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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 312-1999
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INQUIRY RE: A decision by the Insurance Corporation of British Columbia to deny the Insurance Bureau of Canada access to rate class information

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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 (the Office) on May 10, 1999 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the Insurance Corporation of British Columbia (ICBC) to withhold records that had been requested by the Insurance Bureau of Canada (the applicant).

2. Documentation of the inquiry process

On November 13, 1999, the Insurance Bureau of Canada submitted a request to my Office for access to the following records from the Insurance Corporation of British Columbia:

- The total number of part-time and contract employees with the Insurance Corporation of British Columbia for 1994, 1995, 1996 and 1997.

- The number of insured vehicles in each class, total premium income in each class, and total claims expenses in each class for all of the Insurance Corporation of British Columbia's rate classes.

- The total cost of all Claim Centre operations, including labour costs, for 1993, 1994, 1995, 1996, and 1997.

- All public opinion research conducted on ICBC's behalf during 1996 and 1997 that makes reference to 'no fault' insurance, 'product change' or 'competition'.

This request was forwarded to ICBC which received it on November 26, 1998.

On December 18, 1998 ICBC informed the applicant that it was extending the response time frame by thirty days under section 10(1)(b) of the Act due to the large number of records requested.

On January 8, 1999 ICBC provided the applicant with the annual reports for the years 1993 to 1997, which contain the information requested in items one and three of the applicant's request. It also provided the applicant with a document that identifies all public opinion poll research that is responsive to item four of the applicant's request. In addition, ICBC informed the applicant that it was withholding access to the rate class information requested in the second item under section 17 of the Act.

On January 13, 1999 the applicant requested a review of ICBC's decision to withhold the rate class information under section seventeen. Mediation was unsuccessful and, on March 31, 1999, the applicant indicated that it would like to proceed to an inquiry. With the consent of both parties, the ninety-day deadline was extended to April 28, 1999.

On April 6, 1999 the parties were notified that a written inquiry was scheduled for April 28, 1999. On April 13, 1999 ICBC submitted a written request to extend the date for initial submissions to May 7, 1999 so that it could prepare a "full and proper set of submissions." On April 14, 1999 the applicant noted that it was not in favour of the extension as there had already been one extension and the request was now five months old. After reviewing the submissions of both parties, the Executive Director of my Office decided that, on the basis of fairness, the inquiry date should be rescheduled to May 10, 1999.

3. Issue under review and the burden of proof

The issue to be reviewed in this inquiry is the decision of ICBC to withhold records containing rate class information under section 17 of the Act. The relevant parts of section 17 are as follows:

Disclosure harmful to the financial or economic interests of a public body

> 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;

…

(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

….

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under section 17, it is up to the public body, in this case ICBC, to prove that the applicant has no right of access to the record or part of the record.

4. The records in dispute

The records in dispute are reports of the number of insured vehicles, total premium income, and total claims expenses for each of ICBC's insurance rate classes.

5. The Insurance Bureau of Canada's case as the applicant

The Insurance Bureau of Canada is a division of the Insurance Council of Canada, which represents private general insurance companies in this country. In this inquiry, the applicant contests the application of section 17 of the Act to the remaining records in dispute. In particular, it points out the statutory monopoly that ICBC has over basic automobile insurance in this province:

> We especially believe that the Act should apply rigorously to Crown Corporations, which enjoy vast legislated monopolies.... In exchange for giving up this right to choose their provider of basic auto insurance, we believe that British Columbians have a right to complete transparency in regards to the handling of their premium dollars.

The applicant believes that its request to examine the total number of drivers in each ICBC rate class, along with the total revenues and expenditures for each of those rate classes, is in the public interest. The applicant would like to examine ICBC's treatment of drivers with varying safety records in order to determine whether good drivers are subsidizing bad drivers and whether drivers who cause accidents are paying their fair share.

The applicant submits that disclosure of the information requested cannot reasonably be expected to harm the financial or economic interests of either ICBC or the government, "for the simple reason that ICBC enjoys a legislative monopoly over the business in question. Other insurers cannot use this information against ICBC.... The only risk to ICBC from the release of this information would be political discomfort, not economic harm." The applicant further argues that none of the subsections of section 17(1) are relevant to the information in dispute.

In terms of both mandatory and optional auto insurance, the applicant points out that for 1997 ICBC controlled 97.3 percent of the market for total vehicle and driver premiums; private insurers had less than 3 percent.

