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

Order F08-19

INSURANCE CORPORATION OF BRITISH COLUMBIA

Gale L. Prestash, Adjudicator

December 12, 2008

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Summary: The applicant requested personal information from two ICBC claims files. ICBC disclosed many records but withheld some in whole or part. The adjudicator confirmed ICBC's application of legal advice privilege and, as lawsuits were ongoing, litigation privilege (s. 14). ICBC's application of s. 22 (personal information of third parties) was confirmed for some but not all information and some information is ordered disclosed. ICBC showed reasonable expectation of financial harm for reserve information but not other information related to its defence in the lawsuits (s. 17) and this other information is ordered disclosed. ICBC properly withheld some information that was advice and recommendations it received from its claims examiner and a physician (s. 13). ICBC is ordered to reconsider its decision to refuse access to CPIC information under s. 16(1)(b).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13, 14, 16(1)(b), 17, 22.

Authorities Considered: B.C.: Decision F07-03, [2007] B.C.I.P.C.D. No. 14; Decision F08-02, [2008] B.C.I.P.C.D. No. 4; Order F06-19, [2006] B.C.I.P.C.D. No. 32; Order 01-41, [2001] B.C.I.P.C.D. No. 42; Order F06-18, [2006] B.C.I.P.C.D. No. 30; Order 01-25, [2001] B.C.I.P.C.D. No. 26; Order 02-08, [2002] B.C.I.P.C.D. No. 8; Order 00-42, [2000] B.C.I.P.C.D. No. 46; Order 02-06, [2002] B.C.I.P.C.D. No. 6; Order 03-35, [2003] B.C.I.P.C.D. No. 35; Order F07-12, [2007] B.C.I.P.C.D. No. 17; Order 01-46, [2001] B.C.I.P.C.D. No. 48; Order 00-08, [2000] B.C.I.P.C.D. No. 8; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F05-06, [2005] B.C.I.P.C.D. No. 36; Order No. 331-1999, [1999] B.C.I.P.C.D. No. 44; Order 01-13, [2001] B.C.I.P.C.D. No. 14; Order 02-19, [2002] B.C.I.P.C.D. No. 19; Order No. 325-1999, [1999] B.C.I.P.C.D. No. 38; Order 02-50, [2002] B.C.I.P.C.D. No. 51;Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-56, [2002] B.C.I.P.C.D. No. 58; Order F08-03, [2008] B.C.I.P.C.D. No. 6.

Cases Considered: *College of Physicians of B.C. v. B. C. (Information and Privacy Commissioner)* 2002 BCCA 665; *B.C. (Minister of Environment, Lands & Parks) v. B.C.(I.P.C.)*, [1995] B.C.J. No. 2594; *R. v. McLure,* [2001] 1 S.C.R. 445; *Hodgkinson v. Simms* (1988), 55 D.L.R. (4th) 577 (B.C.C.A.); Manes, Ronald and Silver, Michael, Solicitor Client Privilege in Canadian Law, (Butterworths, 1993); *Blank v. Canada (Minister of Justice),* [2006] S.C.J. No. 39, *Hamalainen (Committee of) v. Sippola* (1991), 62 B.C.L.R. (2d) 254; *Saric v. Toronto-Dominion Bank,* [1999] B.C.J. No. 1712 (C.A.); *B. v. Canada* [1995] 5 W.W.R. 374 (BCSC).

1.0 INTRODUCTION

[1] The applicant requested a review of the Insurance Corporation of British Columbia's ("ICBC") decision to deny her access to some information in its files for two claims she made for personal injury damages. Mediation through this Office did not fully resolve the dispute and so a written inquiry was held under Part 5 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

2.0 ISSUES

[2] The issues in the Notice of Inquiry are:

1. Whether ICBC is authorized by ss. 13, 14, 15, 16 and 17 of FIPPA to refuse access to information; and

2. Whether ICBC is required by s. 22 to refuse access to information.

[3] Under s. 57(1) of FIPPA, ICBC has the burden of proof regarding ss. 13, 14, 15, 16 and 17. Under s. 57(2) the applicant has the burden of proving that disclosure of the personal information of third parties would not be an unreasonable invasion of their personal privacy under s. 22.

3.0 DISCUSSION

[4] **3.1 Background**—The applicant was involved in a car accident. She made an insurance claim to ICBC for personal injuries. Her lawyer started a lawsuit for that claim and settled it. The applicant said she did not authorize that settlement. She was involved in a second car accident several days before the date of the purported settlement. She made a second insurance claim to ICBC.

[5] The applicant then started a lawsuit for her claims from both the first and the second accidents, against ICBC, the other drivers and her previous lawyers.[1]

[1] In fact there are 3 lawsuits involved. I refer to the lawsuit for the first claim that was purportedly settled as the "first lawsuit." The applicant started a second lawsuit in March 2004 about that first claim and the second accident claim. She then started a third lawsuit on April 21, 2005. For ease of reference and because applying the facts to the law on this point does not require

She believes that ICBC did not assess her claims properly once it obtained information from a former acquaintance of hers and that person's husband. The former acquaintance accused her of being dishonest with ICBC.

[6] She asked ICBC for access to her personal information that it held relating to her two claims and to a statement given to ICBC by the former acquaintance. To decide the scope of the applicant's request, I have considered her letters to ICBC requesting access, her letter to this Office requesting a review, her submissions in this inquiry, ICBC's responses to her request and its inquiry submissions in particular the evidence of its Information Officer.[2]

[7] **3.2 Preliminary Issues**—ICBC abandoned its reliance on s. 15, so I need not deal with that section.[3]

[8] The applicant raised new issues in her submissions. She argued that ICBC wrongly collected and disclosed personal information about her, did not ensure the accuracy of that information and did not properly correct or protect it, all in contravention of FIPPA Part 3. She believes that full disclosure of the records to her is at least part of the remedy for those problems. ICBC argued that this inquiry should be confined to the issues listed in the Notice of Inquiry.

[9] Previous orders and decisions have set out that, in general, bringing new issues at the inquiry stage is to be discouraged.[4] Here, ICBC has not been provided a sufficient opportunity to fully argue the new issues the applicant raised. This Office has a process for bringing complaints about public bodies' compliance with Part 3 that gives both parties a proper opportunity to address such issues and the applicant can pursue her other issues through it. This order will only address the issues set out in the Notice of Inquiry.

[10] **3.3 Records at Issue**—ICBC marked the applicant's first Claim file as "H" and her second Claim file as "K." I will refer to them by those letters. There are 1,035 pages from those two files that were responsive to the applicant's request. ICBC disclosed many of those records to her over a period of two years.[5]

[11] I have determined what information remains in dispute in the 1,035 pages by using the updated "Requester Reports" which are ICBC's forms that show which sections of FIPPA it applied to the pages, the updated copy of the records

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a distinction, I refer to the second and third lawsuits together as the "second lawsuit." The Statements of Claim for the second and third lawsuits are attached as Exhibits A and C to the Fister affidavit and include claims for damages from both accidents.

[2] Luther affidavit, para. 3 and Exhibits A and B.

[3] Initial submission, para. 9.

[4] Decision F07-03, [2007] B.C.I.P.C.D. No. 14 and Decision F08-02, [2008] B.C.I.P.C.D. No. 4.

[5] Records were disclosed March 29, 2005, May 11, 2005, December 2006, and April 19, 2007. A further one page with revised severing and one complete page were disclosed April 27, 2007 (Claim file H, pp. 494, 495).

produced by ICBC at the request of this Office and the lists of pages in ICBC's written submissions.[6] My reference to pages is to the whole page or the portion(s) of that page that ICBC withheld.

[12] **3.4 Parties' Positions**—The applicant disagreed that ICBC could withhold any of her personal information for any reason. She did not provide substantive argument about ICBC's interpretation and application of the sections of FIPPA that it used to refuse access. She made assertions of fact and submitted approximately ninety pages of documents, primarily directed to the new issues she attempted to raise.

[13] The applicant clearly made her point that she is gravely concerned that ICBC got information about her from third parties without her permission, that she believes those people had reasons to say untrue things about her and that what they said was untrue. She strongly believes that ICBC has since treated her as if she were dishonest and that it has not assessed her claims fairly. Those are serious issues for the applicant, but this inquiry cannot resolve them. I will however keep in mind her assertion that the dishonest behaviour was alleged, not proven. ICBC said no charges were ever laid and there is no evidence before me of any civil judgment.[7] Therefore, where ICBC refers to the dishonesty as a fact, for example in its initial submission para. 41, I have kept in mind that that is alleged, not proven.

[14] ICBC referred to case law and previous orders for its interpretation of each section of FIPPA it used to refuse access. It explained why it applied the section it did to each of the pages in whole or part. I have summarized its arguments as appropriate in the discussion below of the individual exceptions.

[15] ICBC submitted, *in camera,* an unsevered copy of the records. It provided affidavits sworn by the following persons whose evidence included the topics noted:

- ICBC Information Officer Luther described how the applicant's access request was processed and why ICBC applied the FIPPA sections it did;
- ICBC lawyer Burnett and private practice lawyer Fister acted for ICBC in the lawsuits with the applicant and described actions taken and records produced for those lawsuits;
- ICBC Section Manager of Fraud Prevention and Investigation Unit Elkin described why ICBC applied s. 16 to police records information;
- ICBC Claims Adjuster Van Horne described how the applicant's claim for the second accident was processed, her contact with the applicant and why

[6] Initial submission, paras. 13, 21, 31, 36, 41, 46, and 54.
[7] Initial submission, para. 41.

she concluded that by August 26, 2002 the applicant would litigate the claim.

[16] **3.5 Solicitor-Client Privilege**—ICBC used this exception for many of the records it withheld.[8] Section 14 reads as follows:

> 14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[17] The term "solicitor client privilege" as used in s. 14 includes both legal advice privilege and litigation privilege.[9] Each has its own test. The Commissioner in past orders has adopted the following test for legal advice privilege:

> 1. there must be a communication, whether oral or written,
> 2. the communication must be of a confidential character,
> 3. the communication must be between a client (or his agent) and a legal advisor, and
> 4. the communication must be directly related to the seeking, formulating, or giving of legal advice.[10]

[18] The Commissioner in Order 02-08[11] and other orders applied the following test for litigation privilege from *Hamalainen (Committee of) v. Sippola:*[12]

> Having considered the decisions, the writings and the various aspects of the public interest which claim attention, I have come to the conclusion that the court should state the relevant principles as follows: a document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the

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[8] The previous orders, court cases and a text that ICBC referred to in support of certain points in its argument about the meaning and application of solicitor client privilege are *College of Physicians of B.C. v. B. C. (Information and Privacy Commissioner)* 2002 BCCA 665; *B.C. (Minister of Environment, Lands & Parks) v. B.C.(I.P.C.)*, [1995] B.C.J. No. 2594, Order 02-01, [2002] B.C.I.P.C.D. No 1; Order F06-16, [2006] B.C.I.P.C.D. No. 23, Order F06-19, [2006] B.C.I.P.C.D. No. 32, *R. v. McLure,* [2001] 1 S.C.R. 445, *Hodgkinson v. Simms* (1988), 55 D.L.R. (4th) 577 (B.C.C.A.), Manes, Ronald and Silver, Michael, Solicitor Client Privilege in Canadian Law, (Butterworths, 1993), *Blank v. Canada (Minister of Justice),* [2006] S.C.J. No. 39, *Hamalainen (Committee of) v. Sippola* (1991), 62 B.C.L.R. (2d) 254, *Saric v. Toronto-Dominion Bank,* [1999] B.C.J. No. 1712 (C.A.), Order 01-41, [2001] B.C.I.P.C.D. No. 42, Order F06-18, [2006] B.C.I.P.C.D. No. 30,

[9] Order F06-19, [2006] B.C.I.P.C.D. No. 32, at para. 30.

[10] Order 01-25, [2001] B.C.I.P.C.D. No. 26, at para. 60, from *B. v. Canada* [1995] 5 W.W.R. 374 (BCSC), and Order F06-19, at para. 36.

[11] [2002] B.C.I.P.C.D. No. 8 and Order F06-19.

[12] (1991), 62 B.C.L.R. (2d) 254 at page 6 where the Court quotes from *Grant v. Downs* (1976), 135 C.L.R.674 at p. 677.

> conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.
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> Any attempt to apply the rule when determining a claim of privilege with respect to a document necessarily requires that two factual determinations be made:
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> (a) Was litigation in reasonable prospect at the time it was produced, and
> (b) If so, what was the dominant purpose for its production?
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> …..In my view litigation can properly be said to be in reasonable prospect when a reasonable person, possessed of all pertinent information, including that peculiar to one party or another, would conclude that it is unlikely that the claim for loss would be resolved without it.

Information ICBC withheld for legal advice privilege

[19] ICBC referred to the four-part test for legal advice privilege set out above. It said it withheld records that were direct communications, or notes of direct communications, between ICBC and its lawyers, made for the purposes of seeking or receiving legal advice. The two lawyers who gave affidavit evidence said the records were intended to be confidential.[13]

[20] The records for which I accept ICBC's claim are written communications, in the form of facsimile cover sheets, letters, and emails. The communications are between lawyers and their clients, ICBC staff. I also accept records that are notes made in ICBC's file by its representatives to record the contents of telephone discussions with their lawyers, or that record that they are following legal advice received from their lawyers or are preparing for further communication about legal advice with their lawyers.

[21] I have considered the indicators and the evidence of confidentiality in the submissions and the records. I accept the evidence of the two lawyers that their communications were intended to be confidential.[14] The fax covers have a standard confidentiality warning on them. Some but not all of the emails are marked "confidential". Few of the records have any other specific confidentiality marking on their face. However, the contents themselves suggest confidentiality. They are squarely about the lawsuits with the applicant. The lawyers are giving legal advice to and receiving instructions from ICBC representatives.[15] They discuss strategy and assess evidence.

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[13] Burnett affidavit, para. 10; Fister affidavit, para. 10.
[14] Burnett affidavit, para. 10; Fister affidavit, para. 10.
[15] In the records where the lawyer was an employee of ICBC, it is apparent from the contents of the records and the affidavit evidence that the lawyer was acting as lawyer giving legal advice and not acting in some other capacity.

[22] ICBC exercised its discretion to withhold the records and decided it would not waive privilege because of the outstanding lawsuits brought by the applicant for her claims from the two accidents.[16]

[23] For those reasons I accept ICBC's claim for legal advice privilege for the following records:

- Claim file K — 27-31, 39–49, 51-52, 98-108, 111, 146–150, 154-156, 158–159, 348, 349.

- Claim file H — 17, 19-21, 32-33, 35-36, 40, 58, 65, 66, 70, 88, 95, 99, 104-107, 109, 124, 128,[17] 131-135, 139, 141, 143-144, 146, 149-150, 265, 289-290, 375.

[24] The list for Claim file K includes all the records for which ICBC claimed legal advice privilege except p. 152. ICBC claimed both legal advice privilege and litigation privilege for that page. Legal advice privilege does not apply to p. 152 because the communication was not confidential. ICBC also claimed litigation privilege for that page and I find below that litigation privilege applies. For pp. 27-31, ICBC claimed both legal advice privilege and litigation privilege. Legal advice privilege applies to them so I will not consider them under litigation privilege.

[25] The list for Claim file H includes all the records for which ICBC claimed legal advice privilege except for pp. 34, 125 and 380. I do not accept ICBC's claim of legal advice privilege for pp. 34 and 125 because they are not communications between client and lawyer. I further discuss them under litigation privilege, below. Page 380 is not a communication between lawyer and client, and it is not responsive to the applicant's request.

Litigation privilege

[26] In Order 00-42,[18] the Commissioner commented on assessing records in ICBC insurance files for privilege in general and for litigation privilege, as follows:

> The courts have, since Order No. 6-1994 was issued, confirmed that s. 14 incorporates the common law of solicitor client privilege, including litigation privilege. The privilege issue must be assessed, in each case, in light of the evidence as it relates to each communication and not in light of a generalized assertion that "any work that ICBC does in the process of settling claims" is done "in contemplation of litigation". In the absence of

[16] Luther affidavit, para. 12.
[17] Claim file H, p. 128 was not included in ICBC's list of s. 14 records withheld for legal advice privilege in its initial submission para. 21. Its Requester Report and the page show it as being withheld under s. 14. The contents clearly fall within legal advice privilege. I have included it in this inquiry.
[18] [2000] B.C.I.P.C.D. No. 46.

> evidence supporting such a conclusion in relation to each record, any such statement is, necessarily, conjecture. There must be evidence, in respect of a particular record, to support the conclusion that it is privileged under s. 14. In the case of litigation privilege, ICBC bears the burden of proving that the dominant purpose for creation of the record was to conduct, assist with, or advise upon litigation under way or in reasonable prospect at the time of its creation. That is the common law test and it must be met in each case.[19]

[27] ICBC referred to the test for litigation privilege in *Hamalainen*, applied in Order 02-08. It said the records in both claims files for which it claimed this privilege were prepared after the first lawsuit started and that the dominant purpose for their creation was litigation of the two lawsuits and not ordinary claims processing.

[28] ICBC claimed that litigation privilege started for records in the first lawsuit when the lawsuit started and I agree. It claimed litigation privilege started for records in the second claim on August 26, 2002, the date its Claims Adjuster said she reasonably anticipated further litigation with the applicant.[20]

[29] Since the existence of the applicant's insurance claim does not amount to a presumption of litigation,[21] I have considered the facts to establish when, if ever, litigation became a reasonable prospect. The Claims Adjuster set out in her affidavit certain facts she relied on to decide that by August 26, 2002, it was reasonable to anticipate litigation on the second claim. Those facts included the following points, which I summarize from the Van Horne affidavit, including the quotes:

- Two days after the second accident, the applicant advised ICBC that she wished to speak to her lawyer.
- The applicant initially did not want to provide a statement. She later provided a written statement.
- She "was well versed in the claims terminology and appeared to be knowledgeable about the claims process".
- She told the Adjuster she had "issues" with ICBC. She indicated distrust of ICBC and was "adversarial."
- She expressed dissatisfaction with the settlement of the first lawsuit and advised that she had taken action against her former lawyer.

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[19] At p. 12.

[20] And this date would "re-start" litigation privilege for the records in the first lawsuit, based on ICBC's argument that those records too are protected by litigation privilege while the second lawsuit is ongoing.

[21] *Hamalainen* at p. 7, and the Commissioner in Order 00-42, quoted above, and Order 02-08 at paras. 21–25.

- Some months after the second accident she reported injuries different than those she reported soon after it occurred.
- She had previously litigated a claim against ICBC.
- In that previous claim ICBC had questioned her credibility.
- ICBC had referred the previous claim to its Special Investigations Unit.
- On August 26, 2002, the Claims Adjuster reviewed the likelihood of litigation with her Claims Centre Manager and they jointly assessed that the applicant would litigate again.

[30] Taken on their own, each of the individual facts set out by the Claims Adjuster is not enough to establish the necessary reasonable prospect of litigation. Obtaining legal advice and hiring a lawyer for an insurance claim may assist settlement as much as predict litigation. ICBC referring a claim to its Special Investigations Unit does not of itself establish the prospect of litigation. In Order F06-18,[22] Adjudicator Francis rejected certain adversarial behaviour by an ICBC claimant as grounds for reasonably anticipating litigation. Each of the other facts on their own does not in this case provide reasonable grounds to anticipate litigation.

[31] However, I give considerable weight to the combined result of those facts, all of which existed by August 26, 2002. Also, there are several notations in ICBC's file from March to August 2002 that the applicant stated she was pressured into settling the first lawsuit and was going to take further action on her claim that had been the subject of that lawsuit. I accept that by August 26, 2002, there was a reasonable prospect of litigation.

[32] In general litigation privilege ends when the lawsuit it relates to ends. In this case, ICBC said that litigation privilege for the records related to the first lawsuit continued past the date that lawsuit purportedly settled, because the applicant started the second lawsuit about the same facts with the same issues. The second lawsuit was ongoing at the time the parties made their submissions in this inquiry and so, ICBC argued, litigation privilege for its records had not ended.[23]

[33] On the question of when litigation privilege comes to an end, ICBC referred to a legal text,[24] Order F06-19 and the following statements from *Blank v. Canada (Minister of Justice):*[25]

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[22] [2006] B.C.I.P.C.D. No. 30.
[23] Initial submission, para. 30.
[24] Manes, Ronald and Silver, Michael, Solicitor Client Privilege in Canadian Law, (Butterworths, 1993).
[25] [2006] S.C.J. No. 39.

> ¶38 As mentioned earlier, however, the privilege may retain its purpose - and, therefore, its effect - where the litigation that gave rise to the privilege has ended, but related litigation remains pending or may reasonably be apprehended. In this regard, I agree with Pelletier J.A. regarding "the possibility of defining ... litigation more broadly than the particular proceeding which gave rise to the claim" (at para. 89): see *Ed Miller Sales & Rentals Ltd. v. Caterpillar Tracter Co.* (1988), 90 A.R. 323 (C.A.).
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> ¶39 At a minimum, it seems to me, this enlarged definition of "litigation" includes separate proceedings that involve the same or related parties and arise from the same or a related cause of action (or "juridical source"). Proceedings that raise issues common to the initial action and share its essential purpose would in my view qualify as well.
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> ¶40 As a matter of principle, the boundaries of this extended meaning of "litigation" are limited by the purpose for which litigation privilege is granted, namely, as mentioned, "the need for a protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate" (Sharpe, p. 165)….

[34] On March 2, 2002, the applicant was involved in the second car accident. She reported it to ICBC the next day. She signed a Release in the first lawsuit on March 15, 2002. She told ICBC not later than April 2, 2002, that she was not satisfied with the settlement of the first lawsuit.[26] She filed the second lawsuit on March 1, 2004.

[35] The second lawsuit was ongoing when ICBC responded to the applicant's information access request and made its submissions in this inquiry. Therefore, litigation privilege applies to records where that lawsuit was the dominant purpose for their creation.[27]

[36] In the second lawsuit, the applicant claimed damages from the second accident and criticized ICBC's conduct of its case in the first action. She also claimed personal injury damages from the first accident. The claim in the second lawsuit raised the original issue between the original parties arising from the same legal source—the first claim for personal injury damages.

[37] Until the merits of the second lawsuit are assessed by the court, in my view, the litigation privilege in the first lawsuit remains intact. It provides a protected area for the investigation and preparation of the case, about personal injury damages from that accident, without adversarial interference and fear of premature disclosure.

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[26] From the records.

[27] The information in this and the following paragraph comes from the Statements of Claim, Exhibits A and C to Fister affidavit, and the affidavits of Luther and Fister.

[38] I find that litigation privilege continues to apply to the records that were protected by litigation privilege in the first lawsuit, on the specific facts of this case.

[39] I have reviewed each record that ICBC withheld from disclosure related to both lawsuits on the basis of litigation privilege, in both claims files. I have considered the purpose for the creation of each record—ordinary claims processing or litigation—and, where both purposes existed, which one was dominant. I have considered each date in the chronology of the claims and lawsuits. That includes the start and end dates of the first lawsuit, the period between the end of the first lawsuit and August 26, 2002, when the Claims Adjuster thought the applicant would sue again, and from that date to the start of the second lawsuit.

[40] I find that the dominant purpose for the creation of the records listed below was to conduct, assist with, or advise upon litigation under way or in reasonable prospect at the time of their creation. ICBC decided that it would not exercise its discretion and waive privilege because of the outstanding lawsuits.[28] I see no error in its exercise of discretion. Therefore, I accept ICBC's claim for litigation privilege for the following records:

- Claim file K — 17-19, 24, 35-36, 37-38, 145, 152, 161, 176-178
- Claim file H — 22, 27-28, 42, 67, 69, 71, 96-98, 100-101, 242-243, 244-264, 391, 392, 441-451, 496

Three remaining records

[41] For Claim file H, pp. 34 and 125, ICBC claimed legal advice privilege, not litigation privilege. These two records are not communications between lawyer and client or their agents. They are not part of the necessary exchange of information leading to the provision of legal advice. Legal advice privilege does not apply to them.

[42] However, I have accepted ICBC's claim for litigation privilege for several other records that are of an identical nature to pp. 34 and 125. Like those other pages, pp. 34 and 125 are communications between ICBC and a third party created to assist ICBC in the preparation of its defence in the first lawsuit. I consider it an oversight that ICBC claimed legal advice privilege and not litigation privilege over pp. 34 and 125. I find that those two pages are covered by litigation privilege.

[43] For Claim file H, p. 68, ICBC listed it in the Requester Report as withheld under legal advice privilege, and on the page in the records as withheld under

[28] Luther affidavit, para. 12.

s. 14 without distinction as to legal advice or litigation privilege. It did not include it in the lists of records withheld for either privilege in its initial submission. The severed portions relate to the first lawsuit, are clearly covered by litigation privilege and I include them in this inquiry.

[44] In the result, I have accepted ICBC's application of legal advice privilege and litigation privilege, except for one page (Claim file H, p. 380), and the application of only litigation privilege to four pages (Claim file H, pp. 34, 68 and 125, and Claim file K, p. 152).

[45] **3.6 ICBC's Financial or Economic Interests**—The only records I need to consider under s. 17 are as follows:

- Claim file K, pp. 14, 21, 240, 358, 360, 362, 363
- Claim file H, pp. 29, 51, 73, 291, 292, 307, 389

[46] I will not consider the pages to which ICBC applied both s. 14 and s.17 where I have found that s. 14 applies because s. 17 would give ICBC no better protection against the financial consequences of the applicant's lawsuits which is the harm it claims it faces. That harm will end when the lawsuits end.[29] I need not decide if ICBC has proved that harm sufficiently for those pages for the purposes of s. 17.

[47] I will also not consider Claim file K, p. 25 under s. 17 because for reasons set out later in this order I find that s. 13 applies to it.

[48] The relevant parts of s. 17 read as follows:

> 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; …
>
> (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;

[29] Regarding the length of time that reasonably expected harm under s. 17 exists, see for example Order 02-06, [2002] B.C.I.P.C.D. No. 6, and Order 03-35, [2003] B.C.I.P.C.D. No. 35. Regarding Claim file H, pp. 27-28, ICBC correctly described their contents under litigation privilege which I have found applies, and incorrectly described their contents in its argument about s. 17.

> (e) information about negotiations carried on by or for a public body or the government of British Columbia;
>
> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[49] Order F07-12[30] and other orders have stated the test for harm for the application of s. 17. The evidence must not be speculative. It must establish on a confident, objective basis that disclosure could reasonably be expected to result in the harm, there must be a clear and direct connection between the disclosure and the harm alleged, and the evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm.

[50] ICBC relied on the main clause in s. 17(1) and made no specific reference to any of subsections (a) – (f), which are not an exclusive list. The information that it withheld under s. 17 is about reserve amounts and calculations, evaluations by its adjusters of the applicant's injuries and claims, and information about its defences, liability and strategy.

[51] ICBC described "reserve information" as follows:

> … the amount that ICBC notionally sets aside for a claim based on its view of the upper range of potential damages which may be necessary to settle a claim. Claims adjusters and examiners are required to post reserve information for each claim and to adjust reserve amounts as information becomes available concerning the potential upper range of damages for a claim.[31]

[52] Previous orders have considered similar claims for withholding ICBC reserve information.[32] In Order 01-46, the Commissioner stated that where a claim is alive, reserve-related information may have independent monetary value to counsel or an unrepresented claimant, but on the facts of that case it did not because the litigation was settled. In Order F06-18, Adjudicator Francis found that litigation was not a reasonable prospect in the circumstances and the test for showing reasonable expectation of harm had not been met. In Order F06-19, some litigation had taken place and was ended. Related litigation was ongoing. Adjudicator Trott said this about reserve information:

> [130] As I have indicated in the discussion above about the litigation privilege, the Part 7 action remains extant. The question is whether the release of reserve information could reasonably be expected to reveal

[30] [2007] B.C.I.P.C.D. No. 17, para. 35.
[31] Initial submission, para. 47.
[32] Order 01-46 [2001] B.C.I.P.C.D. No. 48, Order F06-18 and Order F06-19.

> ICBC's defence strategy concerning the Part 7 litigation. In the circumstances of this case, the disclosure of the reserve information, generated over time, taken together, and connected to specific events or assessments, could reasonably be expected to reveal ICBC's litigation strategy. In addition, some of the amounts indicate a potential upper range of the claim, and as such, could have monetary value under s. 17(1)(b) of FIPPA. In this case, the ongoing litigation makes the harm to ICBC's financial position neither speculative nor remote.

[53] Here, ICBC said lawsuits about both claims are ongoing, it is difficult to predict their outcomes and it would give the applicant significant bargaining leverage if she knew ICBC's view of the potential upper range of damages.[33]

[54] ICBC did not show how disclosing the form headings it severed on three pages of forms that contain reserve information would cause it harm. The headings set out basic factors to consider in a personal injury claim. On their own they do not meet the test for s. 17. That applies to Claim file K p. 363, and Claim file H, pp. 291 and 292.

[55] Other than those headings, however, I accept ICBC's decision to withhold the reserve information. In the face of the ongoing lawsuits, that information could reasonably be expected to harm ICBC's financial interests by revealing its assessment of the potential upper range of the two claims.[34] This applies to the following information:

Claim file H

- Page 29 – The reserve information related to the applicant's claim.
- Page 51 – The severed information in the part of the form titled "Reserves".
- Page 73 – The "Reserve amounts".
- Page 291 – All the handwritten entries on the form.
- Page 292 – The handwritten entries in the block on the left side of the bottom half of the page.
- Page 307 – The reserve information related to the applicant's claim in the typewritten part of the form.
- Page 389 – Severed block marked "A".

Claim file K

- Page 21 – All severed information.

[33] Luther affidavit, para. 14.
[34] Luther affidavit, para. 14.

- Page 240 – The severed information related to the applicant's claim.
- Page 363 – All the handwritten entries.

[56] ICBC also severed information under s. 17 that the Luther affidavit described as follows:

> ICBC has also claimed s. 17 with respect to …[*in camera*] to the subject matter of the outstanding litigation, information regarding its evaluation of the Applicant's claims including evaluations of defences, liability and the Applicant's clinical records. ICBC considered whether or not to withdraw its reliance on s. 17 in relation to these records but is not prepared to do so because there is still outstanding litigation (Action Nos. M040897 and S050603) in relation to her two claims. Disclosing ICBC's evaluation of the claims, defences, liability and its view of the Applicant's clinical records would give the Applicant significant insight into its defence strategy. Given the difficulty which ICBC faces in trying to predict the outcome of the Applicant's litigation, it is not prepared to waive s. 17 in relation to any of the information severed or withheld under that section.[35]

[57] The sum of ICBC's argument about why s. 17 applies to that information is as follows:

> ICBC was not prepared to withdraw s. 17 in relation to these records because of the outstanding litigation. Until such time as the Applicant's litigation in relation to both of her motor vehicle accidents is resolved, information regarding the strategy for handling the Applicant's claim in relation to the second accident, ICBC's assessment defences, liability apportionment, clinical records and the severity of her alleged injuries in relation to both accidents could reasonably be expected to harm the financial interests of ICBC.[36]

[58] Previous orders have considered ICBC's claims about the harm to its financial interests that it foresees if it must disclose information in the nature of defence strategy to applicants who have made insurance claims.[37] It must provide sufficient proof of a reasonable expectation of harm.

[59] I have reviewed the withheld information with ICBC's brief argument in mind. There is simply insufficient evidence to show what insight if any the applicant or her counsel might gain from the withheld information, compared for example to the information on those topics that the applicant already has, or how that could cause harm to ICBC's financial or economic interests.

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[35] Luther affidavit, para. 15.
[36] Initial submission, para. 50.
[37] Order 00-42, at pp. 23-26.

[60] I do not accept ICBC's decision to apply s. 17 to the following information.

Claim file H

- Page 292 – The handwritten entries in the block on the right side of the bottom half of the page, and all the form headings.
- Page 307 – Sixth severed block (two handwritten words that follow the phrase "Hit head on steering wheel" which ICBC disclosed).

Claim file K

- Pages 14, 358, 360 and 362 – All severed information.

[61] **3.7 Advice or Recommendations**—ICBC relied on section 13(1) to withhold some information in Claim file K. Section 13(1) reads as follows.

> 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[62] Section 13(1) is limited by circumstances listed in s. 13(2). For example, s. 13(2)(a) states that a public body must not refuse to disclose under s. 13(1) "any factual material." A number of orders have considered the principles for the application of s. 13 and I have taken the same approach here without repeating it.[38]

[63] I will not consider ICBC's application of s. 13(1) to records to which I have already found ICBC properly applied litigation privilege. The records I need to consider under s. 13 are therefore Claim file K. pp. 9, 25, 26 and 236.[39]

[64] ICBC argued that the information it severed showed that a claims examiner and a physician gave advice and recommendations to its adjuster on what the adjuster should do next to handle the applicant's claims and the lawsuits.[40]

[65] The claims examiner and the physician do refer to certain facts, and give analysis and opinion, but only those on which they base their advice and recommendations. The facts, analysis and opinion are so integrated in the content of the advice and recommendations that they cannot be extricated.

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[38] See for example, Order 00-08, [2000] B.C.I.P.C.D. No. 8, Order 02-38, [2002] B.C.I.P.C.D. No. 38 and Order F05-06, [2005] B.C.I.P.C.D. No. 36. See also *College of Physicians of B.C. v. B.C. (Information and Privacy Commissioner).*

[39] The communication recorded on p. 236 is duplicated from p. 9. ICBC did not include p. 9 in the list of records it withheld under s. 13 set out in its initial submission paragraph 13 but it did note this page as partially withheld in its Requester Report and marked the exception section on the page. I include it in this inquiry.

[40] Initial submission, para. 14.

I therefore find that s. 13(1) applies to Claim file K, pp. 9, 25, 26 and 236. I have reviewed the records for information that would engage s. 13(2) or 13(3) and find there is nothing.

[66] I have considered ICBC's exercise of discretion in withholding that information and find no error. It said that when it exercised its discretion it considered that lawsuits remained outstanding for damages for personal injuries and for its conduct of the first lawsuit.[41] The advice from the claims examiner and the physician is specifically directed to decisions ICBC had to make on how to process the first claim and respond to the litigation.

[67] **3.8 Intergovernmental Relations**—ICBC applied s. 16(1)(b) to information on Claim file H, pp. 494 and 498 about its search of the CPIC database.[42] On p. 494 it applied s. 16 to information about the applicant and another individual. The information about the other individual is not responsive to the applicant's request. Therefore I will only consider p. 498 and the information about the applicant on p. 494.

[68] The relevant parts of s.16 read as follows:

> 16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
>
> (i) the government of Canada or a province of Canada; ….
>
> (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, …

[69] I will apply the Commissioner's interpretation of s. 16(1)(b) as set out in Order No. 331-1999, Order 01-13 and Order 02-19.[43]

[70] ICBC referred to s. 12 of the Memorandum of Understanding ("MOU") it signed with the RCMP and s. 7 of the CPIC Reference Manual ("Manual") to show that the RCMP and ICBC have a mutual expectation of confidentiality when ICBC asks for CPIC searches. It said that the RCMP and ICBC expect the confidentiality will continue.[44] ICBC argued that it withheld the information because it was provided and received confidentially and disclosing it would be contrary to the MOU and Manual.[45]

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[41] Luther affidavit, para. 11.
[42] Canadian Police Information Centre division of the Royal Canadian Mounted Police.
[43] [1999] B.C.I.P.C.D. No. 44; [2001] B.C.I.P.C.D. No. 14; [2002] B.C.I.P.C.D No. 19.
[44] The Commissioner found that the RCMP is a federal government agency for the purposes of FIPPA s. 16(1)(b) in Order 02-19, starting at para. 53.
[45] Initial submission, para. 41.

[71] I accept that the MOU and Manual are an explicit agreement between the RCMP and ICBC that set the conditions of confidentiality for ICBC's receipt of information from the RCMP about CPIC searches.

[72] I have considered those conditions of confidentiality, set out as ICBC's rights and obligations as a "CPIC Category II (B) Agency" in the excerpts from the Manual and the MOU that it submitted, including s. 7 of the Manual entitled "Confidentiality and Dissemination of Information", and s. 12 of the MOU, which deals with dissemination of information. The MOU allows ICBC as a CPIC agency to disseminate the information where that is consistent with carrying out its law enforcement duties. The Manual gives ICBC discretion to disseminate the information, provided that it complies with national and provincial privacy legislation and the use is consistent with carrying out its duties.[46]

[73] Therefore, the question before me is whether ICBC did in fact in this case receive the CPIC information in confidence. The terms of the MOU and Manual suggest to me that the RCMP expected that when it supplied the information to ICBC it did so in confidence. The facts before me suggest that when ICBC received the information it intended that receipt to be confidential. At the time of receipt, ICBC was actively investigating the applicant's alleged dishonest behaviour. It submitted a report to Crown counsel.

[74] I find that s. 16(1)(b) applies because disclosing the information in question would reveal information received in confidence from a government agency. However, ICBC must also show that it actually exercised its discretion, in the specific circumstances of this case, under this discretionary exception to the right of access.[47]

[75] ICBC said only that it "was not prepared to exercise its discretion to withdraw reliance on [s. 16] because of confidentiality requirements."[48] It made no reference to the specific facts of this case in its evidence or argument regarding s. 16.[49] It gave no reason why disclosing the information at the time of the applicant's request would be inconsistent with carrying out its law enforcement duties or inconsistent with FIPPA. It said its investigation of the applicant's alleged dishonest behaviour was finished. Neither ICBC nor the Crown took further action.[50]

[76] In my view ICBC failed to establish that it considered an obviously relevant factor, *i.e.*, could it, and should it, disseminate the information under the terms of

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[46] MOU s. 12 and Manual s. 7.1(a)(1)(1) and (2).
[47] Order No. 325-1999, [1999] B.C.I.P.C.D. No. 38; Orders 02-38 and 02-50.
[48] Luther affidavit, para. 13.
[49] Elkin affidavit, Luther affidavit.
[50] Initial submission, paras. 41 and 42.

its agreement with the RCMP at the time the applicant made her request? Instead, it interpreted its obligations to the RCMP in a way that did not consider its full ability to allow access and followed a standard policy that it had set without any evidence it considered that position in light of the circumstances before it. That is not sufficient, in my view, for the proper exercise of its discretion. The most I can do, however, is to require ICBC to reconsider its decision to refuse access to this information and I do so.

[77] **3.9 Third-Party Personal Privacy**—Many previous orders have addressed the application of s. 22.[51] Previous orders have considered ICBC's decisions to withhold third-party personal information under s. 22.[52] I have taken the same approach here without repeating it.

[78] The relevant parts 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, …
>
> (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 …
>
> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation, …

[51] For examples, Orders 01-53, [2001] B.C.I.P.C.D. No. 56 and 02-56, [2002] B.C.I.P.C.D. No. 58.
[52] Orders 00-42, 01-46, 01-53, F06-18 and F06-19.

> (d) 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, …

[79] The applicant requested access to her personal information and the statement of the former acquaintance. That statement is Claim file H, pp. 102 and 103, and 371 through 374. The last four pages are handwritten; the first two pages are the typed version. ICBC released the bulk of the contents of the two versions but withheld the same information in both versions under s. 22. Its explanation of why it refused access to several sentences is that the information on pp. 102 and 103 was "[R]eferences to third parties" and (for the identical information) on pp. 371-374 that it was "[D]ate of birth, employment information of third party".[53] Many of the sentences it did release contain the former acquaintance's personal information found in her description of circumstances around the alleged dishonest behaviour.

[80] The applicant produced part of a transcript of the former acquaintance's evidence at an examination for discovery that she said proved the former acquaintance agreed that the applicant could have a copy of the statement.[54] I do not accept the transcript as proper evidence in this proceeding because by law its use must be confined to the lawsuit for which it was made. In any event, I do not accept that the contents of the transcript show that the former acquaintance consented to ICBC disclosing the statement.

[81] I accept ICBC's severing decisions in the statements except for two sentences. For the severing I accept, I have considered each step in the application of s. 22, and find no error in ICBC's decision. In particular, most of the severed information is about the former acquaintance, not the applicant, and has little to do with the circumstances she described about the alleged dishonest behaviour. Two sentences (one preceding each of the two I will order disclosed) could arguably be said to also be about the applicant. I find after careful examination that they are not about the applicant, and, even if they are, considering the presumption raised by s. 22(3)(b) and all relevant circumstances as discussed below, I agree with ICBC that it would be an unreasonable invasion of the former acquaintance's personal privacy to disclose them.

[82] However, I do not agree with ICBC's decision to refuse access to the following two sentences:

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[53] Initial submission, para. 54.
[54] Applicant's initial submission, Item 13.

- Page 102 - the second of the two sentences in the last block of information severed, and the corresponding information on page 373.

- Page 103 – the second of the two sentences in the last block of information severed, and the corresponding information on page 374.

[83] I am restricted in describing the contents of the two sentences because they were submitted *in camera*. However, I find that the two sentences contain personal information of both the applicant and of the former acquaintance. It is shared personal information.[55] I have considered whom the information is "about" as that term is interpreted for the purposes of defining "personal information".[56] I find the personal information is more "about" the applicant than it is "about" the former acquaintance.

[84] No circumstances exist that would raise s. 22(4), but one circumstance raises a presumption under s. 22(3)(b) that the disclosure would be an unreasonable invasion of personal privacy. That section applies to personal information that was compiled and is identifiable as part of an investigation into a possible violation of law. ICBC did not mention this presumption except by including it in its recitation of the parts of s. 22 that it said are applicable in this case.[57] However, in its argument about s. 16 it said its Special Investigation Unit conducted a fraud investigation about the applicant and sent a report to Crown counsel. The evidence is clear that it got the statement as part of that investigation and I find that s. 22(3)(b) applies.[58]

[85] I have considered the relevant circumstances listed in s. 22(2) and others not listed. ICBC said "there is nothing in any of the severed records that would advance the Applicant's case in terms of seeking a fair determination of her rights under section 22(2)(c)" and referred to a finding by Adjudicator Trott in Order F06-19.[59] Here, ICBC has directly challenged the applicant's honesty and that is relevant to her ongoing lawsuits. Disclosing what the former acquaintance said will not affect its investigation into the issue because it said its investigation is finished. In my view, it is relevant to a fair determination of the applicant's rights in the lawsuit that she should have access to as much as possible of the statement of someone who accused her of dishonest behaviour. This factor favours disclosure.

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[55] Order F08-16, discussed shared personal information and intertwined personal information and the application of s. 22 and s. 4 (duty to sever) to such information.
[56] Order F08-16, and Order F08-03, [2008] B.C.I.P.C.D. No. 6, at paras. 84-87. I have taken into account that those two decisions were released after the parties in this inquiry made their submissions so they did not have the opportunity to review them.
[57] Initial submission, para. 52.
[58] Initial submission, para. 41.
[59] Initial submission, para. 57 and Order F06-19, at para. 162.

[86] ICBC stated that "there are no other factors which militate in favour of disclosure".[60] I have considered that there is no evidence that the former acquaintance would be exposed unfairly to financial or other harm [s. 22(2)(e)], that she supplied the statement in confidence [s. 22(2)(f)], or that disclosure may unfairly damage her reputation [s. 22(2)(h)]. These factors are neutral in deciding on disclosure.

[87] I have compared the information that ICBC has already disclosed in the statement with the shared personal information it withheld in the two sentences and find there is very little difference in nature between the two. ICBC disclosed the acquaintance's identity as author, her history with the applicant, including employment history, something about each of their roles in the alleged dishonest behaviour and her assertions about certain critical facts. I find the similarity weighs in favour of disclosure.

[88] Taking into account the presumption raised and the factors that favour disclosure, which in my view rebut the presumption, I find ICBC is not required to refuse access to this information under s. 22 because its disclosure would not be an unreasonable invasion of the former acquaintance's personal privacy.

[89] There is another instance in the records where ICBC withheld information under s. 22 that is the shared information of the applicant and two third parties: Claim file H, p. 486, the first block of severed text. While I cannot disclose the content because it was submitted *in camera*, ICBC disclosed the substance of the information in other records. The analysis set out above for the two sentences in the statement that I will order released is applicable to the information of one of the third parties, with the same results. Its disclosure would not be an unreasonable invasion of that third party's personal privacy. Disclosure would also not be an unreasonable invasion of the other third party's personal privacy for similar reasons. In addition, ICBC has already disclosed in other records what the text shows about that party's identity and involvement.

[90] ICBC applied s. 22 to other information in the records, such as third parties' names, addresses and other contact information, vehicle insurance coverage, drivers' licence numbers, valuation of third parties' vehicles, and medical information.[61] I will not further consider information to which ICBC applied s. 22 where I have accepted ICBC's claim under another exception.

[91] I have examined the remaining information to which ICBC applied s. 22 listed in its initial submission at para. 54. It is information about third parties that is not responsive to the applicant's access request. Therefore I will not examine ICBC's decision to refuse access to the information it withheld under s. 22 on the following pages:

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[60] Initial submission, para. 57.
[61] Initial submission, para. 54 and see Orders 01-46 and 00-42.

- Claim file H - 2, 29, 41, 50, 51, 54, 63, 65, 67-68, 82-87, 110-113, 116, 118, 121, 136, 138, 140, 148, 163, 165, 168, 170, 174, 176, 183, 185, 194-195, 197, 214, 218, 228, 238-239, 307, 308, 310-311, 317, 319-321, 380, 381-387, 390, 393-398, 403, 406-428, 430, 433-439, 440, 471, 473-475, 479-485, 486 (second block of severed text), 494, 497

- Claim file K - 2-3, 7, 13, 17, 162, 176, 206-207, 209-211, 240

[92] I have included in the above list Claim file H, pp. 54 and 440. ICBC did not include them in its para. 54 list but did include them in the Requester Report that listed the exceptions for that Claim file and marked the pages in the records as withheld under s. 22.

[93] I have also included in the above list Claim file H, p. 380. ICBC did not include it in its para. 54 list for s. 22 but did include it in the Requester Report and marked the page in the records as withheld under s. 22. ICBC claimed legal advice privilege for this page in its submission but as I found above it is not a communication between lawyer and client. It is information about a third party that is not responsive to the applicant's request.

[94] However, I find that s. 22 must be considered for three items of information that ICBC withheld under s. 17 where I have not accepted its decision to apply that exception. The items contain personal information about a third party. ICBC did not apply s. 22 to them and that section is mandatory.

[95] On each of Claim file K, pp. 358 and 360 ICBC severed its entries under form headings that show it assessed the percentage of responsibility for the accident. The following analysis also applies to the first severed block of text on Claim file K, p. 14.

[96] These items of information are about the applicant. However, they reveal by inference ICBC's assessment of the responsibility of the only other driver involved,[62] which is that individual's personal information. As such, it is shared personal information of the applicant and the other driver. I find it is as much about the other driver as it is about the applicant.

[97] I will consider the application of s. 22 based on what evidence and argument is before me. I find that none of the circumstances in s. 22(4) applies. The evidence also does not establish that any of the presumptions in s. 22(3) apply.

[98] I consider that the information is minimally relevant to a fair determination of the applicant's rights [s. 22(2)(c)]. That factor slightly favours disclosure.

[62] This is evident from the severing of the record. The applicant knows the identity of this person.

There is no evidence that the third party would be exposed to financial or other harm unfairly [s. 22(2)(e)]. This factor is neutral. There is no evidence of other relevant circumstances listed in s. 22(2). In all the circumstances I find that disclosure would not be an unreasonable invasion of the third party's personal privacy.

4.0 CONCLUSION

[99] For the reasons given above, under s. 58 of FIPPA I make the following orders.

1. I confirm ICBC's decision to refuse access to the information that it withheld under s. 13 on Claim file K, pp. 9, 25, 26 and 236.

2. I confirm ICBC's decision to refuse access to the information that it withheld under s. 14 for legal advice privilege on the following pages:

   - Claim file H — 17, 19-21, 32-33, 35 -36, 40, 58, 65, 66, 70, 88, 95, 99, 104-107, 109, 124, 128, 131–135, 139, 141, 143-144, 146, 149-150, 265, 289-290, 375
   - Claim file K — 27-31, 39–49, 51-52, 98-108, 111, 146-150, 154-156, 158–159, 348, 349.

3. I confirm ICBC's decision to refuse access to the information that it withheld under s. 14 for litigation privilege on the following pages:

   - Claim file H — 22, 27-28, 34, 42, 67, 68, 69, 71, 96-98, 125, 100-101, 242-243, 244-264, 391, 392, 441-451, 496
   - Claim file K — 17-19, 24, 35-36, 37-38, 145, 152, 161, 176-178

4. I require ICBC to reconsider its decision to refuse access to the information about the applicant on Claim file H, p. 494 and all of p. 498 that it withheld under s. 16.

5. I require ICBC to give access to the form headings in Claim file K, p. 363 and Claim file H, pp. 291 and 292 that it withheld under s. 17.

6. I confirm ICBC's decision to refuse access to the rest of the reserve information that it withheld under s. 17 described as follows:

   Claim file H

   - Page 29 - The reserve information related to the applicant's claim
   - Page 51 – The severed information in the part of the form titled "Reserves"

- Page 73 – The "Reserve amounts"
- Page 291 – All the handwritten entries on the form
- Page 292 – The handwritten entries in the block on the left side of the bottom half of the page
- Page 307 – The reserve information related to the applicant's claim in the typewritten part of the form
- Page 389 – Severed block marked "A"

Claim file K

- Page 21 – All severed information
- Page 240 – The severed information related to the applicant's claim
- Page 363 – All the handwritten entries

7. I require ICBC to give access to the information that it withheld under s. 17 on the following pages:

Claim file H

- Page 292 – The handwritten entries in the block on the right side of the bottom half of the page, and all the form headings.
- Page 307 - Sixth severed block (two handwritten words that follow "Hit head on steering wheel.").

Claim file K

- Pages 14, 358, 360 and 362 – All severed information.

8. I confirm ICBC's decision to refuse access to the information that it withheld under s. 22 on the following pages, except for the information on those pages that I order disclosed below:

- Claim file H – 102, 103, and 371 through 374.

9. I require ICBC to give access to information that it withheld under s. 22 in Claim file H as follows:

- Page 102 – the second of the two sentences in the last block of information severed, and the corresponding information on p. 373
- Page 103 – the second of the two sentences in the last block of information severed, and the corresponding information on p. 374
- Page 486 – the first block of severed text

I will provide a copy of those pages to ICBC with this order showing the information it must disclose.

10. Where I have required ICBC to give access it is to provide that access within 30 days of the date of this order, as FIPPA defines "day", that is, on or before January 28, 2009 and, concurrently, to provide me a copy of its cover letter to the applicant together with a copy of the records showing the information it has released to her that it previously withheld.

December 12, 2008

ORIGINAL SIGNED BY

Gale L. Prestash
Adjudicator

OIPC File No. F06-25973