

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 15-1994  
July 7, 1994**

**INQUIRY RE: A Request by the Wellington Insurance Company for Access to  
Records of the Insurance Corporation of British Columbia**

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**1. Description of the Review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner in Victoria, B.C. on June 21, 1994 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act) concerning a request for records in the custody or under the control of the Insurance Corporation of British Columbia (ICBC). The request was made by the Wellington Insurance Company (the applicant) of Victoria, B.C.

The applicant wrote to ICBC on January 18, 1994 to request ICBC's data on extended third party liability insurance and claims for personal passenger vehicles. On March 15, 1994 ICBC responded to the applicant after granting itself a 30-day time extension. ICBC initially withheld the data on the basis that the information was excepted from disclosure under section 17 of the Act, "Disclosure harmful to the financial or economic interests of a public body." On March 24, 1994 the applicant requested a review by the Information and Privacy Commissioner of ICBC's decision to withhold the requested record.

On April 5, 1994, in a separate but related request, the applicant requested ICBC's data on mandatory third party liability and accident benefits coverage for personal passenger vehicles. On May 13, 1994 ICBC responded to the applicant and disclosed the requested data on ICBC's mandatory coverage on passenger vehicles. The information in the disclosed record relates to ICBC's accident benefit and third party liability coverage for its mandatory coverage of passenger vehicles.

On June 3, 1994 the applicant wrote to the Office of the Information and Privacy Commissioner to amend its original request for information of January 18, 1994. The amended request removed much of the detail from the information still sought by eliminating the references in the original request to specific classes of vehicles. The parties have agreed that the June 3, 1994 request is the request for the purposes of this inquiry. Thus the record at issue in the present inquiry relates to ICBC's business from a

competitive segment of the insurance business, where private sector insurance companies can compete directly with ICBC for customers.

## **2. Documentation of the Review Process**

The Office of the Information and Privacy Commissioner provided all parties involved in the inquiry with a two-page statement of facts (the fact report), which, after some amendments, was accepted by all parties as accurate for purposes of conducting the inquiry.

Under sections 56(3) and 56(4) of the Act, each party was given an opportunity to make written representations to me. Initial submissions were made on June 14, 1994, and final submissions were exchanged thereafter. In reaching my decision, I have carefully considered these submissions, which total more than 150 pages.

The applicant was represented by Mr. Phil Wynne of the Wellington Insurance Company in Victoria, B.C. ICBC's written argument was submitted by David Loukidelis, Esq. of Lidstone, Young, Anderson of Vancouver, B.C.

## **3. Issue under Review**

The sole issue to be decided in this review is whether ICBC was entitled under section 17 of the Act to deny access to the record requested by the applicant.

Under section 57(1) of the Act, at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or parts thereof. Thus ICBC bears the burden of proof under this section.

## **4. The Record in Dispute**

The ultimate record in dispute is a single page prepared by the Corporate Actuarial Department of ICBC that contains information for the accident years from 1989 to 1993 inclusive in five columns: "calendar year;" "earned premium" (the total written and earned premiums); "exposure count" (the number of vehicles insured by car-years); "claim count" (the number of claims for which the value of claims incurred exceeded \$200,000); and "incurred losses" (the total dollar amount of the claims incurred in excess of \$200,000). The requested information pertains to ICBC's claims experience with private passenger vehicles insured for third party liability coverage in excess of the mandatory \$200,000 coverage.

## **5. The Applicant's Case**

Wellington Insurance is a property and casualty insurance company licensed to transact business in all provinces and territories of Canada. It normally provides

automobile insurance to the general public but, at present in British Columbia, only provides first party insurance coverages, that is, collision and comprehensive coverages applicable to damage to the policyholder's own vehicle.

ICBC has a statutory monopoly for insurance on vehicles for minimum third party liability coverage of \$200,000. Liability coverage above that amount may be purchased from Wellington or another insurance company but, in practice, the applicant asserts, ICBC "has been virtually the exclusive supplier of the excess liability coverage, underwriting it as an extension to the mandatory coverage."

The applicant is asking ICBC for limited information about excess liability coverage of private passenger vehicles in British Columbia: "The information we seek will show whether the claims paid under this coverage are offset by the premiums charged by ICBC. In other words, it will indicate whether there is a rate or premium adequacy for the excess liability coverage to pay claims and associated expenses."

The applicant asserts that in order to be sensitive to ICBC's claim that such information could be used to its detriment, it eliminated the request for detailed information on various classes of vehicles: "The information now requested is of a very general and non-specific nature."

The applicant asserts that ICBC has an almost complete monopoly of automobile insurance premiums in this province and has recently introduced two measures that impair the ability of other companies to compete against ICBC on collision and comprehensive coverages. Although the applicant's brokers have always placed all of their excess liability policies with ICBC, these measures have reduced their general commissions; thus, the applicant is investigating the viability of entering the excess liability field.

The applicant's concern is whether ICBC is charging premiums for excess liability insurance that are adequate for the exposure and, in particular, whether cross-subsidies exist between the primary, mandatory coverage and the excess liability coverage.

The applicant states that in most provinces of Canada, most insurers contribute to an actuarial information pool, under the authority of the Insurance Bureau of Canada, which provides all of them with a very large statistical data base upon which insurance rating and actuarial decisions are based. No single company can be identified. ICBC is the sole producer of such information in British Columbia.

The applicant describes the information it is seeking from ICBC as "generic" and "general" information that cannot be used to harm the economic or competitive position of the monopoly insurer.

## 6. ICBC's Case

ICBC argues that the data published by the Insurance Bureau of Canada cannot be linked to any single insurance company and thus are not commercially sensitive, unlike the information requested by the applicant, which is company specific: "No prudent insurer would permit a competitor to have access to such information."

ICBC states that it is open to public scrutiny under the *Insurance Corporation Act* and the *Freedom of Information and Protection of Privacy Act*. The company faces additional annual reporting and auditing requirements to the Legislative Assembly, the Superintendent of Financial Institutions, and the Comptroller General.

Release of the information at issue in this review "would clearly threaten harm to ICBC's financial and economic interests in the competitive market for excess third party liability coverage." ICBC claims that the information is a "trade secret" under section 17(1)(a) of the Act and also "financial" or "commercial" information under section 17(1)(b).

The relevant sections of the Act read as follows:

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- ...

Schedule 1 of the Act defines a trade secret as follows:

"trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

- (a) is used, or may be used, in business or for any commercial advantage,
- (b) derives independent economic value, actual or potential, from not being generally known to the public or to other

persons who can obtain economic value from its disclosure or use,

- (c) is the subject of reasonable efforts to prevent it from becoming generally known, and
- (d) the disclosure of which would result in harm or improper benefit.

ICBC argues that the “information” requested by the applicant meets each of the above criteria for being a trade secret. (Representations of ICBC, pp. 8-9)

ICBC further argues that the record requested is “commercial information” and “financial information” within the plain meaning of the language of the Act. (Representations of ICBC, pp. 9-10)

ICBC submitted several affidavits by three present or former executives and actuarial employees in evidentiary support of the arguments advanced above and the expectation that ICBC would face a “reasonable expectation of significant harm” to its “financial or economic interests” if the record were disclosed. (Representations of ICBC, pp. 11-15) Further, the head of ICBC, in the exercise of his discretion, considered and rejected any “public interest” reasons for disclosing the information.

ICBC argues that section 17 of the Act “militates against disclosure in order to protect the public interest by protecting the legitimate financial interests of the public body.” In its view, the applicant is seeking to “advance private commercial interests at the expense of the legitimate interests of ICBC.”

## **7. Discussion**

I accept the position of ICBC that certain allegations and arguments raised by the applicant are irrelevant to this inquiry, such as the legislature’s decision to establish a scheme of public motor vehicle insurance, or the impact of this decision on insurance companies operating in the province at that time; whether ICBC engages in anti-competitive practices; and whether there is a competitive market for excess liability coverage. I cannot offer remedies for these real or perceived problems. My concern is only with the application of section 17 of the Act to the applicant’s request for access to an ICBC record.

I am satisfied, on the detailed affidavit evidence of ICBC and my own review of the record in dispute, that the record at issue is “commercial” and “financial” information and does have “commercial” and “financial” value. The two actuaries who prepared affidavits offered fairly precise information on this point, including, in one instance, a prediction of the economic impact on ICBC if a competitor captured a certain percentage of its market for excess liability coverage.

The submissions of the applicant themselves indicate that the record sought would have commercial and financial value in determining its future course of action in competing with ICBC for certain portions of its business. I agree with the submission of ICBC that “[w]here there is evidence of an intention to use information of this kind for commercial purposes, it is submitted that you are entitled to weigh that evidence in deciding whether harm to the ‘financial or economic interests’ of a public body can reasonably be expected.” (ICBC’s Reply to Wellington’s Representations, pp. 6-7)

In accordance with my first order (Re: Ministry of Finance and Corporate Relations / Public Service Employee Relations Commission, January 11, 1994), I am persuaded that ICBC has provided detailed and convincing evidence as to a reasonable expectation of harm to its “financial or economic interests” that is likely to flow from disclosure of the information at issue. Since my decision is based on section 17(1)(b) of the Act, I need not address ICBC’s argument in respect of section 17(1)(a) and the definition of “trade secret.”

## **8. Order**

Under section 58(2)(b) of the Act, I confirm the decision of the Insurance Corporation of British Columbia not to release the record to the applicant.

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David H. Flaherty  
Commissioner

July 7, 1994