



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

Order F05-06 (Amended)

## INSURANCE CORPORATION OF BRITISH COLUMBIA

Jay Fedorak, Adjudicator  
March 1, 2005  
(Amended June 23, 2005)

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**Summary:** The applicant requested records detailing the operations of ICBC's Glass Express program, including records relating to suspensions of glass vendors' rights under the program. ICBC properly applied ss. 14 and 22(1) and, in some places, s. 13(1). Some information withheld under s. 13(1) is ordered disclosed. Information withheld under s. 17(1) is ordered disclosed.

**Key Words:** advice or recommendations—solicitor-client privilege—financial or economic interests—reasonable expectation of harm—unreasonable invasion of personal privacy.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 14, 17(1)(d), 22(2)(e), (f), and (h) and 22(3)(f), (h).

**Authorities Considered:** **B.C.:** Order No. 324-1999, [1999] B.C.I.P.C.D. No. 128; Order 00-08, [2000] B.C.I.P.C.D. No. 8; Order 00-11, [2000] B.C.I.P.C.D. No. 13; Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 00-17, [2000] B.C.I.P.C.D. No. 20; Order 00-18, [2000] B.C.I.P.C.D. No. 21; Order 00-41, [2001] B.C.I.P.C.D. No. 44; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 01-54, [2001] B.C.I.P.C.D. No. 57; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 02-50, [2002] B.C.I.P.C.D. No. 51. Order 03-34, [2003] B.C.I.P.C.D. No. 34.

**Cases Considered:** *The College of Physicians and Surgeons of British Columbia v. British Columbia (The Information and Privacy Commissioner)* 2002 BCCA 665, [2002] B.C.J. No. 2779.

## 1.0 INTRODUCTION

[1] The applicant requested access under the *Freedom of Information and Protection of Privacy Act* (“Act”) to records detailing the operation of ICBC’s “Glass Express” program, including records of suspensions of glass vendors from the program. The Glass Express program allows auto glass suppliers who meet the requirements of the program to replace glass in automobiles insured by ICBC without the customer first attending an ICBC claim centre to get an estimate of the damage. In order for a shop to be approved as a Glass Express supplier, the shop owner must apply to ICBC, undergo an evaluation process and enter into a contract with ICBC. ICBC employees sometimes investigate shops. If staff believe a shop has breached its contract with ICBC, the results of the investigation are submitted to the Supplier Conduct Committee, which determines whether or not the information is sufficient to warrant a sanction against the shop.

[2] ICBC responded to the applicant’s request by disclosing some records. ICBC withheld some other records and information under ss. 13, 14, 17, 21 and 22. The applicant requested that this Office review ICBC’s decision to withhold information. During the mediation process, ICBC discontinued its reliance on s. 21.

[3] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

## 2.0 ISSUE

[4] The issues before me in this case are:

1. Does s. 13(1) authorize ICBC to refuse to disclose information?
2. Does s. 14 authorize ICBC to refuse to disclose information?
3. Does s. 17(1) authorize ICBC to refuse to disclose information?
4. Does s. 22(1) require ICBC to refuse to disclose information?

[5] Under s. 57(1) of the Act, ICBC has the burden of proof regarding the application of ss. 13(1), 14 and 17(1), while under s. 57(2) the applicant has the burden of proof to demonstrate that the disclosure of third-party personal information would not be an unreasonable invasion of privacy under s. 22.

## 3.0 DISCUSSION

[6] **3.1 Applicant’s Procedural Objections** – ICBC provided a substantial portion of its initial submission *in camera*, to which the applicant objected. I did not consider the material, with the exception of a few passages, to be properly received

*in camera*. I asked ICBC to reconsider its decision to submit this material *in camera* and ICBC agreed to disclose most of the material to the applicant. I find that the remaining portions of the submission to be appropriately supplied *in camera*.

[7] The applicant received a copy of this submission and asserted that it was inadmissible because the copy that he received did not bear the signature of the counsel for ICBC. He argued that the Affidavit of David Mitchell that was appended to ICBC's submissions was also inadmissible on the grounds that it did not disclose the identity of the commissioner for the taking of the Affidavit. On the first issue, I can confirm that the copy of the submission that this Office originally received did bear the signature of counsel for ICBC. On the second issue, I have determined that the Affidavit is admissible because it is clear from the signature that the Commissioner for the taking of the Affidavit was David Clancy, counsel for ICBC, and there is no reason to suspect that the information is false or unreliable. Therefore, I find it to be admissible. The applicant requested that, in the event that I accepted the Affidavit, David Mitchell be made available to be examined on his Affidavit. This inquiry is a written process. The applicant has been given the opportunity to provide a reply submission for the purpose of addressing or refuting any issues raised in the Affidavit and I see no need to convene an oral examination.

[8] **3.2 Description of the Records** – The records at issue consist of emails, letters, minutes of meetings, a diary, documentation of decisions and the ICBC Glass Express Service Program Guide. These records all relate to issues of compliance with the Glass Express program, including documentation of investigations and decisions regarding suspensions.

[9] **3.3 Advice or Recommendations** – Section 13(1) of the Act authorizes a public body to refuse to disclose “advice or recommendations developed by or for a public body or minister”. The Information and Privacy Commissioner has considered the application of s. 13 in numerous orders and the principles for its application are well established. See for example, Order 00-08<sup>1</sup> and Order 02-38<sup>2</sup>. I will not repeat all of those principles but apply them in this decision.

### ***Submission of ICBC***

[10] ICBC argues that s. 13(1) applies to portions of twenty pages of records. It submits that the information that it has withheld under s. 13(1) represents “directly, or indirectly, the author’s advice to ICBC’s management or to the Supplier Conduct Committee with respect to a particular glass shop”. It also submits that none of the exceptions in s. 13(2) applies to the information that it has withheld under s. 13(1) (paras. 13 and 15, initial submission).

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<sup>1</sup> [2000] B.C.I.P.C.D. No. 8.

<sup>2</sup> [2002] B.C.I.P.C.D. No. 38.

[11] ICBC makes reference to the decision of the Court of Appeal in *The College of Physicians and Surgeons of British Columbia v. British Columbia (The Information and Privacy Commissioner)*<sup>3</sup> in particular, the following passages:

[105] ... s. 13 of the Act recognizes that some degree of deliberative secrecy fosters the decision-making process, by keeping investigations and deliberations focussed on the substantive issues ...

[106] ... the deliberative process includes the investigation and gathering of the facts and information necessary to the consideration of specific or alternative courses of action.

[113] ... “advice” includes expert opinion on matters of fact on which a public body must make a decision for future action. (para. 18, initial submission).

[12] ICBC submits that some of the material it has withheld under s. 13(1) includes advice given by ICBC to a cabinet minister. The remainder of the material consists of advice and recommendations contained in minutes of meetings and internal correspondence. In some cases, this consists of a direct recommendation for action. In other cases, it consists of “the writer’s conclusions or opinions with respect to an investigation”. In such cases, ICBC submits that the author “exercised judgment and skill to weigh the significance of matters of fact” to assist ICBC and the Supplier Conduct Committee in making decisions about “how to proceed with further action concerning the shop(s) in question” (paras. 19-21, initial submission).

### ***Submission of the Applicant***

[13] The applicant submits “there is no evidence in any of the requested documents to suggest that the information reveals advice or recommendations developed by or for a Public Body or Minister”. Therefore, he concludes that s. 13(1) cannot apply (para 9, initial submission).

[14] The applicant further submits that it is desirable for the purposes of public scrutiny of the activities of ICBC that all the information in the records be disclosed (paras. 17 and 25, initial submission).

### ***Application of Section 13***

[15] Despite the applicant’s contention that there is no evidence within the requested documents that the information withheld would consist of advice or recommendations, I am satisfied that, in the case where records document the advice that ICBC offered to the Minister responsible for ICBC, the information is explicitly identifiable as advice and recommendations. In addition, the applicant’s concern that the information should be disclosed for purposes of public scrutiny does not override the discretion that the Act

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<sup>3</sup> 2002 BCCA 665, [2002] B.C.J. No. 2779.

gives to public bodies to withhold information that constitutes advice or recommendations. This information is appropriately withheld under s. 13(1).

[16] In all but two cases, however, ICBC has expanded the parameters of the interpretation of advice beyond that found in previous orders or in light of the Court of Appeal Decision mentioned above. The key passage from Order 00-08 is that advice “usually involves a communication between an individual whose advice has been sought, to the recipient of the advice, as to which courses of action are preferable or desirable”. The key passage in the Court of Appeal decision cited by ICBC is that “advice includes expert opinion on matters of fact on which a public body must make a decision for future action.” (para. 113). ICBC has interpreted the latter passage to include any reference in the records where an ICBC employee expresses an opinion, even where the opinion is not directly relevant to a deliberative process. The communication of an opinion merely for purposes of information, or “giving a heads up”, does not constitute advice, because it is not connected to a deliberative process. In some cases, ICBC has also characterized as expert opinions the observations of ICBC investigators about factors that are not relevant to the deliberations concerning eligibility for the Glass Express program. Moreover, there are some circumstances where ICBC identifies as advice factual information, such as a simple listing of violations of policy (without expert analysis or explanation of those facts), which does not constitute expert advice on matters of fact. Similarly, ICBC has applied s. 13 to the section of a record that documents the reasons why ICBC issued suspensions to particular auto glass companies. ICBC has also applied s. 13 to forensic analysis of past actions without connecting that analysis to a deliberative process.

[17] In summary, I find that ICBC has correctly applied s. 13 on pp. 50 and 52. I find that ICBC has incorrectly applied s. 13 on pages 2C, 6B&F, 9B, 10A&C, 16, 19G, 20A&C, 22C, 23C, 25C, 30B, 35A, 40, 42A, 44, 46B&E, 47B&D, 48B, 49A, 74 and part of 45D. As below, I have found that s. 14 applies to the information on p. 45D, I do not have to make a determination on the application of s. 13.

[18] **3.4 Solicitor-Client Privilege** – Section 14 of the Act allows public bodies to withhold information that is subject to solicitor-client privilege. Commissioner Loukidelis has considered the application of s. 14 in numerous orders and the principles for its application are well established. See, for example, Order 00-08. I will not repeat those principles but apply them in this decision.

### *Submission of ICBC*

[19] ICBC argues that the information it has withheld under s. 14 consists of records of communications between ICBC and its in-house legal counsel for the purpose of giving and receiving legal advice. ICBC claims that “legal advice privilege” applies to these records (para. 23, initial submission).

[20] ICBC asserts that the information that has been withheld on pp. 17, 22, 26, 27 and 45 is minutes of meetings of the Supplier Conduct Committee which recorded consultation with in-house legal counsel, Richard Fister, on the subject of the

interpretation of the Glass Express contract and whether potential litigation would arise if ICBC imposed a sanction under the contract (para. 22, initial submission).

***Submission of the applicant***

[21] The applicant claims that s. 14 does not apply to the records. He asserts that the burden of proof lies with ICBC to demonstrate that a solicitor-client relationship existed. He also made arguments on issues of litigation privilege that are not relevant to the records at hand, as ICBC is not claiming litigation privilege (paras. 12-16, initial submission).

***Application of section 14***

[22] All of the information over which ICBC asserted s. 14 constitutes direct communications between ICBC and its solicitor or indirect communication of the substance of such communications.

[23] I find that s. 14 applies to the records pp. 17, 26-27, 50 and part of 45D.

[24] **3.5 Harm to ICBC's Financial Interests** – ICBC has, in a number of instances, withheld information under s. 17(1) of the Act, the relevant portions of which 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: ...

- (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; ....

[25] Order 02-50, [2002] B.C.I.P.C.D No. 51, is an example of previous orders that have set out the principles to be applied in s. 17(1) cases. I am applying those principles without repeating all of them, as above. I have also, as in previous similar cases, approached the evidence on the basis that, for the purposes of s. 17(1), disclosure of information to the applicant must be treated as disclosure to the world.

***Submission of ICBC***

[26] ICBC argues that disclosure of the information to which it has applied s. 17(1)(d) could reasonably be expected to cause undue financial loss to companies that were

mentioned in the record but were not subject to any ICBC investigation. ICBC asserts that the same would apply to companies that had been investigated for possible breaches in the Glass Express program but in the end had not been sanctioned (paras. 28-32, initial submission). ICBC submits that the evidence of the financial harm that would result from disclosure is “necessarily speculative to a certain extent” (para. 27, initial submission). ICBC also admits that it is not possible to state with certainty that disclosure would result in financial harm. ICBC relies on the Affidavit of David Mitchell to establish that economic harm is a possibility (para. 17, initial submission).

[27] ICBC first deals with the prospect of harm to the companies that were investigated but not sanctioned. ICBC argues that the disclosure that ICBC investigated a particular auto glass company for suspected fraud or substandard business practices could cause the named shops to lose business. If disclosure resulted in unsubstantiated allegations becoming public, this could damage the reputations of those businesses. ICBC relies on an Affidavit from an employee who has worked in the industry for fifty years (para. 28, initial submission). David Mitchell submits:

In my opinion the degree of competitiveness in the auto glass industry at the present time is such that there is a good chance that ... [competitors] will use that information to suggest to the public and to customers ... that the shops in question are not trustworthy or do not do good work. If that occurs, it is likely that those shops will lose business and suffer financial losses because auto glass customers are not likely to take steps to independently verify the information presented to them. [para. 10, Affidavit of David Mitchell]

[28] ICBC acknowledges that, once it has established that there is a likelihood of financial loss to a third party, it must also demonstrate that the loss is “undue”. ICBC cites Order 00-10<sup>4</sup>, in which the Commissioner defines the meanings of “undue” as “something that is unwarranted, inappropriate or improper. They can also include something that is excessive or disproportionate, or something that exceeds propriety or fitness” (para. 30, initial submission). ICBC also cites Order 00-41<sup>5</sup>, in which the Commissioner commented, “Businesses who contract with public bodies must have some understanding that those dealings are necessarily more transparent than purely private transactions. Even if one assumes loss could be expected to the third party, such loss would not be undue” (para. 30, initial submission). ICBC submits that in this particular case, the losses would be “undue”. Although business dealings between third parties and public bodies need to be transparent, making public the details of allegations or investigations that did not result in any penalties being imposed does not serve, in ICBC’s view, the general public interest. It is the position of ICBC that

Any financial loss to an “innocent” shop would “exceed propriety or fitness”. ICBC submits that the risk of information being used to damage the

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<sup>4</sup> [2000] B.C.I.P.C.D. No. 11.

<sup>5</sup> [2001] B.C.I.P.C.D. No. 44.

reputation of the shops outweighs whatever interest there might be in disclosure. [para. 32, initial submission].

[29] ICBC has also applied s. 17(1)(d) to the identity of some third-party businesses that were customers of businesses under investigation.

ICBC is not in a position to adduce specific evidence with respect to the potential economic harm to the customers if it were revealed that they were mentioned in the context of an ICBC investigation into inappropriate billing practices. ICBC submits, however, that it is reasonable for ICBC to conclude that there is a real risk that the reputation of a company would suffer if it revealed that they were connected to a scheme by which they did not have to pay their insurance deductible on repairs. [para. 35, initial submission]

[30] ICBC also cites the name of a third-party business that one of its competitors had alleged was under investigation by ICBC. In fact, this business was not under investigation. ICBC submits that it would damage the reputation of this business to disclose the fact that it had been alleged as being subject to an investigation (para. 36, initial submission).

[31] ICBC does not draw the connection between the undue harm to the third party and financial harm to ICBC in the text of its submission. David Mitchell covers this point, however, in his Affidavit. He cites the importance of ICBC maintaining an “open and cooperative relationship” with the participants in the Glass Express program. He states that ICBC investigators currently enjoy full and complete access to the records of the participants. This is based on the trust that currently exists between ICBC and the participants. He submits that if participants began to suffer financial losses as a result of information collected during investigations having been disclosed, “the existing degree of trust and cooperation would undoubtedly disappear.” The consequence would be that some participants would begin to resist producing their records, and this would result in the investigations becoming more adversarial and expensive for ICBC (para. 11, Affidavit of David Mitchell). This would also impede the ability of ICBC investigators to detect fraudulent billing activities, and detection of such fraud enables ICBC to recover money and helps to prevent future occurrences (para. 12, Affidavit of David Mitchell). In conclusion, he states:

It is impossible to quantify the potential economic harm to ICBC that would result from disclosure of the information that has been withheld. Any significant increase in the time it takes to conduct investigations, however, would result in me having to hire more staff as my present staff have a full workload. Similarly it is impossible to predict the amount of fraud that might go undetected, but I have no doubt that ICBC’s ability to detect fraud would be reduced. [para. 13, Affidavit of David Mitchell]



*Submission of the applicant*

[32] The applicant submits that the burden of proof is on ICBC to demonstrate that there is a reasonable prospect of economic and financial harm to ICBC and that it has not met this burden of proof: “It is respectfully submitted there is no evidence existing to support the test for proving a reasonable expectation of economic or financial harm to ICBC” (para. 34, initial submission). In his reply submission, he submits, “There is no evidence to support that shop owners who have been sanctioned, suspended or investigated by ICBC that [*sic*] the public or the customers will question the member shop’s trustworthiness or not to do good work” (para. 16, reply submission). He dismisses David Mitchell’s Affidavit as “conjecture and speculation” (para. 48, reply submission). The applicant also submits that ICBC, as a public body, must operate “with a fair degree of openness”, and this requires it to disclose all records concerning the Glass Express Program (para. 39 initial submission).

*Application of section 17*

[33] As noted above, ICBC has the burden of proof to demonstrate that there is a reasonable expectation that disclosure of the information withheld under s. 17(1)(d) would result in undue financial loss to the third parties mentioned in the record and in financial or economic harm to ICBC. In my assessment, there are two key considerations.

[34] The first key consideration relates to the evidence, or lack thereof, in support of ICBC’s argument. ICBC has recognized in its submission that the justification for applying s. 17 requires more than mere speculation about the expectation of harm. Nevertheless, ICBC admits several times that the expectation is merely speculative. The applicant correctly states that ICBC has not provided evidence in support of its position other than a professional opinion or a series of predictions offered by an employee with considerable experience in the Glass Express program.

[35] The second key consideration is a weakness in ICBC’s argument about the impact that disclosure of third-party information would have on future interactions between ICBC and other third parties. David Mitchell submitted that third parties might in future be less forthcoming with their records in future, if they feared that their information would be disclosed. This assertion of the “chilling effect” that disclosure of information in the records may have on the future behaviour of other parties is similar to those that have been rejected in previous orders (Order 00-18<sup>6</sup>, Order 01-07<sup>7</sup>, Order 00-11<sup>8</sup>, Order 01-54<sup>9</sup> and Order 03-34<sup>10</sup>). As the evidence provided in David Mitchell’s Affidavit is merely speculative, ICBC has not provided sufficient evidence for me to decide differently in this case.

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<sup>6</sup> [2000] B.C.I.P.C.D. No. 21.

<sup>7</sup> [2000] B.C.I.P.C.D. No. 7.

<sup>8</sup> [2000] B.C.I.P.C.D. No. 13.

<sup>9</sup> [2001] B.C.I.P.C.D. No. 57.

<sup>10</sup> [2003] B.C.I.P.C.D. No. 34.

[36] The implication of this second key consideration is that, regardless of whether ICBC demonstrates a reasonable expectation of harm to the third parties, it must also demonstrate that this will result in financial or economic harm to ICBC. Section 17(1)(d) must be read in accordance with the stipulation that it relates to information “the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body ... including the following information ...”. Merely demonstrating that there would be likely financial harm to the third party, without concomitant harm to the public body, is insufficient for this exception to apply. In its written submission, ICBC makes no mention of the impact that the disclosure would likely have on ICBC. It is only David Mitchell who addresses this issue, but, as noted above, he has provided insufficient evidence to support his claim.

[37] Therefore, I find that s. 17 does not apply to any of the excepted information on pp. 6, 9, 10, 16-17, 19, 20, 24, 26-27, 32, 35, 37-38, 43-45, 47-49 and 75.

[38] **3.6 Harm to Personal Privacy** – ICBC has, in a number of instances, withheld information under s. 22 of the Act. Commissioner Loukidelis has considered the principles for applying s. 22 in numerous orders – see, for example, Order 01-53<sup>11</sup>. I will not repeat those principles but have applied them in this decision. The portions relevant to this Inquiry 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
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, ...

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<sup>11</sup> [2001] B.C.I.P.C.D. No. 56.

- (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,

[39] As noted, the burden of proof is on the applicant to demonstrate that disclosure of personal information would not be an unreasonable invasion of third-party privacy. The information to which ICBC has applied s. 22 is the names of third parties, or the name of a company that identifies the name of the individual referred to in the record.

### *Applicant's Submission*

[40] The applicant submits that there is no evidence that disclosure would be harmful to anyone's privacy. He also submits that disclosure would be in the interest of the public in that it would protect the public from further violations of law (paras. 42 and 43).

### *Submission of ICBC*

[41] ICBC submits the personal information withheld under s. 22 consists of the names of proprietors or representatives of auto glass shops; members of industry associations; a potential purchaser of a shop under investigation; and complainants and witnesses. With respect to the representatives of shops, ICBC argues that disclosure might permit the applicant or others to link the names of individuals to particular investigations and this might damage their reputations in accordance with s. 22(2)(e) (para 38, initial submission). With respect to the name of the potential purchaser of one of the shops, ICBC asserted that he had a reasonable expectation of privacy that should be protected under s. 22(2)(f), because the information was supplied in confidence, and s. 22(3)(f), because the information relates to the third party's personal finances (para. 40, initial submission). With respect to the identities of complainants and witnesses, ICBC submits that they are protected under s. 22(2)(e), where they might be unfairly exposed to financial or other harm, and s. 22(3)(h), where they have evaluated the job performance of another party and provided it to ICBC in confidence (para. 41, initial submission).

### *Application of section 22*

[42] The information at issue is just the names of third parties that would identify them as employees, customers or a potential purchaser of third-party businesses. Previous orders (Order No. 324-1999<sup>12</sup>, Order 00-17<sup>13</sup>, Order 01-07 and Order 01-53) have established that it would be an unreasonable invasion of privacy to release the names of individuals who are mentioned in statements of witnesses or other records relating to investigations, particularly where information was supplied in confidence. I find that the same principles apply in this case.

[43] The applicant has the burden of rebutting the presumption that the disclosure of this information would be an unreasonable invasion of the personal privacy of the third

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<sup>12</sup> [1999] B.C.I.P.C.D. No. 128.

<sup>13</sup> [2000] B.C.I.P.C.D. No. 20.

parties. He has failed to meet his burden of proof. He has not provided any evidence to support his contention that disclosure would not be an unreasonable invasion of the third parties' personal privacy. While he argues that disclosure would provide a public benefit by preventing the violations of law, he provides no evidence in support of that position and cites no other relevant circumstances to support his argument.

[44] Given the application of principles set out in previous orders and the failure of the applicant to meet his burden of proof, it is not necessary for me to evaluate all of the arguments that ICBC submitted with respect to s. 22.

[45] Therefore, I find that disclosure would be an unreasonable invasion of the privacy of the third parties, and that ICBC has correctly applied s. 22(1) to the following: pp. 4, 6, 9-11, 13, 17, 19, 20, 22-23, 25, 30, 32-36, 38-39, 41, 43-47, 49, 51-53, 57-58, and 77-90.

#### **4.0 CONCLUSION**

[45] For the reasons given above, under s. 58 of the Act, I make the following orders:

1. I confirm that ICBC is authorized to withhold under s. 13(1) of the Act the information it withheld on pp. 50 and 52.
2. I find that ICBC was not authorized to withhold the information withheld under s. 13 on pp. 2C, 6B&F, 9B, 10A&C, 16, 19G, 20A&C, 22C, 23C, 25C, 30B, 35A, 40, 42A, 44, 46B&E, 47B&D, 48B, 49A, 74 and the part of 45D that I have identified in a copy of the record that I have provided to ICBC.
3. I confirm that ICBC is authorized to refuse to disclose the information that it withheld under s. 14.
4. I find that ICBC was not authorized to withhold the information withheld under s. 17(1) on pp. 6, 9, 10, 16-17, 19, 20, 24, 26-27, 32, 35, 37-38, 43-45, 47-49 and 75.
5. I require the ICBC to refuse to disclose the information that it has withheld under s. 22 of the Act.

My reasons for amendment of this order are attached as Appendix A.

June 23, 2005

#### **ORIGINAL SIGNED BY**

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Jay Fedorak  
Adjudicator



## **Appendix A to ORDER F05-06 (Amended)**

### **Reasons for Amendment of Order F05-06**

#### **INSURANCE CORPORATION OF BRITISH COLUMBIA**

Jay Fedorak, Adjudicator  
June 23, 2005

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[1] ICBC's application for judicial review of Order F05-06 as regards the applicability of s. 17(1) of the Act to the information ICBC withheld from p. 74 of the records in issue (BCSC Action No. L050910, Vancouver Registry, filed April 13, 2005), has made me aware of an inadvertent error in that order.

[2] In my deliberations respecting Order F05-06, I identified ICBC's application of disclosure exceptions to the records in issue on the basis of its *in camera* submission dated December 2, 2003 and the guide to release that it provided to the applicant and the inquiry. In para. 22 of the *in camera* submission, ICBC applied the s. 13(1) disclosure exception to the information it withheld from p. 74, and I referred to the applicability of s. 13(1) to p. 74 in para. 16 of Order F05-06, as follows:

Similarly, ICBC has applied s. 13(1) to the section of [a] record that documents the reasons why ICBC issued suspensions to particular auto glass companies.

[3] I was not aware during my deliberations that there was a discrepancy in ICBC's materials in that its *in camera* submission applied s. 13(1), but its guide to release applied s. 17, to p. 74. The result, unfortunately, is that my deliberations concerning p. 74 were governed by ICBC's *in camera* submission, which applied s. 13(1) alone to p. 74, while paras. 17, 37 and 45 of Order F05-06 referred to ICBC's guide to release, which applied s. 17(1) alone to p. 74. Because I was not alive to the discrepancy in the treatment of p. 74 between the *in camera* submission and the guide to release, Order F05-06 reflects

a disposition on the applicability of the s. 17(1) disclosure exception to p. 74, when I did not in fact deliberate on that question at all and intended to make a disposition for p. 74 respecting only the applicability of the s. 13(1) disclosure exception (which I rejected).

[4] In the circumstances, I believe my disposition in Order F05-06 on the applicability of s. 17(1) to p. 74 is a nullity and I am issuing an amended order, as follows:

- Page 74 is added to the list of pages in para. 17 to which I found ICBC had incorrectly applied s. 13
- Page 74 is deleted from the list of pages in para. 37 to which I found s. 17 did not apply
- Page 74 is added to the list of pages in para. 45 to which I found s. 13 did not authorize ICBC to withhold information
- Page 74 is deleted from the list of pages in para. 45 to which I found s. 17 did not authorize ICBC to withhold information

[5] These amendments clarify my disposition in Order F05-06 that s. 13(1) does not apply to the information that ICBC withheld from p. 74, and will defer my disposition on the applicability of s. 17(1) to that information until the parties have been given a further opportunity to be heard on that issue should either of them wish to do so. I consider this only fair in these unusual circumstances. ICBC may wish to rely on its original submissions respecting s. 17(1) or it may wish to add something that is more specific to the information withheld from p. 74. The applicant may also have something to add that is more specific to s. 17(1) and p. 74.

[6] The Registrar of Inquiries will contact the parties about the scheduling of further submissions. The inconvenience involved here is regrettable for all concerned. I intend to make a prompt disposition respecting the applicability of s. 17(1) to the information withheld from p. 74 of the records in issue as soon as any further submissions from the parties are received.

[7] Finally, with respect to records in issue other than p. 74, ICBC has now made, pursuant to Order F05-06, a further release of records to the applicant. I have reviewed a copy of that release package. I am satisfied that it complies with Order F05-06 and that the overall dispositions in the order, other than for p. 74, were not affected by discrepancies between ICBC's *in camera* submission and its guide to release.

June 23, 2005

**ORIGINAL SIGNED BY**

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Jay Fedorak  
Adjudicator