OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 01-46

# INSURANCE CORPORATION OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
October 11, 2001

Quicklaw Cite: [2001] B.C.I.P.C.D. No. 48
Document URL: http://www.oipcbc.org/orders/Order01-46.pdf
Office URL: http://www.oipcbc.org
ISSN 1198-6182

**Summary:** The applicant, an insured of ICBC, was involved in a car accident. ICBC admitted liability on his part and later settled a personal injury claim brought by the third party. After the settlement, the applicant sought access to claim-related records. ICBC disclosed numerous records, but withheld all or part of others under ss. 14, 17(1) and 22(1). ICBC not authorized to withhold information under ss. 14 or 17(1), but required to withhold certain third-party personal information under s. 22(1).

**Key Words:** financial or economic interests – negotiations by or for public body – information having monetary value – personal privacy – unreasonable invasions – third-party finances – third-party income.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 14, 17(1) and 22(1).

**Authorities Considered: B.C.:** Order 00-08, [2000] B.C.I.P.C.D. No. 8; Order 00-42, [2000] B.C.I.P.C.D. No. 46.

**Cases Considered:** *Chersinoff* v. *Allstate Insurance Co.* (1968), 69 D.L.R. (2d) 653 (B.C.S.C.) and (1969), 3 D.L.R. (3d) 560 (B.C.C.A.).

## 1.0 INTRODUCTION

[1] In 1998, the applicant and the third party were involved in a car accident, in which the third party was injured. Both he and the applicant were insured by the Insurance Corporation of British Columbia ("ICBC"). ICBC investigated the accident and ultimately admitted, in the litigation mentioned below, that the applicant was at fault. The third party was unable to work at all for several months after the accident and after

that only gradually returned to full-time employment. He consulted a lawyer almost immediately after the accident and, a number of months later, sued the applicant. ICBC, as the applicant's insurer, assumed the defense of that action. The suit eventually settled and ICBC paid the settlement amount to the third party. The action settled on February 22, 2000.

[2] ICBC had two internal claim files, one for the third party's claim against the applicant and another for a claim the applicant made to ICBC for damage that his vehicle had suffered in the accident.

[3] On March 24, 2000, the applicant made an access request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), to ICBC. In his request, he said ICBC had told him that the third party's claim had been settled and that he "requested full information as to the results that were made". He said that, because he was involved in the accident, he believed he was "entitled to have all the information that led to this decision" and "as much of the complete file" as ICBC had. In its May 26, 2000 response, ICBC disclosed 135 pages of records in their entirety, with a further 242 pages being withheld in whole or in part. Despite these page tallies, it is fair to say that ICBC withheld relatively little information.

[4] The applicant asked for a review of ICBC's decision, again on the basis that he believed he was "entitled to have all this information", so that he could know that the court action had been "settled fairly". The applicant's request for review emphasized his belief that, as the client in the court action, he should be entitled to have access to all relevant records. His request for review – and his submissions in this inquiry – also allude to what he alleges was a "cover-up" by ICBC.

## 2.0 ISSUES

[5] The issues in this inquiry are as follows:

1. Is ICBC authorized by s. 14 of the Act to refuse to disclose information to the applicant?

2. Is ICBC authorized by s. 17 of the Act to refuse to disclose information to the applicant?

3. Is ICBC required by s. 22(1) of the Act to refuse to disclose personal information to the applicant?

Under s. 57(1) of the Act, ICBC bears the burden of proof on the first two issues. Under s. 57(2), the applicant bears the burden regarding the third issue.

## 3.0 DISCUSSION

[6] **3.1 Solicitor Client Privilege** – Section 14 of the Act permits a public body to refuse to disclose information that is protected by solicitor client privilege. In responding

to the applicant's request, ICBC refused on that basis to disclose a number of records. Paragraph 14 of ICBC's initial submission reads as follows:

> ICBC maintains that all correspondence between it and its legal counsel, including any attachments to such correspondence, legal accounts, and any references within internal ICBC materials relating to such correspondence or instructions to counsel remain in confidence and are excepted from disclosure pursuant to section 14 (solicitor/client privilege) of the Act. ICBC has never waived its claim of privilege over those documents – and the privilege continues without any further action on the part of ICBC.

[7] The legal counsel referred to are various lawyers at the firm retained by ICBC to represent the applicant in the court action brought by the third party. Different lawyers at the firm acted for the applicant at various times. The lawyers from time to time corresponded with ICBC. The correspondence includes letters confirming the retainer, reporting letters to ICBC and instruction letters from ICBC about the court case. The action was, I infer, defended by ICBC under its contractual duty to the applicant to defend the applicant, its insured, against such claims.

[8] At paras. 15 and following of its initial submission, ICBC also argued that the contents of its internal file regarding the third party's claim are protected by litigation privilege. It did not claim litigation privilege over the contents of the file that it maintained for the applicant's claim against ICBC, for damage suffered to his vehicle, but it did claim litigation privilege over any contents of that file that were from, or incorporated materials from, the third party's claim file.

[9] After reading ICBC's initial submission, I asked for further submissions on its s. 14 case in light of the trial level and appeal decisions in *Chersinoff* v. *Allstate Insurance Co.* (1968), 69 D.L.R. (2d) 653 (B.C.S.C.) (reversed in part, on another point, at (1969), 3 D.L.R. (3d) 560 (B.C.C.A.)). In *Chersinoff*, an insurer had retained a law firm to represent one of its policy-holders, as required by the insurance policy. Aikins J. (as he then was) held that the law firm was acting for the policy-holder, *i.e.*, the policy-holder was a client of the firm. The policy-holder later sued the insurer for breach of the insurance policy and, in defending that action, the insurer claimed privilege over correspondence between itself and the law firm it had retained to defend the policy-holder (or "insured"). Aikins J. held that the insured and the insurer were jointly represented by the law firm, until the insured later sued the insurer. At p. 661, he said that "the rule in respect to privilege in the case of joint retainer is applicable." At pp. 662-663, he said the following:

> The result, I think, is this: communications passing between the solicitors and the insurer in regard to liability of the insured to pay damages, in regard to the amount of damages, and in regard to settlement, all of which are within the ambit of the joint employment of the solicitors, cannot be considered confidential as between the clients so such communications are not privileged vis-à-vis the plaintiff in this action and must be produced.

[10] Having considered *Chersinoff*, ICBC said that it "no longer seeks to deny access to records that are the subject of this review upon the basis set out in s. 14" of the Act, *i.e.*, it "no longer seeks to deny access to the subject records on the basis of solicitor/client privilege or litigation privilege." This means I need not decide the s. 14 issue.

[11] In light of ICBC's concession of the s. 14 point, I also need not consider whether, even if litigation privilege could be claimed by ICBC here, any such privilege had ended by the time the applicant made his request because the third party's court action against the applicant had settled.

[12] **3.2 Harm to ICBC's Financial Interests** – ICBC argues that s. 17(1) authorizes it to withhold information in the disputed records. It refers specifically to ss. 17(1)(b) and (e). The relevant portions of s. 17(1) read 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:
>
> …
>
> (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;
>
> …
>
> (e) information about negotiations carried on by or for a public body or the government of British Columbia.

***Nature of the Harm Test***

[13] In Order 00-42, [2000] B.C.I.P.C.D. No. 46 – a case involving ICBC – I said the following, at p. 29, about the harm test under s. 17(1):

> … the standard in s. 17(1) is that of a reasonable expectation of harm. The feared harm must not be fanciful, imaginary or contrived and evidence of speculative harm will not satisfy the test, although it is not necessary to establish a certainty of harm. The quality and cogency of the evidence presented must be commensurate with a reasonable person's expectation that disclosure of the requested information could cause the harm specified under s. 17(1).

***ICBC's Evidence***

[14] To support its s. 17(1) case, ICBC relies on an affidavit sworn by Jon McGrath, who is Senior Manager, Bodily Injury Technical Services and Injury Research with ICBC. It is worth reproducing a considerable portion of his affidavit here:

8. In general terms, from the time a file is opened, until it is concluded, the adjuster who is primarily responsible for conduct of the file is obligated to assess the value of the claim(s) and to make an assessment of ICBC's potential exposure to liability arising out of those claims. That exposure consists of a dollar amount that is organised by the type of loss, i.e. vehicle damage, no fault benefits, etc. The type of loss is known within ICBC as the Kind of Loss ("KOL"). ICBC must reserve funds to cover those exposures to liability with respect to each and every claim and those funds are known as the "reserves".

9. The reserves serve to both quantify the claim, to help determine how the claim is to be handled (i.e. locally, or in Head Office Claims), and to determine how much the Corporation as a whole must hold in reserve to meet its expected liabilities. The quantum of the reserves kept is financial and commercial information belonging to ICBC.

10. Furthermore, that information most definitely has a monetary value. The knowledge of ICBC's reserves, globally for the Corporation as a whole or on a case-by-case basis, is undeniably valuable information. With respect to an individual claim, an adjuster's calculation of exposure and consequential placement of reserves is information that would be very valuable to opposing counsel. For example, take the hypothetical situation of plaintiff's counsel who is prepared to recommend that his or her client settle a tort claim for $50,000. Suppose counsel knew that the adjuster had reserved $75,000. Plaintiff's counsel could offer to settle for just under the reserved amount, and it is likely that the adjuster would accept that offer – the adjuster having at least held the belief that the claim could be worth that much. The value of the reserve information in that particular example is $25,000, because ICBC paid $25,000 more than it would otherwise have had to pay to settle the claim.

11. In a global context, ICBC's exposure to potential claims affects how it will carry on business. The amount of its exposure (and therefore reserves) is an important factor in ICBC's business planning. For example, given existing reserves, is it possible for ICBC to embark on a new line of business, or alternatively, must it raise insurance rates or abandon some business lines. This information would be valuable to ICBC's competitors in terms of knowing what ICBC's business plans may be for the future.

12. From the previous two examples, it can be seen that release of exposure and reserve information, whether on a claim-by-claim basis or globally, will have a harmful effect on the financial and economic interests of ICBC.

13. Record 96 refers to insurance limits of a third party. The same argument can be (and is) made with respect to insurance limits, as was made for the exception of reserve and exposure details, in paragraph 10 above. The information is valuable financial or commercial information, the disclosure of which will have a harmful effect on ICBC's financial and economic interests. Without repeating the analysis detailed in paragraph 10 above, if an opposing party knows the limits of another's insurance coverage, their demands and expectations, will likely be modified accordingly, with resultant increased costs to ICBC.

[15] I will now discuss ICBC's case in some detail.

***Information Having Monetary Value***

[16] I will deal first with ICBC's arguments under s. 17(1)(b), on which it relies in relation to records 2, 9, 10, 96, 97, 123, 124, 155, 183-189, 193, 281-285 and 371. At para. 21 of its initial submission, it says that:

> ICBC seeks to have excepted from disclosure all references in the records relating to:
>
> (a) the setting of exposure reserves, and the quantum of those reserves;
>
> (b) any comments on strategy with respect to the setting of those reserves; and
>
> (c) the amount of insurance coverage (and deductible) relating to claims made against an insured.

[17] ICBC says "this information is of monetary value, and would lead to harm to the financial and economic interests of ICBC should such information be disclosed."

[18] Again, Jon McGrath deposed that an adjuster's calculation of exposure and the consequential determination of reserves "is information that would be very valuable to opposing counsel". He also deposed that such information "most definitely has a monetary value" and is "undeniably valuable". These are, of course, opinions held by Jon McGrath, who is employed by ICBC and whose expertise in such matters has not been established by ICBC. I have, nonetheless, given his evidence weight.

[19] Although it may be that, where a claim is alive, reserve-related information has independent monetary value – including to counsel or an unrepresented claimant – this is not such a case. Here, the applicant sought access to this information after the litigation settled. Once the settlement was effected, it seems to me, the amount that ICBC's adjuster had set aside as a monetary reserve for the claim – an amount that I infer is specific to the facts of the particular claim – would be of little relevance or use to anyone. In that light, I am not persuaded that the reserve amounts set aside by ICBC in respect of the third party's claim had, or were reasonably likely to have, independent monetary value as contemplated by s. 17(1)(b). Nor am I persuaded that the other reserve-related information withheld by ICBC had, or was reasonably likely to have, independent monetary value as contemplated by that section. ICBC has not provided me with any evidence to the contrary. In this case, therefore, I find that none of the reserve-related information described above is financial or commercial information that has, or is reasonably likely to have, monetary value for the purposes of s. 17(1)(b).

[20] I have also considered, with respect to s. 17(1)(b), whether ICBC's argument that the specified records disclose its 'strategy' or 'technique' for negotiating this or other claims. This argument is discussed below. For the reasons given below, I am not persuaded that any of the specified records would disclose, directly or indirectly, any

technique or strategy that could reasonably be expected to have independent monetary value for the purposes of s. 17(1)(b)

[21] Further, even if one assumes for argument's sake that this information is subject to s. 17(1)(b), I am not persuaded that its disclosure here could reasonably be expected to harm the financial or economic interests of ICBC. Jon McGrath's opinion, in para. 10 of his affidavit, as to the harm that could be expected to flow from disclosure speaks to a case different from this one. That is, the claim was settled here before the access request was made and his evidence, in para. 10 of his affidavit, speaks to a case where the claim is alive.

[22] In light of the contents of the relevant records, I am not persuaded by paras. 11 and 12 of Jon McGrath's affidavit as to the global, or general-level, harm that disclosure of the reserve-related information in this case supposedly might cause. Paragraph 11, in my view, really speaks to the harm that allegedly would flow from knowledge of ICBC's general exposure to claims. I am not persuaded that disclosure of the reserve specific to this settled claim could reasonably be expected to harm ICBC's interests under s. 17(1). This does not mean an ICBC competitor, for example, would be entitled to know all ICBC reserve or exposure amounts at a given date. It only means that I do not accept ICBC's case for a general harm flowing from disclosure of the now-irrelevant reserve-related information in this case.

***Information About Negotiations***

[23] I have similar difficulties with ICBC's s. 17(1)(e) argument here. ICBC argues that disclosure could reasonably be expected to harm its financial and economic interests, because this could reveal "specific negotiations" or "negotiation strategy in general". In his affidavit, Jon McGrath deposed that this harm would flow from disclosure of records 103, 104, 157, 177, 279-285, 328, and 329-330. He deposed as follows at para. 15 of his affidavit:

> Disclosure of negotiations carried on by ICBC would also, in my opinion, lead to harm to the financial and economic interests of ICBC. If such information were disclosed, opposing parties to negotiations would receive information on how employees of the Corporation prepare for, and participate in, negotiations, including mediation of claims. ICBC's participation in negotiation and mediation initiatives would be thereby prejudiced.

[24] ICBC argues that some of the records in the third party's claim file "relate to negotiation strategy and negotiation offers which were made in the course of negotiating with counsel for" the third party (para. 26, initial submission). It argues that "disclosure of specific negotiations, or negotiation strategy in general, can reasonably be expected to harm ICBC's financial and economic interests" (para. 26, initial submission). Paragraph 26 of ICBC's initial submission refers to "disclosure of specific negotiations" or "negotiation strategy in general", while Jon McGrath's affidavit refers to the general harm that allegedly would flow from disclosure, *i.e.*, the harm to ICBC's participation in negotiation and mediation initiatives generally, not just in this case.

[25] ICBC does not explain how any of the relevant information would disclose "negotiations" or "negotiation strategy", either as regards this case or in respect of how ICBC goes about negotiating such claims in general. The records are case-specific and factual. The information includes adjusters' notes to file, directions given to them by supervisors on what they should do in handling the claim generally, information about what offers were made or should be made, and information regarding possible outcomes of the claim. My review reveals no information that could be said to disclose anything like a general 'strategy' or 'technique' for negotiating this or other claims. As regards any information about ICBC's general negotiating strategy, I am not persuaded that s. 17(1) has been satisfied.

[26] As regards ICBC's argument that the information comprises a general negotiating 'strategy' or 'technique', I rejected a similar argument in Order 00-42, [2000] B.C.I.P.C.D. No. 46. In that case, Jon McGrath deposed that disclosure of information in dispute there could reasonably be expected to give the applicant and his lawyer information about the "negotiating policies, guidelines, and practices used by ICBC to settle claims out of court in a cost-effective, yet fair and just manner." At p. 30, I noted that ICBC had not drawn my attention to information that specifically could be said to qualify as policies, guidelines or practices that it uses to settle claims or negotiate settlements. In this case, although ICBC has referred me to specific pages of the records, as noted above, I am unable to conclude that the information to which it refers would, directly or indirectly, reveal any negotiating 'strategy' or 'technique'.

[27] ICBC also relies on s. 17(1)(e) on the basis that some of the disputed information is about the (now past) negotiations on the third party's claim. That is clearly the case, (*e.g.,* the September 8, 1999 note to file in record 103). In the context of a claim that was settled before the applicant sought access to information, however, I am not persuaded that disclosure of such information could reasonably be expected to harm ICBC's interests as contemplated by s. 17(1). The outcome may well differ where a claim remains alive, but that is not the case here.

[28] **3.3 Unreasonable Invasion of Personal Privacy** – ICBC disclosed a small amount of the third party's personal information to the applicant because it had already been disclosed to him in the police investigation report (para. 29, initial submission). ICBC withheld a considerable amount of the third party's personal information, however, under s. 22(1) of the Act. Generally speaking, that information comprises medical information, a telephone number and address, tax-related information, information relating to statutory benefits received by the third party and information about the third party's employment history and return to work.

[29] At para. 31 of its initial submission, ICBC says it "seeks the Commissioner's direction with respect to the scope of information it is obligated to withhold pursuant to s. 22". It gives some examples of the kinds of information on which it seeks direction. It would not be appropriate for me, in an inquiry such as this, to offer general direction on the "scope of information" that a public body is required (or permitted) to withhold under the Act. Such an approach may seem practical, but my role in an inquiry such as this is clearly constrained – it is limited to reviewing a public body's decision in response to an

access request. The scheme of the Act requires a public body to consider an access request and, based on the facts known to it, decide which (if any) exceptions to the right of access can or must be applied. I am limited to reviewing that decision based on the evidence before me.

[30] Section 22(1) of the Act requires a public body to refuse to disclose personal information if its disclosure would unreasonably invade anyone's personal privacy. As I noted above, s. 57(2) of the Act places the burden on the applicant to "prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy." The relevant portions of s. 22 read as follows:

> **Disclosure harmful to personal privacy**
>
> 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.
>
> (2) In determining under subsection (1) or (3) whether a 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
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
>
> …,
>
> (c) the personal information is relevant to a fair determination of the applicant's rights,
>
> …,
>
> (e) the third party will be exposed unfairly to financial or other harm,
>
> (f) the personal information has been supplied in confidence, … .
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
>
> …,
>
> (c) the personal information relates to employment, occupational or educational history,
>
> …
>
> (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, … .

[31] ICBC has withheld information under s. 22 from the following disputed records: 5, 6-10, 95, 96, 98-111, 114, 115, 123, 124, 149-157, 159, 162, 163, 172, 177-180, 183-192, 201-270, 277-285, 301, 313-319, 321, 322, 324, 328-330, 333-337, 354, 355, and 368-372. Also, in an October 1, 2001 letter to me, ICBC says it believes certain of the records in respect of which it had initially relied on s. 14 only also contain personal information that must be withheld under s. 22(1). The letter referred to some or all of each of the following additional pages: 127, 148, 175, 194-200, 271-272, 274, 292, 302-312, 325-326, 345, 351-352, 362-367 and 377. ICBC also supplied me with proposed severing of these pages. It says that disclosure of the personal information it has severed would unreasonably invade the third party's personal privacy. It relies on ss. 22(3)(f) and (h) of the Act, in addition to s. 22(3)(a) and (d), which were raised earlier. ICBC's reliance on s. 22(1) in relation to these added pages of records came after the close of the inquiry, but because s. 22(1) is a mandatory exception to the right of access, I have considered those submissions. I see no prejudice to the applicant in doing so. For clarity, the discussion below of the various classes of personal information in issue covers all of the personal information to which ICBC has applied s. 22(1), including in its October 1, 2001 letter.

[32] It is useful in this case to summarize here the applicant's and the third party's arguments regarding s. 22(1). In his initial submission, the applicant says the following:

> All the information I am asking for has to do directly with me and not to do with the 3rd party involved in the accident. I am not interested in the personal things about him. As an insured person with ICBC since they were in existence, all the info concerns me in relation to how I was dealt with by ICBC.
>
> … I am not interested in anything personal about the 3rd party.
>
> … I am not interested in personal info about the 3rd party. It would seem to me that if a 3rd party was willing enough to make a claim, he should not be able to hide from disclosing information other than his medical records, he became public when he decided to make a claim and took money from a public body, from premiums of others and they should be entitled to know. I can't see where s. 22(3) applies at all in this case.
>
> … I, therefore believe that ICBC should release all the information I have asked for other than the medical records. How else can ICBC be accountable to the people if they can withhold information from their customers that pay insurance premiums and then find out they are not allow to know what was done to settle and if it was fair.

[33] In his reply submission, the applicant argues that the third party

> … should not expect to withhold information about the settlement or anyother [*sic*] information relating to his claim. nothing [*sic*] should be held in confidence, other than his very personal business. He became public when he made the claim of [*sic*] a public insurance company, and he shouldnt [*sic*] need to object to it being known, its [*sic*] not personal, at all.

[34] The applicant is trying to have it both ways. On the one hand, he says he is not interested in the third party's personal information. On the other hand, he indicates that only the third party's medical records and other "very personal" information should be kept from him.

[35] A lawyer acting for the third party made a submission in the inquiry. He said that:

> … the premise of all our discussions with ICBC and its Counsel was that all matters were confidential and would remain that way, and not available to any other person or institution.
>
> Release of this information, including settlement, would be an unreasonable invasion of …[the applicant's]… privacy, and, accordingly, we strongly object on his behalf.

[37] Two points arise from this submission. First, a "premise" of confidentiality does not trump the right of access under the Act. Confidentiality of supply of personal information is only one circumstance that may be relevant to the s. 22 analysis. Second, not all of the personal information in issue in this case was necessarily supplied by the third party, or his lawyer, to ICBC or its lawyer. I have, nonetheless, kept the relevant circumstance under s. 22(2)(f) in mind as appropriate in assessing the s. 22 issues in this case.

***Medical Information***

[38] Contrary to the applicant's argument that s. 22(3) does not apply, it is obvious that a good deal of the information that ICBC withheld falls under the presumed unreasonable invasion of personal privacy expressed in s. 22(3)(a). Many of the records contain information about the diagnosis and treatment the third party received for his accident injuries, as well as other medical information. This is, in any case, one category of personal information that the applicant has unambiguously said he does not wish to see. I certainly see no basis on which, considering the relevant circumstances under s. 22(2) or otherwise, he should be given that information. I therefore find that ICBC is required to withhold all of the information to which it has applied s. 22(3)(a).

***Employment Information***

[39] ICBC has also withheld the third party's employment-related information. Some of the records contain information about the third party's present employment circumstances, as well as his past employment history. This information includes the name of his employer, details of that employment (including earned and lost income), other employment the third party has had. The information withheld by ICBC is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(d) of the Act. The applicant has not attempted to rebut that presumption, other than by asserting his alleged right, as an insured, to know "everything" about his case. None of the relevant circumstances in s. 22(2), or otherwise, supports disclosure. I find that ICBC is required to refuse to disclose the third party's employment-related information.

[40] ICBC also withheld the business telephone number and business address of the third party's employer under s. 22(3)(d). In my view, the business address and business telephone number are the third party's personal information as contemplated by the Act. Personal information is defined in Schedule 1 to the Act as "recorded information about an identifiable individual." I accept that the name of one's employer is personal information, since it is about one's "employment history" as contemplated by paragraph (g) of the definition of personal information. The name of the employer is not in issue here; only the employer's telephone number and address are in dispute. Here, the address and telephone number inevitably lead to the identity of the third party's employer, which would in turn disclose personal information of the third party under paragraph (g) of the definition of personal information. It should be underscored that s. 22(1) will not always require employer-related information to be withheld. Such information may, for example, be relevant to a fair determination of an applicant's legal rights against another person. In this case, however, I find that ICBC is required by s. 22(1) to withhold this information, like the other s. 22(3)(d) information.

***Financial Information***

[41] Some of the information withheld by ICBC falls under the presumed unreasonable invasion of personal privacy created by s. 22(3)(f). This financial information consists of the value placed on the third party's tort claim and details of the third party's insurance coverage.

[42] Details of the third party's ICBC insurance are, in my view, personal information of the third party. This information consists of policy dates, rate class, type of use, third-party liability limit, collision deductible, comprehensive deductible, the third party's place on ICBC's claims-rated scale, whether the third party had underinsured motorist's protection and any loss of use limit in the third party's insurance policy. As this information about the third party is about his finances and history, it is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(f). The applicant has not attempted to rebut this presumption. Nor can I see, in light of the s. 22(2) (or other) relevant circumstances, any basis on which that presumption could be rebutted in this case.

[43] I do not agree that ICBC is required by s. 22(1) to withhold any dollar amounts set out under "reserves" for the claim. Nothing in the material before me supports the view that the amount of a reserve taken by an ICBC adjuster respecting the third party's claim is personal information of the third party. ICBC has not shown how the reserve information, on its own, could disclose the nature or amount of any insurance maintained by the third party or how it could consist of, or disclose, other personal information. I find that ICBC is not required to refuse to disclose this information under s. 22(1).

[44] With the exception of the claim reserve amounts, I find that ICBC is required by s. 22(1) to withhold the personal information to which it has applied s. 22(3)(f).

***Unfair Damage to Reputation***

[45] Citing s. 22(2)(h), ICBC also has withheld information that it considers may, if disclosed, unfairly damage the third party's reputation. I agree that disclosure of the information cited by ICBC as being subject to this relevant circumstance must be withheld in this case. Even though there is no reason for anyone to think ill of the third party because of this information, I cannot reveal its nature here without risking "unfair" damage to his reputation. Seeing no relevant circumstances that overcome that presumed unreasonable invasion of personal privacy, I find that ICBC is required by s. 22(1) to refuse to disclose the personal information to which it says s. 22(2)(h) applies.

***Vehicle Numbers***

[46] ICBC withheld the registration number and serial number of the third party's motor vehicle under s. 22(1). These are not, to my mind, the third party's personal information within the meaning of the Act. Unlike the business telephone number and address of the third party's employer – which lead to disclosure of the employer and thus are about the third party's employment history – this information is not "about" the third party. These numbers are identifiers assigned to the vehicle, not the owner. They are information "about" a vehicle, not its owner. I find that ICBC is not required by s. 22(1) to withhold this information, since it is not "personal information".

***Third Party's Signature***

[47] ICBC also has withheld the third party's signature under s. 22(1), for example, on pp. 163 and 190 of the records. An individual's signature will be personal information if it is legible and thus reveals her or his name – which is not always the case (see below) – or otherwise identifies the individual. This is because paragraph (a) of the Act's definition of "personal information" includes an individual's name.

[48] Of course, this does not mean that a signature must be withheld. The question remains whether disclosure of the signature would unreasonably invade the third party's personal privacy. The signature is found on various ICBC forms and documents related to the third party's personal injury claim and settlement. The applicant knows who the third party is. ICBC says, citing "s. 22", that disclosure of the signature would be an unreasonable invasion of personal privacy. I do not see how the signature fits, in this case, under any of the presumed unreasonable invasions of personal privacy created under s. 22(3) of the Act. In light of the fact that the applicant knows the third party's identity, having considered ss. 22(2) and (1), I see no basis on which disclosure of his signature to the applicant would unreasonably invade the third party's personal privacy. ICBC is not required to withhold the signature under s. 22(1).

[49] I should note here that, if a signature is found in a record that has been created by a public body employee in an employment capacity, it is unlikely that disclosure of the employee's signature would be an unreasonable invasion of personal privacy.

## 4.0 CONCLUSION

[50] For the reasons given above, I make the following orders:

1. Under s. 58(2)(a) of the Act, I require ICBC to give the applicant access to the information that ICBC withheld under s. 14 and the information that it withheld under s. 17(1); and

2. Under s. 58(2)(c) of the Act, with the exception of the above-described claim reserve amounts, vehicle-related numbers and the third party's signature, I require ICBC to refuse access to the information it withheld under s. 22(1).

October 11, 2001

**ORIGINAL SIGNED BY**

David Loukidelis
Information and Privacy Commissioner
for British Columbia