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Order F16-38

INSURANCE CORPORATION OF BRITISH COLUMBIA

Ross Alexander
Adjudicator

July 22, 2016

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Summary: An applicant requested records from the Insurance Corporation of British Columbia about a multi-car accident involving 18 vehicles. The applicant was the driver of one of the vehicles. ICBC withheld information in responsive records under ss. 13, 14, 17 and 22 of FIPPA. The adjudicator determined that ss. 13 or 22 applied to most of the withheld information, and that s. 14 applied to a few records. The adjudicator determined that s. 17 did not apply. ICBC was ordered to disclose the remaining information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13, 14, 17 and 22.

Authorities Considered: B.C.: Order F15-43, 2015 BCIPC 46 (CanLII); Order F14-57, 2014 BCIPC No. 61 (CanLII); Order F11-19, 2011 BCIPC 25 (CanLII); Order F08-22, 2008 CanLII 70316 (BC IPC); Order 00-42, 2000 CanLII 14407 (BC IPC); Order P12-01, 2012 BCIPC 25 (CanLII); Order 01-46, 2001 CanLII 21600 (BC IPC); Order F06-19, 2006 CanLII 37939 (BC IPC); Order 01-07, 2001 CanLII 21561; Order F16-36, 2016 BCIPC 40 (CanLII); Order F15-63, 2015 BCIPC 69 (CanLII); Order F10-09, 2010 BCIPC 14 (CanLII); Order 01-19, 2001 CanLII 21573 (BC IPC).

Cases Considered: *R. v. Mohan*, [1994] 2 SCR 9, 1994 CanLII 80 (SCC); *R. v. Abbey*, 2009 ONCA 624; *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12 (CanLII); *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch),* 2006 BCCA 119; *John Doe v. Ontario (Finance)*, 2014 SCC 36; *College of Physicians of British Columbia v. British Columbia (Information and Privacy*

Commissioner), 2002 BCCA 665 (CanLII); *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII); *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 BCSC 1180; *Gichuru v. British Columbia (Information and Privacy Commissioner),* 2013 BCSC 835; *Hamalainen (Committee of) v. Sippola*, 1991 CanLII 440 (BCCA); *Raj v. Khosravi*, 2015 BCCA 49; *Meyer v. Lahm*, 2015 BCSC 749; *Buettner v. Gatto*, 2015 BCSC 1374; *Blank v. Canada (Minister of Justice)*, 2006 SCC 39; *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3.

INTRODUCTION

[1] This inquiry relates to an applicant's request to the Insurance Corporation of British Columbia ("ICBC") for records about a multi-car accident involving 18 vehicles, including a Greyhound bus. The applicant was the driver of one of the vehicles.

[2] ICBC responded to the applicant's request by providing him with some of the requested records. However, it withheld information in many of these records under various provisions of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). It also did not provide some responsive records on the basis that it believed they are outside of the scope of FIPPA.

[3] The applicant requested that the Office of the Information and Privacy Commissioner ("OIPC") review ICBC's response. Mediation did not resolve the issues between the parties, so it proceeded to inquiry.

[4] The Notice of Inquiry lists nine sections of FIPPA that are at issue in relation to more than 5,000 pages of responsive records.[1] However, ICBC advised in its initial submissions that it is no longer relying on two sections to withhold information.[2] Further, ICBC disclosed additional information to the applicant, and the parties reached an agreement regarding what records are in dispute, which narrowed the issues and information that is at issue.[3] Moreover, the parties did not provide argument regarding two other sections of FIPPA, and I confirmed with them during the inquiry process that those sections are no longer at issue.[4]

[5] The four remaining sections of FIPPA that are at issue in this inquiry are s. 13 (policy advice or recommendations), s. 14 (solicitor client privilege), s. 17 (disclosure harmful to the financial or economic interests of the public body), and s. 22 (disclosure harmful the personal privacy).

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[1] Sections 3(1)(a)-(i), 6, 13, 14, 16, 17, 20, 21 and 22 of FIPPA.
[2] Sections 16 and 21 of FIPPA: ICBC's initial submissions at para. 27.
[3] ICBC's initial submissions at para. 27.
[4] November 24, 2015 letter to the parties.

ISSUES

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

a) Is ICBC authorized to refuse access to information because disclosure would reveal advice or recommendations under s. 13 of FIPPA?

b) Is ICBC authorized to refuse access to information because it is subject to solicitor client privilege under s. 14 of FIPPA?

c) Is ICBC authorized to refuse access to information because disclosure could reasonably be expected to harm the financial or economic interests of ICBC under s. 17 of FIPPA?

d) Is ICBC required to refuse access to information because disclosure would be an unreasonable invasion of a third party's personal privacy under s. 22 of FIPPA?

[7] ICBC has the burden of proof for the information with respect to ss. 13, 14 and 17, pursuant to s. 57(1) of FIPPA. However, the applicant has the burden of proof with respect to s. 22, pursuant to s. 57(2) of FIPPA.

DISCUSSION

[8] **Background –** The chronology of events in this case is significant to the analysis of the issues, particularly s. 14.

[9] On November 15, 2013, there was a multi-vehicle accident[5] on a bridge near Chilliwack, BC involving 18 vehicles, including a Greyhound bus carrying 36 passengers. According to ICBC, the accident appears to have been triggered by decreased visibility due to smoke from a fire under the bridge.[6]

[10] Many of those involved in the accident were injured to varying degrees, but no injuries were life-threatening. Approximately 14 people were taken to hospital at the time of the accident.

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[5] The parties led evidence about whether the accident was one accident, or a series of four or five stand-alone accidents. However, for simplicity, I will refer to the accident or accidents as the "accident".

[6] ICBC's reply submissions at para 14. I note that neither this statement nor anything else in this Order is intended to opine on the cause(s) of the accident or the merits of the applicant's potential tort claim against ICBC.

[11] There were 17 ICBC insured vehicles in the accident, and more than 20 ICBC claimants. The applicant was the driver of one of these vehicles. The Greyhound bus was plated, licensed and insured Alberta.

[12] Immediately after the accident, ICBC established two teams of ICBC adjusters to deal with an anticipated large volume of telephone accident claims due to the accident.

[13] On November 18, ICBC's lead adjuster retained an independent adjuster to help investigate the accident.

[14] On November 18, the independent adjuster interviewed the applicant.

[15] On November 19, the independent adjuster retained two engineers to examine the vehicles involved in the crash and assist him with his investigation.

[16] By November 21, a number of the people involved in the accident had retained legal counsel.[7]

[17] By November 25, Greyhound retained legal counsel in relation to the matter.[8]

[18] The independent adjuster's preliminary report is dated November 25, 2013. On or around this time, ICBC provided Greyhound's engineers with access to the vehicles insured by ICBC. In exchange, Greyhound provided ICBC's engineers with access to the Greyhound bus.

[19] On December 2, ICBC advised the applicant that liability was still outstanding due to the complexity of the accident.[9]

[20] On December 4, the independent adjuster provided an interim report to ICBC, which encloses transcribed witness statements of eight of the drivers involved in the accident.

[21] On January 3, 2014, a driver involved in the accident commenced legal action against ICBC.[10]

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[7] If the accident is viewed as a series of stand-alone accidents rather than one large accident, at least one of the people involved in the applicant's stand-alone accident retained a lawyer by this date: ICBC's initial submissions at paras. 9 and 10.

[8] If the accident is viewed as a series of stand-alone accidents rather than one large accident, the Greyhound bus was in the applicant's stand-alone accident: ICBC's initial submissions at paras. 9 and 10.

[9] ICBC adjuster's notes: Affidavit of the Litigation Support Clerk at Exhibit "I".

[10] ICBC's reply submissions at Appendix A. If viewed as a series of stand-alone accidents, the driver who commenced this action was part of a different accident.

[22] On January 14, ICBC's lead adjuster emailed the applicant and advised him that the Greyhound bus was responsible for the collisions involving the applicant, the vehicle in front of him, and the vehicle behind him. