



Order F24-84

INSURANCE CORPORATION OF BRITISH COLUMBIA

D. Hans Hwang
Adjudicator

September 24, 2024

CanLII Cite: 2024 BCIPC 96

Quicklaw Cite: [2024] B.C.I.P.C.D. No. 96

Summary: An applicant asked the Insurance Corporation of British Columbia (ICBC) for access to records about him. ICBC disclosed some information but withheld the rest under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege) and 22(1) (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that ICBC was authorized to withhold some, but not all, of the disputed information under ss. 13 and 14. The adjudicator also found that ICBC was required to withhold a small amount of third-party personal information in dispute under s. 22(1). The adjudicator ordered ICBC to disclose the information it was not authorized or required to withhold under ss. 13(1), 14 and 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, s. 13(1), 14, 22(1), 22(2), 22(3)(a), 22(3)(d) and 22(3)(i) and Schedule 1 (Definitions).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) requested the Insurance Corporation of British Columbia (ICBC) to provide records about him.

[2] ICBC disclosed some of the information but withheld the rest under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege) and 22(1) (unreasonable invasion of third party personal privacy) of FIPPA.¹

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review ICBC's decision to withhold information. OIPC's

¹ From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

mediation did not resolve the issues in dispute and the applicant requested the matter proceed to inquiry.

[4] Prior to providing its reply submission, ICBC reconsidered its decision to withhold some portions of the information in dispute and released this information to the applicant.²

[5] Both parties provided written submissions.

ISSUES

[6] At this inquiry, I must decide the following issues:

1. Is ICBC authorized to refuse to disclose the information in dispute under ss. 13(1) and 14?
2. Is ICBC required to refuse to disclose the information in dispute under s. 22(1)?

[7] Under s. 57(1), the burden is on ICBC to prove that the applicant has no right of access to the information in dispute under ss. 13(1) and 14.

[8] With respect to s. 22(1), s. 57(2) says that the burden is on the applicant to prove that the disclosure of the information in dispute is not an unreasonable invasion of a third party's personal privacy. However, ICBC, which is the public body in this case,³ has the initial burden of proving the information is personal information.⁴

DISCUSSION

Background

[9] ICBC is a provincial Crown corporation that provides universal and compulsory basic auto insurance in British Columbia. ICBC also administers driver-licensing including renewing licences, administering driving tests and issuing identification cards.

[10] The applicant identifies himself as a Pastafarian and a member of the Church of the Flying Spaghetti Monster, who are known to wear either a pasta colander or a three-cornered hat known as a pirate's tricorne on their heads. In 2019, the applicant applied for a renewal of his driver's licence and provided photographs in which he is wearing this kind of head covering.

² ICBC's email dated July 5, 2024.

³ Schedule 1 "Definition" of FIPPA.

⁴ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.

[11] ICBC determined these photographs unacceptable for the purpose of printing on a BC driver's licence. The applicant made his access request under FIPPA for records related to his renewal application.

Preliminary Issue

[12] The applicant says that ICBC violated the *Canadian Charter of Rights and Freedoms* (Charter) because ICBC decided that the applicant's religious beliefs as a member of the Church of the Flying Spaghetti Monster were not protected by the Charter based on their own skepticism about the legitimacy of the applicant's religion.⁵

[13] In this inquiry, my task is to dispose of the issues listed in the OIPC investigator's fact report (report) and the notice of inquiry (notice), which was provided to both parties at the start of this inquiry. Those issues are limited to whether certain FIPPA exceptions to disclosure apply to the information in dispute. The report and notice in this case do not mention the applicant's claim about the Charter violation. Further, I find that the applicant's assertion about the Charter violation has no connection to the applicant's rights under FIPPA, and I do not have the authority to decide that issue. Therefore, although I have read all of the parties' submissions, I will only comment on those matters insofar as they directly relate to an issue under FIPPA.

Record and information at issue

[14] The responsive records comprise 691 pages of emails and attachments.⁶ ICBC is withholding information from some of these records.

[15] In some instances, ICBC applied more than one FIPPA exception to the same information. In going through my analysis, if I found that one exception applied, I did not consider the other cited exceptions.

