked for. The submissions do not explain what happened with this complaint.

² ICBC's initial submission, para. 6.

apply. It disclosed severed copies in response to the applicant's access request. I find, therefore, that this issue is moot and I decline to deal with it.³

Section 25 (public interest override)

[9] Section 25 requires disclosure of information where it is clearly in the public interest.

[10] The journalist argued that s. 25 overrides s. 3(1)(a).⁴

[11] ICBC objected to the journalist raising s. 25 for the first time in his response submission. ICBC said that, in any case, the journalist's argument has no merit. In its view, if s. 3(1)(a) excludes court records from FIPPA, it follows that s. 25 cannot apply to those records.⁵

[12] I declined above to consider whether s. 3(1)(a) (now s. 3(3)(a)) applies. Neither party raised the issue of whether s. 25 overrides s. 22(1).

[13] In any case, past orders have said that parties may raise new issues only with the OIPC's permission.⁶ The journalist did not ask for such permission and did not explain why he was raising s. 25 at this late date. I have therefore decided not to permit him to raise it now.

Charter rights

[14] The journalist argued that the right to report on court matters and the right to report on matters of public interest flow from s. 2(b) of the *Canadian Charter of Rights and Freedoms (Charter)*.⁷ In his view, his s. 2(b) *Charter* rights have been breached because, without court file numbers, he cannot access the relevant court records.⁸

[15] ICBC objected to the journalist raising this issue for the first time in his response.⁹

[16] Section 2(b) of the *Charter* states that everyone has the fundamental "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication".

³ See Order F16-10, 2016 BCIPC 12, for a detailed discussion of mootness principles in the context of whether to hold an inquiry under s. 56 of FIPPA.

⁴ Journalist's response submission, para. 9. He did not suggest that s. 25 also overrides s. 22(1).

⁵ ICBC's reply submission, p. 1.

⁶ For example, Order F21-16, 2021 BCIPC 21 (CanLII), Order F18-11, 2018 BCIPC 14 (CanLII).

⁷ Journalist's email requesting that this matter proceed to inquiry.

⁸ Journalist's response submission, paras. 6 and 15.

⁹ ICBC's reply submission p. 1.

[17] Section 2(b) of the *Charter* was not included as an issue in the notice for this inquiry. There is no evidence that the journalist asked that it be included as an issue or that he objected to it not being included. I have, therefore, decided not to permit him to raise it now.

ISSUES

[18] The issue to be decided in this inquiry whether s. 22(1) requires ICBC to withhold information.

[19] Under s. 57(2) of FIPPA, the journalist has the burden of proving that disclosure of any personal information would not be an unreasonable invasion of third-party privacy.

DISCUSSION

Background

[20] ICBC said:

The most common types of insurance fraud include false claims, exaggerated (opportunistic) claims and organized fraud. An example of a false claim is when the owner fabricates a story about their vehicle being stolen when it was actually disposed of by the owner. Exaggerated claims are when a driver or passenger embellishes a claim by overstating their injuries or the damage to their vehicle. Organized fraud is a planned event such as a staged collision.¹⁰

[21] In January 2016, ICBC issued a news release called “ICBC’s Hall of Shame: The Top 6 Fraud Files of 2015” which summarized six examples of insurance fraud. The aim of the news release was to highlight the work of ICBC’s Special Investigations Unit (SIU). Its purpose was also to educate the public about the costs associated with fraudulent behaviour and about how the public can help prevent or report such behaviour.¹¹

[22] ICBC said that “[o]f the six fraud examples referred to in the access request, four resulted in criminal convictions, one resulted in criminal charges that had not yet been tried, and the remaining one did not result in criminal charges or a civil judgment but rather a denial of a claim.”¹²

¹⁰ Affidavit of ICBC’s SIU Manager, para. 5.

¹¹ ICBC’s initial submission, para. 2.

¹² ICBC’s initial submission, para. 24.

Information in dispute

[23] Twenty-six of the 37 pages of responsive records consist of court services forms related to the six cases.¹³ The remaining pages are ICBC's own records about the six incidents which include summaries of the incidents, ensuing investigations and any convictions.

[24] The journalist requested these items:

- full names of the parties who were charged and/or sued;
- the dates of the incidents;
- the municipalities in which the incidents occurred;
- the ICBC file numbers;
- the police and/or court file numbers;
- the status or disposition of the civil and/or criminal cases; and
- the amount of any funds recovered by ICBC.

