

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 16-1994
July 8, 1994**

**INQUIRY RE: A Request 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 13, 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 a former employee of ICBC (the applicant).

The applicant wrote to ICBC on December 29, 1993 to request a copy of an ICBC insurance claim file. On January 20, 1994 ICBC responded to the applicant and disclosed records. Some of the requested records were withheld and others were severed pursuant to the Act. The file contained 317 pages, of which all but 108 pages were initially released in whole or in part.

On February 2, 1994 the applicant requested a review by the Information and Privacy Commissioner of ICBC's decision to withhold and sever records from the claim file. The 90-day investigation period started on March 17, 1994, when the applicant specified the list of records under review to the Office of the Information and Privacy Commissioner. Mediation by a Portfolio Officer from this Office and an all-party agreement resulted in a list of eight records (29 pages) being submitted to the Information and Privacy Commissioner for review. The applicant specified that he was seeking records relating to ICBC's investigation of his insurance claim arising from the theft of his automobile.

For background information on the applicant's insurance claim, see the decision of the British Columbia Supreme Court in Brooks v. Insurance Corporation of British Columbia (1994), 89 B.C.L.R. (2d) 215 (S.C.). The issue in that case has no direct relationship to the current request for review.

2. Documentation of the Review Process

The Office of the Information and Privacy Commissioner provided all parties involved in the inquiry with a one-page statement of facts (the fact report), which, after amendment, was accepted by both parties.

Under sections 56(3) and 56(4) of the Act, each party was given an opportunity to make written representations. ICBC submitted its initial argument on June 8, 1994 and provided a confidential affidavit to the Information and Privacy Commissioner on June 10, 1994. ICBC provided a severed version of the affidavit to the applicant.

On June 12, 1994 the applicant requested access to the unsevered affidavit, stating that he had “very serious concerns over the accuracy of [the] affidavit.” ICBC agreed to permit the applicant to present written arguments to the Information and Privacy Commissioner to challenge the affidavit after the closing date for written submissions. However, the applicant did not file any written submissions to this Office, either as initial argument or rebuttal to the affidavit itself. After reviewing the entire contents of the affidavit, I concluded that the severed portions contained evidence that was properly before me “in camera.”

In reaching my decision, I have carefully considered all of the written submissions that I received.

3. Issue under Review

The issue to be decided in this review is whether ICBC was entitled under sections 14, 15, 16, or 22 of the Act to deny access to the records 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 for non-personal information. However, where the applicant has been refused access to personal information about a third party, section 57(2) of the Act states that it is up to the applicant to prove that disclosure of the personal information would not be an unreasonable invasion of the third party’s personal privacy.

4. The Records in Dispute

There are eight records in dispute. Four are “CL80” notes made by insurance adjusters during the processing of insurance claim files. Two of the CL80 notes were partially severed and two were completely withheld from disclosure.

Three of the records are electronic mail notes about ICBC’s investigation of the applicant’s claim, all of which were completely withheld from disclosure.

The final record is an investigative report which also was completely withheld from disclosure.

5. The Applicant's Case

On January 23, 1992 someone stole a 1981 Porsche 928 owned by the applicant, who subsequently filed a claim with his insurer, ICBC. After investigation, ICBC denied liability. The automobile in question had been purchased in Texas and imported into Canada by the applicant, who conducted a sideline business of this nature. Until about 1983, the applicant had also worked for about ten years as a loss estimator for ICBC. At the time of theft, the automobile was temporarily located in the yard of a Richmond auto body shop. I have taken these facts from the decision of Mr. Justice Bouck of the Supreme Court of British Columbia noted above, having received little in writing from the applicant in the form of a submission on his request for review.

The records indicate that the applicant has essentially requested complete copies of his claims file from ICBC, especially including records of the investigative work and reports prepared by a specific ICBC investigator.

6. ICBC's Case

ICBC states that the insurance adjuster assigned to the applicant's case became suspicious and referred the case to the Corporation's Special Investigation Unit (SIU). The investigator subsequently assigned to this case submitted an affidavit to me outlining his involvement in the investigation that led to the denial of coverage. I note that he has the status of a special constable and can conduct investigations that lead to the laying of criminal charges as well as civil actions and denials of coverage. His affidavit indicates that various detachments and sections of the Royal Canadian Mounted Police (RCMP) have participated in this investigation to date.

ICBC is generally denying access to the remaining requested records under section 14 of the Act dealing with solicitor-client privilege and section 15, a disclosure harmful to law enforcement. The relevant portions of the Act are as follows:

14. The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

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....