The applicant is especially adamant that ICBC must release the requested information on basic mandatory coverage.

6. The Insurance Corporation of British Columbia's case

ICBC submits that disclosure of the information in dispute could reasonably be expected to harm its financial or economic interests. In summary form, its argument is that:

- No prudent insurer would permit a competitor, either directly or indirectly, to have access to such information

- 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

- The Applicant is seeking to advance private commercial interests at the expense of the legitimate interests of ICBC. (Submission of ICBC, paragraph 28)

I have presented below various points from ICBC's more detailed submissions, which include affidavit evidence, including two (one of them *in camera*) from the chief actuary of the Corporate Actuarial Department of ICBC.

7. Discussion

The fundamental issue in this inquiry is whether the disclosure of rate class information could reasonably be expected to harm the financial or economic interests of a Crown Corporation that has a legislated monopoly over mandatory automobile insurance and holds the majority of coverage for optional automobile insurance.

The applicant contends that disclosure could not reasonably be expected to harm the financial or economic interests of ICBC, because other insurers cannot use this information to obtain the business. The applicant points out that, regardless of how it feels about the rate class information, it cannot directly use that information to harm ICBC's economic interests, because its member companies are legally prohibited from selling that type of insurance.

ICBC contends that disclosure of rate class information for mandatory and optional coverage would cause financial harm to the corporation. ICBC submits that this request is identical to Order No. 15-1994, July 7, 1994, except that a new applicant has "expanded the request to include more information as well as greater detail for that

information." (Submission of ICBC, paragraph 13) It argues that my reasoning in the earlier Order on the applicability of section 17 of the Act applies to the records in dispute in this inquiry and that their disclosure could reasonably be expected to harm the financial or economic interests of ICBC. (Submission of ICBC, paragraph 16 and 28) Indeed, ICBC contends that the present request is more potentially harmful to its economic interests, since the applicant is asking for even more information than in Order No. 15-1994. From ICBC's perspective, the nature of the applicant does not significantly reduce or eliminate the expectation of harm to ICBC. (Submission of ICBC, paragraphs 20 to 22) I agree that the reasoning in Order No. 15-1994 is helpful in reaching my decision in the present inquiry.

Although the reasoning in Order No. 15-1994 is helpful, I also recognize that the information in dispute in the present case relates primarily to mandatory automobile coverage, which raises different implications than information relating to optional coverage. While it is clear that disclosure of rate class information for optional coverage to competitors could reasonably be expected to harm the financial interests of ICBC, the issue is less clear in the context of disclosure of information for mandatory coverage, where the corporation has a monopoly with respect to the market.

However, I do not accept the argument that ICBC's monopoly with respect to mandatory automobile insurance automatically precludes the possibility of a reasonable expectation of harm to its financial or economic interests. While the applicant cannot use the rate class information to compete in the present market for mandatory automobile insurance, it may use the information in other ways, which may give rise to a reasonable expectation of financial or economic harm to the corporation. The Chief Actuary for ICBC deposes that disclosure of mandatory coverage information alone by rate class would still enable a competitor to assess market segment size, overall loss ratios, and profitability potential for optional coverage. The information may also be used to lobby for privatization. The question, then, is whether such use would give rise to a reasonable expectation of harm under section 17.

With those preliminary observations, I turn to a consideration of the specific subsections invoked by ICBC in support of its claim that disclosure could reasonably be expected to give rise to harm.

Section 17(1): Disclosure harmful to the financial or economic interests of a public body…(a) trade secrets of a public body

ICBC contends that the rate class information constitutes a "trade secret," relying on the broad definition of that term in Schedule 1 of the Act:

> '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.

The applicant acknowledges and accepts that there is a difference between mandatory and optional insurance coverage. (Submission of the Applicant, p. 4) However, the applicant argues that the mandatory coverage information is not a trade secret as such, "because it cannot be used for a commercial advantage, does not derive independent economic value from not being generally known to the public and to other persons, and its disclosure would not result in harm or improper benefit." (Reply Submission of the Applicant)

In my view, the information concerning optional coverage falls squarely within the definition of "trade secret" under Schedule 1 of the Act, since it may be used for business or commercial advantage, derives independent economic value from not generally being known, is the subject of reasonable efforts to prevent disclosure, and disclosure would result in harm by providing competitors with access to information that is not customarily available from other insurance companies.