[25] ICBC disclosed all of these items in both types of records, except for the names and police or court file numbers. Accordingly, I need only consider whether s. 22(1) applies to the drivers' names and court and police file numbers.

Unreasonable invasion of third-party personal privacy – s. 22(1)

[26] ICBC said that s. 22(1) applies to the information in dispute. The journalist disagreed.

[27] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03, where the adjudicator said this:

Numerous orders have considered the approach to s. 22 of FIPPA, which states that a "public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy." This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine

¹³ For example, "Conviction – Imposition of Fine"; "Certificate of Conviction"; "Restitution Order"; "Probation Order"; "Warrant of Committal upon Conviction". ICBC said these forms were all Provincial Court criminal records that its SIU officers obtained from Court Services Online; Affidavit of ICBC's SIU Manager, para. 8.

whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.¹⁴

Is the information in dispute personal information?

[28] FIPPA defines "personal information" as recorded information about an identifiable individual, other than contact information.¹⁵

[29] ICBC said that the information in dispute is personal information.¹⁶ The journalist did not address this issue.

[30] The withheld names are about identifiable individuals and are not contact information. I find that they are personal information.

[31] The police and court file numbers are also called file numbers in the records and are unique to each driver's case. I conclude they could be used to locate the relevant court files and thus identify the drivers. I find, therefore, that they are also personal information.

Does s. 22(4) apply?

[32] Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. ICBC said that the information in dispute does not fall under any of the s. 22(4) categories.¹⁷ The journalist did not address this issue.

[33] I agree with ICBC that there is no basis for finding that s. 22(4) applies here. The personal information at issue does not, for example, relate to any third party's position, functions or remuneration as an officer, employee or member of a public body (s. 22(4)(e)).

Presumed unreasonable invasion of third-party privacy – s. 22(3)

[34] Section 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[35] Section 22(3)(b), the relevant provision, reads as follows:

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

¹⁴ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

¹⁵ "Contact information" is defined in Schedule 1 of FIPPA 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."

¹⁶ ICBC's initial submission, para. 29.

¹⁷ ICBC's initial submission, para. 30.

...

- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

...

[36] ICBC said that s. 22(3)(b) applies to the information in dispute, as it is clear that ICBC's SIU gathered the information in the course of the six fraud investigations.¹⁸ ICBC's SIU manager deposed that SIU's officers are peace officers and Special Constables under the *Police Act*. He said they investigate fraud and other criminal offences committed against ICBC under the *Criminal Code*, the *Motor Vehicle Act* and *Motor Vehicle Act Regulations*, with a view to protecting the public automobile insurance fund and the vehicle licencing and registration program.¹⁹

[37] The journalist did not specifically address this provision. However, I infer from his submission that he accepts that the information relates to fraud cases.

[38] I am satisfied from ICBC's evidence and the records themselves that the information in dispute was compiled and is identifiable as part of ICBC's SIU investigations into possible fraud under the *Criminal Code*. I find, therefore, that s. 22(3)(b) applies to it. This means that its disclosure is presumed to be an unreasonable invasion of third-party privacy.

Relevant Circumstances

[39] Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy. It is at this stage that the s. 22(3)(b) presumption may be rebutted.

[40] The relevant s. 22(2) circumstances read as follows:

- 22 (2) In determining under subsection (1) or (3) whether 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

¹⁸ ICBC's initial submission, para. 31.

¹⁹ Affidavit of SIU Manager, para. 2.

(a) the disclosure is desirable for the purposes of subjecting the activities of the government of British Columbia or a public body to public scrutiny

...

(e) the third party will be exposed unfairly to financial or other harm,

...

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

...

[41] **Public scrutiny – s. 22(2)(a):** ICBC did not specifically address this factor. The journalist said that s. 22(2)(a) favours disclosure. He argued that ICBC has withheld all of the information that would allow him to report in the public interest on how each case was disposed of in court, whether justice was served and whether a judge ordered a “perpetrator” to compensate ICBC. In his view,

Knowing and understanding who the alleged fraudsters were and whether the cases against them were based on evidence is the right of those who own ICBC, the people of B.C. Was the ICBC advertising campaign compliant with truth in advertising principles?²⁰

[42] He added that other public bodies commonly disclose file numbers, if not names, because, he said, they understand “the value of the public’s right to know in a free and democratic society.”²¹ He suggested that ICBC wants to suppress the information “because there is a likelihood that the facts do not support the claims made in the communications program and the advertising campaign.”

[43] I infer that the journalist wants to review all of the court records related to these six incidents. I also understand that it would likely be easier for him to locate them, if he had the names and court file numbers. He has not, however, explained why he cannot do so with the information he has.

[44] The journalist has, in fact, received most of the information he requested: names of municipalities where incidents occurred; dates of incidents; ICBC claim and SIU file numbers; disposition (e.g., conviction); money recovered (e.g., fines). He has also received detailed summaries of the incidents and the related SIU investigations. Thus, contrary to what the journalist said, he does know how each case was disposed of and whether the “perpetrator” had to pay compensation.

[45] Moreover, it is evident that the news release contains much the same (anonymized) information as the severed records.²² He has thus already received information that tells him what happened and allows him to see if ICBC provided

²⁰ Journalist’s response submission, paras. 21-22.

²¹ Journalist’s response submission, para. 23.

²² ICBC provided a copy of the news release with its initial submission.

accurate information in the news release. I fail to see how disclosure of the names and police and court file numbers would enhance the journalist's or the public's understanding of what ICBC did in these six cases.

[46] For these reasons, the journalist has not persuaded me that disclosure of the information in dispute would be desirable to subject ICBC's activities to public scrutiny. I find that s. 22(2)(a) does not apply here.

[47] **Unfair harm and damage to reputation – ss. 22(2)(e) and (h):** The journalist did not directly deal with these factors. ICBC said that “[t]o the extent the information is about individuals who were not charged, or having been charged not convicted, additional considerations such as those established by section 22(2)(e) and 22(2)(h) militate against non-disclosure.”²³

[48] Disclosure of the information in dispute would identify individuals who had been caught in their attempts to engage in fraud against ICBC and, by extension, the taxpayers of BC. Some of them were convicted and jailed or fined.

[49] There is no doubt in my mind that this kind of information is sensitive and potentially embarrassing. I am satisfied that disclosure of the information in dispute could expose these individuals to harm or could damage their reputations. However, given that four of these individuals were convicted of fraud, I am not persuaded that any such harm or damage to them would be “unfair”. I make the same finding regarding the individual whose claim ICBC denied. I find, therefore, that ss. 22(2)(e) and (h) do not apply to the information in dispute pertaining to these five individuals.

[50] ICBC said that the sixth individual was charged but not yet tried at the time of the request. ICBC did not explain what happened in this person's case. If the individual was not convicted, however, I am satisfied that disclosure of the information in dispute pertaining to this individual could result in unfair harm or damage to the individual for the purposes of ss. 22(2)(e) and (h).

Conclusion on s. 22(1)

[51] I found above that the information in dispute is personal information. I also found that s. 22(4) does not apply but that s. 22(3)(b) does, meaning that disclosure of the information in dispute is presumed to be an unreasonable invasion of third-party privacy. I also found that s. 22(2)(a) does not apply to any of the information in dispute.

[52] I found that ss. 22(2)(e) and (h) do not apply to the individuals who were convicted and to the individual whose claim was denied. However, I found that ss. 22(2)(e) and (h) do apply to the information in dispute related to the sixth

²³ ICBC's initial submission, para. 32.

individual, if that person was not convicted. This favours withholding the information in dispute related to that sixth individual.

[53] I am not aware of any factors favouring disclosure of any of the information in dispute.

[54] The fact that I found that disclosure of the information in dispute of five of the drivers would not result in unfair harm or damage to them for the purposes of ss. 22(2)(e) and (h) does not mean that the presumption in s. 22(3)(b) is outweighed. The journalist has not persuaded me that he should have access to the names and police and court file numbers. He has, in my view, already received sufficient information to permit him to engage in his journalistic endeavours and to attempt to locate the court files themselves, should he still wish to do so.

[55] The journalist has not, in my view, discharged his burden of proof. I find that s. 22(1) applies to all of the information in dispute.

CONCLUSION

[56] For the reasons given above, under s. 58(2)(c) of FIPPA, I require ICBC to refuse the journalist access to the information in dispute, under s. 22(1).

January 11, 2022

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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