Solicitor-client privilege, s. 14

[16] ICBC applied s. 14 to withhold information from some of the records at issue which consist of approximately 260 pages of emails. ICBC provided a copy of these records for my review.

⁵ Applicant's response submission at paras 1-3.

⁶ In the inquiry, ICBC provided three sets of records: a record package dated June 21, 2024 (Initial package); ICBC's reconsidered disclosure dated July 5, 2024; a severed record package dated July 25, 2024 which reflects the July 5, 2024 disclosure (Final package). In the Final package, the information in dispute has been redacted. Therefore, in order to review the disputed information, I reviewed the Initial package and Final package, as well as the reconsidered disclosure package.

[17] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. This section encompasses both legal advice privilege and litigation privilege.⁷ ICBC is relying on legal advice privilege to withhold the information in dispute.⁸

[18] Legal advice privilege serves to promote full and frank communications between solicitor and client, thereby facilitating effective legal advice, personal autonomy, access to justice and the efficacy of the adversarial process.⁹

[19] Not all communications between a client and their lawyer are protected by legal advice privilege, but the privilege will apply to communications that:

1. are between a solicitor and client;¹⁰
2. entail the seeking or giving of legal advice; and
3. are intended by the solicitor and client to be confidential.¹¹

[20] I will address each category below.

Parties' submissions, s. 14

[21] ICBC says that disclosure of the records at issue would reveal privileged information between ICBC and its lawyers about the applicant's renewal application. It says that the records at issue are confidential communications generated by or for ICBC's in-house legal counsel (In-House Lawyer) about legal opinions and advice. ICBC says that the information in dispute also includes communications between several ICBC employees and the In-House Lawyer in which ICBC employees provided information for the purpose of obtaining legal advice. ICBC also says that some of the disputed information consists of communications between the In-House Lawyer and ICBC's external legal counsel (External Lawyer).¹²

[22] The applicant says that ICBC has not provided evidence to prove that legal advice privilege applies to the disputed information.¹³

⁷ *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

⁸ ICBC's initial submission at paras 6, 10, 11 and 13.

⁹ *College*, supra note 7 at para 30.

¹⁰ *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83.

¹¹ *Solosky v The Queen*, 1979 CanLII 9 (SCC), [1980] 1 SCR 821 [Solosky] at p. 837.

¹² ICBC's initial submission at para 6.

¹³ Applicant's response submission at paras 8-10.

Analysis and findings

[23] Based on my review of the records, I find that ICBC is refusing to disclose the information under s. 14 from:

- Emails between the In-House Lawyer and ICBC employees, some of which include an attachment (In-House Lawyer Emails);
- Emails between the In-House Lawyer and the External Lawyer (External Lawyer Emails); and
- Emails between ICBC employees (ICBC Emails).

[24] To support its claim of privilege over the records, ICBC provided affidavit evidence from an individual who is employed by ICBC as a lawyer and as Senior Manager, Privacy and Information (Senior Manager). The Senior Manager attests that she has reviewed the records at issue and says she is satisfied that the withheld communications are between ICBC and its lawyers where legal advice is sought or received or information is provided for that purpose. The applicant says that the Senior Manager has failed to establish a foundation of their direct knowledge.¹⁴

[25] Having reviewed ICBC's affidavit evidence and the records at issue, I accept that the Senior Manager's evidence is consistent with the records. Also, as an administrative tribunal, OIPC is not bound by strict rules of evidence and it is open to me to accept sworn evidence and belief as opposed to first-hand knowledge in some cases.¹⁵ While the Senior Manager was not a participant in all of the communications that ICBC withheld under s. 14, I accept that the Senior Manager was included in some of these communications and she has reviewed the records at issue and has personal knowledge of these records.

[26] For the reasons that follow, I am satisfied that legal advice privilege applies to some of the disputed information.

In-House Lawyer Emails

[27] ICBC is withholding information from emails between ICBC employees and the In-House Lawyer.

[28] Whether solicitor client privilege applies to communications between a public body and its in-house legal counsel depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is

¹⁴ Applicant's response submission at para 11.

¹⁵ Order F21-15, 2021 BCIPC 19 at para 65, citing Order F20-16, 2020 BCIPC 18 at para 10; Order P07-01, 2007 CanLII 44884 (BC IPC) at para 59 citing *Cambie Hotel (Nanaimo) Ltd. (c.o.b. Cambie Hotel) v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119.

sought and rendered.¹⁶ Having reviewed the In-House Lawyer Emails, I find that ICBC employees contacted the In-House Lawyer for the purpose of seeking legal advice and the In-House Lawyer was acting in their capacity as legal counsel. Therefore, I am satisfied that that ICBC and the In-House Lawyer were in a solicitor-client relationship and the In-House Lawyer Emails meet the first part of the test for legal advice.

[29] The In-House Lawyer emails consist of: (1) emails that ICBC employees sent to the In-House Lawyer and (2) emails that the In-House Lawyer sent to ICBC employees.

[30] I find emails that ICBC employees sent to the In-House Lawyer contain ICBC's concerns and questions on the subject matter on which ICBC is seeking the In-House Lawyer's legal opinion, and related background information. I find that in the emails that the In-House Lawyer sent to ICBC employees, the In-House Lawyer provides their legal opinion and advice about the applicant's renewal application. As a result, I am satisfied that the In-House Lawyer Emails are communications between a lawyer and a client which entail seeking or giving of legal advice.

[31] Further, I am satisfied that these communications were intended to be confidential. I find that some of these emails were marked "privileged", which establishes they were intended to be confidential communications. I also conclude that the emails that are not marked as privileged were intended to be confidential communications because there is no indication they were shared with anyone other than ICBC employees and the In-House Lawyer. I also find that there is nothing in the materials before me that suggests these ICBC employees or the In-House Lawyer intended these communications would not be held in confidence.

[32] Having considered these circumstances, I find that the communications discussed above are privileged.

[33] I find, however, that legal advice privilege does not apply to some of the In-House Lawyer Emails. I find these are emails that only contain greetings and acknowledgements of receipt, cover emails that forward draft documents and communications about whom should be included in the future correspondence and hearing schedule of a matter related to the applicant.¹⁷ I find that these communications do not contain legal advice or information that would allow

¹⁶ *R v. Campbell*, 1999 CanLII 676 at para. 50.

¹⁷ Records at pages: 209, 215, 219, 233, 235, 237, 238, 240, 242, 244, 248, 250, 251, 253, 254, 256, 258, 260, 261, 262, 265, 266, 268, 271, 272, 274, 278, 281, 283, 286, 288, 294, 295, 296, 297, 306, 307, 308, 309, 314, 315, 316, 318, 319, 321, 324, 332, 336, 434, 435, 436, 439, 440, 446, 485, 492, 500, 506, 513, 514, 517, 521, 525, 528, 549, 552, 553, 554, 563, 589, 590, 592, 593, 604, 618, 627, 674, 677, 678.

accurate inferences about privileged communication.

External Lawyer Emails

[34] ICBC is withholding information from emails between the In-House Lawyer and the External Lawyer. I find that in these emails the In-House Lawyer and the External Lawyer discussed the legal issues and opinions involving the applicant's renewal application.

[35] It is well established that communications between lawyers who are working together to provide legal advice to a client fall within the scope of a communication between a legal advisor and client.¹⁸ I am satisfied this principle applies to the External Lawyer Emails because the In-House Lawyer and External Lawyer worked together on the provision of legal advice to ICBC. Also, I find that the In-House Lawyer sought the External lawyer's legal opinion on the subject matter and the External Lawyer provided it. I accept the Senior manager's evidence that the communications between the In-House Lawyer and External Lawyer were for the purpose of seeking and receiving legal advice.

[36] Further, there is nothing in the records and submissions before me that suggests the In-House Lawyer and the External Lawyer intended these communications would not be held in confidence.

[37] I conclude that the External Lawyer Emails may be withheld under s. 14 as disclosing the emails would reveal information that is protected by legal advice privilege.

ICBC Emails

[38] ICBC is withholding information from emails between ICBC employees.

[39] While these emails are not themselves communications between solicitor and client, for the reasons that follow, I find that they are also privileged.

[40] I find that in some of these communications, ICBC employees discussed background information and their concerns and questions on the subject matter on which they are seeking legal advice, and these communications were sent to the In-House Lawyer in order to obtain their legal advice. Therefore, these communications are part of the continuum of information exchanged between the client and the lawyer.¹⁹

¹⁸ Order F20-16, 2020 BCIPC 18 at para 65, citing *Shuttleworth v Eberts et. al.*, 2011 ONSC 6106 at paras 67 and 70-71; *Weary v Ramos*, 2005 ABQB 750 at para 9.

¹⁹ *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 at para 83; *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 (Camp) at paras 40-46.

[41] The ICBC Emails also contain communications about the subject matter discussed in the In-House Lawyer Emails. In these communications, ICBC employees discuss how to incorporate this legal advice into their workflow based on the In-House Lawyer's legal advice. I find these communications are internal client communications that discuss legal advice and its implications; therefore, legal advice privilege extends to them.²⁰

[42] I am satisfied that these communications were intended to be confidential because there is nothing in the materials before me that suggests these communications were shared with anyone other than the ICBC employees who were included in the ICBC Emails.

Summary, s. 14

[43] I find that s. 14 applies to some of the information in dispute. I find, however, that the rest of the information withheld under s. 14 does not contain legal advice or information that would allow accurate inferences about privileged communication. As a result, I conclude s. 14 does not apply to this information.

Advice or Recommendations, s. 13

[44] There was some overlap between ICBC's application of ss. 13(1) and 14 to the records. Where I have already decided ICBC may refuse access to information under s. 14, I will not consider whether it may also refuse access under s. 13(1).

[45] Section 13(1) 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 minister. Previous OIPC orders recognize that s. 13(1) protects "a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations."²¹

[46] To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or a minister. The term "recommendations" includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.²²

²⁰ *Bank of Montreal v Tortora*, 2010 BCSC 1430 at para 12; *Bilfinger Berger (Canada) Inc. v Greater Vancouver Water District*, 2013 BCSC 1893 at paras 22-24.

²¹ Order 01-15, 2001 CanLII 21569 at para 22.

²² *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras 23-24.

[47] The term “advice” has a broader meaning than “recommendations.”²³ “Advice” includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact in relation to a future action or an existing set of circumstances.²⁴

Would disclosing the information at issue reveal advice or recommendations?

[48] ICBC is withholding information in approximately 290 pages of emails, draft emails responses (Draft Responses) and a draft letter (Draft Letter) under s. 13(1).

[49] ICBC says that this information would disclose advice or recommendations prepared for ICBC, either directly or by providing an accurate inference respecting the advice or recommendations provided.²⁵ The applicant asserts that ICBC has not provided evidence to prove its claim of s. 13(1).²⁶

[50] Based on my review of the disputed information, I am satisfied that some of the information in emails is advice and recommendations. I find that this information is a suggested course of action from one ICBC employee to others, advice on how to interpret and apply ICBC’s policy on photo ID card regulation, and how to handle the applicant’s renewal application. I find that this information includes relevant considerations identified by ICBC employees for those who make decisions about such matters, as well as background information about the circumstances giving rise to those considerations. In my view, this information is clearly advice and recommendations developed by ICBC employees for ICBC.

[51] I find that the withheld parts of the Draft Letter contain an ICBC employee’s comments and feedback that are embedded by means of the “track changes” of Microsoft Word program. I also find that the withheld portions of the Draft Responses contain an ICBC employee’s suggested alternative wording or ideas for proposed draft email responses.

[52] I am satisfied that disclosing the information withheld from the Draft Letter and Draft Responses would reveal ICBC employees’ advice and recommendations to the managers at ICBC who ultimately would decide what the final version of those documents would say.

²³ *Ibid* at para 24.

²⁴ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

²⁵ ICBC’s initial submission at para 19-20.

²⁶ Applicant’s response submission at paras 17-18.