ICBC also relies upon sections 16(1)(a) and 22(1) of the Act:

16(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 the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
 - (i) the government of Canada....

22(1) The head of 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.

7. General Discussion

For purposes of establishing the meaning of section 14 of the Act in the present case, I agree with ICBC's citation of Order No. 6-1994, page 3 (Re: A Request for a Report from the Insurance Corporation of British Columbia, March 31, 1994), in which I wrote:

For purposes of the Act, any work that ICBC does in the process of settling claims, where there is a reasonable probability of litigation, can be viewed as having been done in contemplation of litigation if the case is not otherwise settled. This is especially true when claims adjusters suspect the validity of the claim. Even for settled cases, solicitor-client privilege may continue to apply to selected records.

I am satisfied that the remaining records at issue in this request for review were prepared in contemplation of litigation or preparation for a prosecution and thus, in general terms, can be withheld from disclosure under sections 14 or 15(1)(a) of the Act. I am persuaded by ICBC's evidence that both the ICBC insurance adjuster and the SIU investigator were engaged in a law enforcement matter under section 15(1)(a) of the Act. I am also satisfied, based on all of ICBC's evidence, that disclosure of the severed and withheld information could reasonably be expected to harm a law enforcement matter.

8. Discussion of Specific Records

It remains for me to review ICBC's application of the Act to specific records. ICBC divided these into severed records and withheld records, and I have followed this organization below.

Severed Records

- 1) Page 22: This is a note made by the adjuster on the Adjuster File Summary form (more commonly referred to as CL-80 notes) concerning a telephone conversation he had

with the investigator from his “personal” cellular phone. ICBC first claims that the phone number in this note should be excepted under section 22(1) of the Act. I note that the investigator had told the adjuster that he could use this phone number for discussion of a specific issue that he raised, though it was “not open for general use.” In my view, if an employee of a public body chooses to allow the use of his or her *personal* telephone number or cellular phone number for a limited, specific purpose related to his or her duties, as opposed to general use, such individuals should be entitled to protection of their personal privacy under section 22(1) of the Act. Thus I agree with this severance.

Page 22: ICBC has severed three lines from the same Adjuster File Summary concerning what it had decided to do about the applicant’s case after a meeting among the adjuster, the investigator, and the applicant. I accept ICBC’s position that this information should be excepted under sections 14 or 15(1)(a) of the Act.

2) Pages 23, 24, 32, 33: These pages continue the notes of the meeting referred to in the previous paragraph and of subsequent meetings. It sets out a strategy for dealing with the claim and discusses some plans for further investigations. I accept ICBC’s view that these lines should be excepted under sections 14 or 15(1)(a) of the Act.

Withheld Records

3) Pages 25 to 28: ICBC states that these pages deal exclusively with the investigation of the case, set out strategies for handling it, including direction from the adjuster’s manager or examining (supervising) manager, and provide details of the RCMP’s investigation. ICBC claims exceptions under sections 14 or 15(1)(a) of the Act, which I accept.

ICBC also argues that these records should be withheld under section 16(1)(a) of the Act on the grounds that the RCMP is a federal body and, as such, release of the information would be harmful to inter-governmental relations. I will not address this argument in this order as I have already found that ICBC is entitled to withhold the records under sections 14 or 15(1)(a).

4) Pages 29 to 31: These pages include instructions from managers to the adjuster giving direction and setting out strategy for court proceedings, the adjuster’s assessment of how things went at the examination for discovery in the civil case noted above, and a record of discussion with ICBC’s defence counsel. ICBC has claimed an exception under section 14 of the Act, which I accept.

5) Page 34: This page concerns an assessment of the legal issues involved in this case. ICBC claims an exception under section 14 of the Act, which I accept.

6) Pages 305 to 314: This is the initial, detailed report of the ICBC investigation, including information received from the RCMP which ICBC claims to except under sections 14, 15(1)(a), and 16(1)(a) of the Act. I agree with the use of the first two

exceptions. For reasons advanced above, I need not consider the applicability of section 16(1)(a) to these records.

7) Pages 108, 241, and 254: These are electronic mail messages between the ICBC adjuster and investigator about the ongoing investigation of the applicant. ICBC claims to except them under sections 14, 15(1)(a), and 16(1)(a) of the Act. I agree with the use of the first two exceptions. For reasons advanced above, I need not consider the applicability of section 16(1)(a) to these records.

9. Order

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

David H. Flaherty
Commissioner

July 8, 1994