The definition of "trade secret" in Schedule 1 is also sufficiently broad to cover information concerning mandatory coverage, because the definition encompasses the potential use of information. Thus, under the first branch of the test, I accept that the rate class information "may be used" in business or for commercial advantage, both in terms of enabling a competitor to determine the profitability potential for optional coverage and for lobbying efforts for privatization.

Under the second branch of the test, I accept that there is a "potential" independent economic value that may be derived from the information not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

Under the third branch of the test, there is no question that the information is the subject of reasonable efforts to prevent it from becoming generally known. As ICBC points out, no prudent insurer would permit a competitor, either directly or indirectly, to have access to rate class information.

Under the fourth branch of the test, I find that disclosure of the information would result in harm and an improper benefit to the applicant, which would not normally have access to rate class information of this nature from other insurers. The evidence indicates that disclosure of data concerning mandatory coverage could be used to assess the profitability potential for optional coverage.

In summary, I accept ICBC's contention that the rate class information in relation to both mandatory and optional coverage, which is private, commercial information that is not generally known to the public, constitutes a trade secret. (Reply Submission of the Applicant, paragraph 18) I find that section 17(1)(a) of the Act applies to the records in dispute.

Section 17(1)(b): Financial, commercial, scientific or technical information of a public body that has, or is reasonably likely to have, monetary value

ICBC submits that the information in dispute also falls within section 17(1)(b), because the rate claims data constitute financial or commercial information that belongs to a public body that has, or is reasonably likely to have, monetary value. Since I have accepted that disclosure of information for mandatory coverage by rate class would enable a competitor to assess market segment size, overall loss ratios, and profitability potential for optional coverage, and there is no question that rate class information for optional coverage has monetary value, I accept that section 17(1)(b) applies. (See Order No. 15-1994)

Section 17(1)(d): Undue financial loss or gain to a third party

ICBC submits that this subsection applies to the records in dispute, because the applicant's members are competitors or potential competitors of ICBC, so that disclosure to them could reasonably be expected to result in undue financial gain to such third parties.

ICBC further submits that the intentions of the applicant are to use the results of its access request for commercial purposes, that is, for its members to use for the advancement of insurance privatization in this province. In ICBC's view, this is further evidence of how disclosure could reasonably be expected to harm its financial or economic interests. (Submission of ICBC, paragraphs 23 to 25)

As I have indicated, disclosure of rate class information for mandatory coverage can reasonably be expected to result in gain to third parties in terms of providing information which will enable them to assess the profitability of optional coverage. I rely in particular on the evidence submitted *in camera* concerning the potential loss. I also accept that disclosure would constitute an undue gain, since third party insurance companies do not normally have access to the type of information which the applicant is seeking.

I find that ICBC has met the standard of a reasonable expectation of harm to its financial or economic interests. See Order No. 159-1997, April 17, 1997. (Submission of ICBC, paragraphs 26 and 27) Although the applicant has argued persuasively that ICBC should not be allowed to withhold information regarding mandatory insurance coverage over which ICBC has a monopoly, the fact is that section 17 of the Act does permit a public body to do what ICBC has chosen to do.

Other Considerations

The applicant cites as a clear precedent for its request BC Ferry Corporation's disclosure of detailed route report information for eight separate regions of the province in its annual route reports for the years ending March 31, 1997 and 1998, including "a clear breakdown of traffic carried, capacity provided, capacity utilized, per unit ratios, assets deployed, direct revenues, direct operating expenses, contributions or shortfalls, allocated revenues and expenses, and net income or loss." As Information Commissioner, I admire the transparency of BC Ferries with respect to disclosure of information about its routes; indeed, it was its decision to disclose such information to the public. But such an action cannot bind another Crown Corporation to similar actions, especially in light of the statutory exceptions to disclosure in the Act. (See also the Reply Submission of ICBC, paragraphs 13 to 16)

ICBC also points out that it is subject to a considerable variety of oversight and accountability mechanisms beyond the Act itself. (Reply Submission of ICBC, paragraphs 2 to 9, 12) I agree with the following observation:

> Clothing the information request in the public's "right to know" does not diminish the harm to the financial or economic interests of ICBC which would result from the disclosure of the requested information.

8. Order

I find that the Insurance Corporation of British Columbia was authorized to withhold the requested information under section 17 of the Act.

Under section 58(2)(a), I confirm the decision of the Insurance Corporation of British Columbia to refuse access to the rate class information withheld under section 17 of the Act.

David H. Flaherty
Commissioner

June 22, 1999