[53] I find, however, that the rest of the information withheld under s. 13 is not advice or recommendations.²⁷ It is greetings, acknowledgements of receipt, messages that forward one ICBC employee's email to another, communications about who will be contacted for further discussion, and checking the hearing schedule of a matter related to the applicant.²⁸ I also find that some of the information is about the next steps to take, internal file assignment, updates on files, questions asked by one ICBC employee to another seeking an opinion on how to handle the subject matter,²⁹ and cover emails that forward attachments.³⁰ ICBC has not explained, and I do not see, how disclosing this information would reveal any advice or recommendations developed by or for ICBC.

Do any exceptions in s. 13(2) or s. 13(3) apply?

[54] The next step in the s. 13 analysis is to consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found would reveal advice and recommendations developed by or for a public body, which is ICBC in this case.

[55] ICBC says that none of the categories listed in s. 13(2) apply to the information in dispute. In particular, ICBC says "section 13(2)(a) does not apply because: (1) although some withheld information is not directly the advice, it is integral to the advice because it would be difficult to understand what the advice is without it; and (2) because in some instances, it would reveal, by inference, what the advice is..."³¹

[56] The applicant says that he does not think s. 13(2) applies to the information in dispute.³²

[57] Section 13(2)(a) states that a public body must not refuse to disclose "any factual material". The term "factual material" is not defined in FIPPA. However, in distinguishing it from "factual information" which may be withheld under s. 13(1), the courts have interpreted "factual material" to mean "source materials" or "background facts in isolation" that are not necessary to the advice provided. Thus, where facts are compiled and selected by an expert as an integral

²⁷ As set out above, I considered if s. 13 applies to information that I found could not be withheld under s. 14.

²⁸ For example, records at pages 209, 215, 219, 233, 235, 237, 238, 240, 242, 244, 248, 250, 251, 253, 254, 256, 258, 260, 261, 262, 265, 266, 268, 271, 272, 274, 278, 281, 283, 286, 288, 294, 295, 296, 297, 306, 307, 308, 309, 314, 315, 316, 318, 319, 321, 324, 332, 336, 434, 435, 436, 439, 440, 446, 485, 492, 500, 506, 513, 514, 517, 521, 525, 528, 549, 552, 553, 554, 563, 589, 590, 592, 593, 596, 604, 618, 627, 674, 677, 678, 689.

²⁹ For example, records at pages 16, 21, 28, 97, 618, 641, 645, 654, 661, 667-670 and 671.

³⁰ For example, records at pages 46, 53, 461, 462, 468, 476, 478, 479, 502, 543, 586-587 and 644.

³¹ ICBC's initial submission at para 20.

³² Applicant's response submission at para 17.

component of their advice, they do not constitute “factual material” within the meaning of s. 13(2)(a).

[58] Having reviewed the information that I found would reveal advice and recommendations, I am satisfied that none of it is “factual material”. Although some of the information is “factual” in nature, in my view, it is a necessary and integrated part of the advice. Therefore, s. 13(2)(a) does not apply.

[59] I also find that the records have not been in existence for 10 or more years. The oldest records at issue were created in 2016. Consequently, s. 13(3) does not apply.

[60] Given my findings respecting ss. 13(2) and (3), I conclude that s. 13(1) authorizes ICBC to withhold the information that I have found reveals advice and recommendations.

Summary, s. 13(1)

[61] To summarize, I find some of the information withheld under s. 13(1) would reveal advice and recommendations developed by or for ICBC. I also find that ss. 13(2) and 13(3) do not apply to that information. Therefore, I conclude ICBC is authorized to withhold that information under s. 13(1). I find, however, that ICBC is not authorized under s. 13(1) to withhold the information that I found would not reveal any advice or recommendations.

Unreasonable invasion of a third party’s personal privacy, s. 22

[62] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

[63] ICBC has withheld information in several emails and an entire document under s. 22(1).³³

Personal information

[64] Since s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is “personal information” within the meaning of FIPPA.

[65] FIPPA defines personal information 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

³³ ICBC’s initial submission at para 22. ICBC identifies four records at pages 55, 165, 224, 503 and 614.

contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”³⁴ Whether information is “contact information” depends upon the context in which it appears.³⁵

[66] ICBC submits that the information it withheld under s. 22 is personal information of third parties.³⁶ The applicant says that he takes no position on the ICBC’s application of s. 22 “as long as it is bona fide personal information of third parties”.³⁷

[67] From my review of the records, I am satisfied that most of the information withheld under s. 22(1) is personal information because it is about individuals who are identified by name and it is not contact information.³⁸ For clarity, it is information about an ICBC employee’s time off, the In-House Lawyer’s appointment for medical treatment and an individual’s religious belief.

[68] I find, however, that a small amount of the withheld information is contact information, so not personal information, under FIPPA. This information is the name and mobile phone number of an ICBC employee who is to be contacted as a replacement for another ICBC employee during her time off. I find that this information is contact information because it enables the replacement to be contacted at their place of business.³⁹

Disclosure not an unreasonable invasion of privacy, s. 22(4)

[69] The second step in the s. 22(1) analysis is to determine whether the personal information falls into any of the circumstances listed in s. 22(4). If the circumstances in s. 22(4) apply, then disclosure would not be an unreasonable invasion of a third party’s personal privacy. The parties do not address s. 22(4). I have reviewed the circumstances set out in s. 22(4), and I conclude that none of them apply to the disputed information.

Presumptively unreasonable invasion of personal privacy, s. 22(3)

[70] The third step is to determine whether any of the circumstances set out at s. 22(3) apply. If one or more does, then disclosure is presumed to be an

³⁴ Schedule 1, Definition.

³⁵ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

³⁶ ICBC’s initial submission at para 22.

³⁷ Applicant’s response submission at para 5.

³⁸ In my view, the applicant’s submission that he takes no position as long as it is bona fide personal information of third parties is not definitive enough for me to stop further steps in s. 22 analysis. Therefore, although I have found that most of the disputed information is personal information, I take normal steps in the s. 22(1) analysis.

³⁹ Records at pages 224 (duplicate at 503).

unreasonable invasion of a third party's personal privacy. The parties do not address s. 22(3). I have considered if ss. 22(3)(a), 22(3)(d) and 22(3)(i) apply to the disputed information.

Medical history, s. 22(3)(a)

[71] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it is related to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation.

[72] I find that a small amount of the disputed information is the In-House Lawyer's personal information that relates to their medical treatment. This information is found in an email that one ICBC employee sent to another.⁴⁰ I am satisfied that disclosure of this personal information is presumed to be an unreasonable invasion of their personal privacy. For that reason, I find that s. 22(3)(a) applies to this information.

Employment history, s. 22(3)(d)

[73] Section 22(3)(d) creates a rebuttable presumption against disclosure where the personal information relates to the employment, occupational, or educational history of a third party.

[74] As outlined above, I have found some of the personal information relates to an ICBC employee's time off;⁴¹ however, I am not satisfied that s. 22(3)(d) applies to this information. I find the withheld information only reveals the employee telling her coworkers that she will be away for a certain period and how she has arranged work issues to be handled during her absence.

[75] Previous OIPC orders have found that s. 22(3)(d) applies, amongst other things, to personal information relating to the administration of a third party's employment (e.g., the type, amount or balance of parental, vacation, or sick leave)⁴² and information about an employee's leave entitlement.⁴³ The personal information at issue here reveals nothing of that sort about this employee. Instead, it is the kind of factual, non-detailed statement about the timing of an employee's absence from the workplace that past OIPC orders have said s. 22(3)(d) does not apply to.⁴⁴ I agree with that approach and find s. 22(3)(d)

⁴⁰ Record at page at 614.

⁴¹ Records at pages 55, 224 (duplicate at 503). The employee's name has already been disclosed.

⁴² Order F21-62, 2021 BCIPC 71 (CanLII) at paras 22-25.

⁴³ Order F20-20, 2020 BCIPC 23 (CanLII) at paras 130-131.

⁴⁴ F20-38, 2020 BCIPC 44 at paras 77 and 79, Order F20-20, 2020 BCIPC 23 (CanLII) at para 131, Order F21-32, 2021 BCIPC 40 (CanLII) at para 101.

does not apply to this information about when the employee will be away from the office.

Information about religious belief, 22(3)(i)

[76] Section 22(3)(i) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[77] I find that ICBC is withholding a small amount of information in a letter that the applicant provided to ICBC and this information relates to an individual's religious belief. I find s. 22(3)(i) applies to this information.⁴⁵

Relevant circumstances, s. 22(2)

[78] The next step in a s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). These circumstances can weigh either in favour of, or against, its disclosure. It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) may be rebutted.

[79] Neither party made a submission on circumstances listed in s. 22(2) or any unlisted factors.

[80] I considered all relevant circumstances, including those listed in s. 22(2) and find that applicant's existing knowledge is relevant to the information in dispute.

Applicant's existing knowledge

[81] While not enumerated in s. 22(2), past orders have considered whether the applicant has pre-existing knowledge of the information in dispute. An applicant's knowledge of the personal information at issue may be a factor that weighs in favour of disclosure where there is evidence, or the circumstances indicate, that an access applicant already knows or can easily infer the information at issue.⁴⁶

[82] From my review of the records, I can see that the applicant already knows some of the personal information in dispute because this information is in a letter that the applicant provided to ICBC in support of his argument respecting his

⁴⁵ Records at pages 165-166.

⁴⁶ Order F23-13, 2023 BCIPC 15 (CanLII) at para 184.

renewal application.⁴⁷ I am satisfied that his letter is about an identifiable individual and the applicant knows the name and religious belief of this individual. Also, I find that the applicant knows this individual was represented by a lawyer on a specific matter. Considering these circumstances, I find that the applicant's pre-existing knowledge weighs in favour of disclosing this information to the applicant.

Summary and conclusion, s. 22(1)

[83] I found that a small amount of the information consisting of an ICBC's employee's name and mobile phone number is contact information, not personal information, so s. 22(1) does not apply to that information. However, I found that the rest of the information ICBC withheld under s. 22(1) is the personal information of third parties and none of the circumstances in s. 22(4) apply here.

[84] I found that s. 22(3)(a) applies to some of the personal information in dispute because it is about the In-House Lawyer's medical treatment and s. 22(3)(i) applies to some of the disputed information because this information relates to an individual's religious belief. I find, however, that s. 22(3)(d) does not apply to the information about an ICBC employee's time off because this information reveals nothing about her employment or occupational history within the meaning of s. 22(3)(d).

[85] I found that the presumption under s. 22(3)(a) has not been rebutted and that it would be an unreasonable invasion of the employee's personal privacy to disclose information about her medical treatment.⁴⁸ I found, however, that the presumption under s. 22(3)(i) has been rebutted because the applicant already knows the personal information about this individual's religious belief because it is contained in a letter that the applicant provided to ICBC.⁴⁹

[86] In conclusion, ICBC is required to withhold the personal information about the In-house lawyer's medical treatment⁵⁰ under s. 22(1) but it is not required to withhold the rest of the personal information.

CONCLUSION

[87] For the reasons given above, I make the following order under s. 58 of FIPPA:

⁴⁷ Records at pages 165-166. I have found that s. 22(3)(i) applies to this personal information because it relates to an individual's religious belief.

⁴⁸ Record at page 614.

⁴⁹ Records at 165-166.

⁵⁰ Record at page 614.

1. Subject to item 3 below, I confirm, in part, ICBC's decision that it is authorized to refuse access to the information in dispute under ss. 13(1) and 14.
2. Subject to item 3 below, ICBC is required under s. 22(1) to refuse access to some of the information in dispute.
3. In a copy of the records that will be provided to ICBC with this order, I have highlighted the information in dispute that ICBC is not authorized or required to refuse to disclose under ss. 13(1), 14 or 22. ICBC is required to give the applicant access to the information that I have highlighted.
4. ICBC must provide the OIPC registrar of inquiries with a copy of its cover letter and the records it provides to the applicant in compliance with item 3 above.

[88] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by November 7, 2024.

September 24, 2024

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F22-91008