



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

Order 02-48

INSURANCE CORPORATION OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
October 8, 2002

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Summary: The applicant lawyer sought a copy of a RCMP traffic accident analysis report in ICBC's custody. ICBC originally denied access under s. 21, but later relied on s. 20(1)(a). ICBC is authorized to refuse disclosure under s. 20(1)(a).

Key Words: available for purchase by the public.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 20(1)(a).

Authorities Considered: B.C.: Order No. 01-51, [2001] B.C.I.P.C.D. No. 54; Order 02-38, [2002] B.C.I.P.C.D. No. 38.

1.0 INTRODUCTION

[1] On June 11, 2001, a lawyer representing an individual who had been involved in a motor vehicle accident made an access request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), to the Insurance Corporation of British Columbia ("ICBC") for ICBC's claim file for that individual. ICBC withheld, among other things, its copy of a "Collision Analyst Investigation Report" prepared by a member of the Coquitlam Detachment of the RCMP. In refusing to disclose its copy of the report, ICBC initially relied on s. 15 of the Act. By a letter dated October 5, 2001, the applicant requested a review, under Part 5 of the Act, of ICBC's refusal to disclose the report.

[2] During mediation by this Office, ICBC abandoned its reliance on s. 15. ICBC gave notice of the request for review to the RCMP to, as the Portfolio Officer's Fact Report puts it, "determine if section 21 of the Act (disclosure harmful to business interests of a third party) applied." The RCMP objected to disclosure of the report and

ICBC then claimed that s. 21 prohibited its disclosure. ICBC also decided during mediation to claim the benefit of s. 20(1)(a) of the Act, which authorizes it to refuse to disclose information that is available for purchase by the public.

[3] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. In its initial submission, ICBC abandoned its reliance on s. 21 and submitted that only s. 20(1)(a) is in issue. After the parties had made their submissions in the inquiry, however, ICBC wrote and said that the RCMP had offered to disclose a copy of the report to the applicant without charge. The applicant declined to abandon his request for review and asked that the inquiry proceed to its conclusion. I therefore need not deal with s. 21(1), but, because I consider the s. 20(1)(a) issue before me is not moot because of the RCMP's offer to disclose, I will dispose of that issue on its merits.

2.0 ISSUE

[4] Again, the only remaining issue is whether s. 20(1)(a) of the Act authorizes ICBC to refuse to disclose the report. Section 57(1) of the Act places the burden of proof on ICBC respecting s. 20.

3.0 DISCUSSION

[5] **3.1 Applicable principles** – Section 20(1) of the Act reads as follows:

20(1) The head of a public body may refuse to disclose to an applicant information

(a) that is available for purchase by the public, or

(b) that, within 60 days after the applicant's request is received, is to be published or released to the public.

[6] I discussed s. 20(1)(a) in Order 01-51, [2001] B.C.I.P.C.D. No. 54. There is no need to repeat that discussion here. I have applied the approach taken there to this case.

[7] There is no doubt the disputed record is “available for purchase by the public” from the Coquitlam Detachment of the RCMP. The affidavit sworn by Mark Francis on behalf of ICBC provides evidence that the RCMP will provide a copy of collision analysis reports to anyone who wishes to purchase it for the \$500 fee (plus goods and services tax). That fee is set by *City of Coquitlam Fees & Charges, Bylaw No. 3255, 1998*. The evidence indicates that the \$500 fee is collected by the RCMP and remitted to the City, for which the Coquitlam Detachment performs municipal policing services. Neither the RCMP nor the City has participated in this inquiry. The availability of the report for purchase by the applicant or members of the public is also confirmed in a February 28, 2002 letter from counsel to the RCMP.

[8] The applicant has not directly addressed s. 20(1)(a) in his initial submission (he did not provide a reply submission). He argues there are “no public policy reasons which

would require I.C.B.C. to keep the report confidential when it can be disclosed in other [legal] proceedings at no expense” (p. 2, initial submission).

[9] I am satisfied that the disputed record is available for purchase by the public within the meaning of s. 20(1)(a). The only remaining issue is whether ICBC has appropriately exercised its discretion under that section in deciding not to waive it.

[10] In Order 01-51, at paras. 50-52, I affirmed that I will not substitute my exercise of discretion under s. 20(1)(a) for the public body’s. I will only consider whether the public body has exercised its discretion under that section in good faith and not for an improper purpose or based on irrelevant considerations. See also Order 02-38, [2002] B.C.I.P.C.D. No. 38, at paras. 24 and 25, regarding the limited grounds for intervening in the exercise of discretion.

[11] ICBC says that, when it learned the City and the RCMP were not going to participate in this inquiry, it reconsidered its position on disclosure of the report “based on a number of relevant considerations following the guidelines provided by Order 325-1999” (para. 22, initial submission). ICBC says it considered various factors in deciding to continue to rely on s. 20(1)(a), including these:

- It concluded that the Act’s objectives of transparency and accountability did not favour disclosure of the report because it was prepared by another agency and because disclosure of that report would not, because of its nature, promote transparency or accountability in ICBC’s operations;
- ICBC decided there was no sympathetic or compelling need to release the report, noting that the applicant did not claim financial hardship or an inability to pay the prescribed fee; and
- It considered its historical practice of only releasing such reports with consent of the appropriate police agency and the fact that the agency approaches to consent differ, which would necessitate ICBC contacting individual agencies in each case, thus increasing the administrative burden to ICBC.

[12] The fact that the report may have to be disclosed, without fee, in any litigation arising from the accident does not make ICBC’s exercise of discretion improper. As it was entitled to do, ICBC considered other legitimate factors in exercising its discretion under s. 20(1)(a). There is no evidence to support a finding that ICBC has improperly exercised its discretion under s. 20(1)(a). I therefore decline to require ICBC to reconsider its exercise of discretion.

4.0 CONCLUSION

[13] For the above reasons, I find that ICBC is authorized by s. 20(1)(a) of the Act to refuse to disclose the disputed record and, under s. 58(2)(b) of the Act, I confirm ICBC's refusal to disclose the disputed record to the applicant.

October 8, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia