



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

Supplement to Order F05-06 (Amended)

INSURANCE CORPORATION OF BRITISH COLUMBIA

Jay Fedorak, Adjudicator
August 23, 2005

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1.0 INTRODUCTION

[1] In Order F05-06 (Amended)¹, I decided that s. 13(1) of *Freedom of Information and Protection of Privacy Act* (“Act”) did not apply to the information ICBC had withheld from p. 74 of the disputed records, but I did not resolve the applicability of s. 17(1) to that information.

2.0 ISSUE

[2] The issue for decision in this order is whether ICBC was authorized by s. 17(1)(d) to refuse to disclose the information it withheld from p. 74 of the disputed records. Under s. 57(1) of the Act, ICBC has the burden of proof regarding this issue.

3.0 DISCUSSION

[3] **3.1 Description of the Record**—Page 74 of the disputed records is titled “Terminations – Express Glass/Glass Express”. It lists six facilities, by name and other information, and their dates of termination from the ICBC Glass Express program. ICBC disclosed all of this information to the applicant. On the right side of p. 74, under the heading “Reasons” (also disclosed by ICBC), there are one to four line explanations

¹ [2005] B.C.I.P.C.D. No. 7.

of why each of the six facilities was terminated. This is the information that ICBC withheld from p. 74 and the only information that is in issue in this order.

[4] **3.2 Harm to ICBC's Financial Interests**—ICBC withheld information under s. 17(1) of the Act on the ground that, under para. (d), it was information about glass shops which, if released, could unfairly damage the reputation of those shops and thereby cause them to suffer undue financial loss (ICBC submission December 2, 2003, para. 3(c)).

[5] Section 17(1)(d) reads 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:

...

- (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;

[6] ICBC's decision to apply s. 17(1)(d) was explained by Michael Fears, ICBC Acting Manager, Information and Privacy, in para. 4 of his affidavit, as follows:

...I determined that the public interest would be satisfied if records relating to shops which the Supplier Conduct Committee determined had breached their contract with ICBC and sanctioned under the terms of that contract were disclosed. I decided that shops which had been the subject of an investigation but which had not been sanctioned faced a substantial risk of economic harm, and so I withheld under section 17(1)(d) those records which relate to shops which were not ultimately subject to any sanctions.

[7] This evidence and reasoning of Mr. Fears was referred to and relied on in ICBC's submission of December 2, 2003 (paras. 11, 26) and forms the basis of its s. 17 materials in the inquiry. An example is para. 11 of the affidavit of David Mitchell, which states as follows:

If one or more shops suffered financial loss as a result of the release of information arising from an ICBC investigation in which the shop was not sanctioned the existing degree of trust and cooperation would undoubtedly disappear. Shops would almost certainly resist producing records, as a result of which investigations would become more adversarial, more time consuming, and ultimately more expensive for the corporation.

[8] Another example is para. 25 of ICBC's submission of December 2, 2003, which reads as follows:

The records which have been severed pursuant to s. 17(1)(d) fall into two categories:

- (i) Records with respect to auto glass shops which were investigated but not sanctioned; and
- (ii) Information concerned with businesses named in the records but not subject to any ICBC investigation.

[9] Turning to p. 74 of the records, it is clear that this information relates to glass shops that ICBC investigated and sanctioned (see the text of p. 74 itself, the *in camera* affidavit of David Mitchell, para. 2, and ICBC's submission of July 8, 2005, p. 1) and that it does *not* relate to either shops that were investigated and not sanctioned or to the names of customers of shops investigated (*in camera* ICBC submission December 2, 2003, paras. 23, 24, ICBC submission July 8, 2005, p. 1). As stated in ICBC submission July 8, 2005:

Page 74 was not mentioned in connection with section 17 in ICBC's *in camera* submissions simply because there was no need to make an *in camera* submission with respect to this record. The *in camera* submission related to those shops which were investigated but not sanctioned as well as the names of customers of the shops which were investigated. Page 74 deals with those shops that were investigated and sanctioned: *in camera* Affidavit of David Mitchell, paragraph 2.

[10] I am unable to identify evidence that the information withheld from p. 74 relates to shops that were investigated but not sanctioned or to named customers or businesses that were not subject to investigation. On the other hand, there is the clear, above-noted evidence, which I accept, that the information in p. 74 relates to shops that were investigated and sanctioned.

[11] ICBC has the burden of proving that s. 17(1)(d) authorized it to withhold information from p. 74. The standard of proof in this area has been addressed in numerous orders. See, for example, Order 02-50², paras. 124-137. The evidence must be detailed and convincing enough to establish a clear and direct connection between the disclosure of the withheld information and a reasonable expectation of the alleged harm.

[12] ICBC's reason for applying s. 17(1)(d) to information about glass shops—to prevent unfair damage to business reputation and resulting financial loss to shops that were investigated but not sanctioned—is tied to shops that were not sanctioned. In Order F05-06 (Amended), I concluded that the evidence was not sufficient to establish that the disclosure of information respecting shops that had been investigated but not sanctioned or respecting the customers of shops could reasonably be expected to result in undue financial loss or gain to a third party under s. 17(1)(d).

² [2002] B.C.I.P.C.D. No. 51.

The shops listed on p. 74 were sanctioned and their terminations from the Express Glass program are known. It is the reasons for termination that ICBC withheld from the applicant. The effect of disclosure of the information in p. 74 about shops that were sanctioned is not addressed by ICBC's assertions that disclosure of information relating to a shop that was investigated but not sanctioned could reasonably be expected to result in undue financial loss to the shop or undue financial gain to its competitors or anyone else. ICBC's case for applying s. 17(1)(d) to p. 74 is therefore even more problematic than it was in Order F05-06 (Amended) because there is an incongruity between ICBC's evidence and submissions (which dealt with shops that were not sanctioned) and the application of s. 17(1)(d) to information relating to shops that were sanctioned.

ICBC did not truly address the issue of disclosure of information relating to shops that were sanctioned, much less discharge its burden of proving that s. 17(1) applies to the information withheld from p. 74, in relation to para. (d) or the more general introductory language of subsection (1). The credibility of ICBC's application of s. 17(1) to p. 74 is further compromised by the fact that other pages of the disputed records show that this type of information (the reasons for terminating particular shops) was disclosed by ICBC elsewhere in the disputed records.

4.0 CONCLUSION

For the reasons given, I find that ICBC was not authorized by s. 17(1) to refuse to disclose the information it withheld from p. 74 of the disputed records and, under s. 58(1), I require ICBC to give the applicant access to that information.

August 23, 2005

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator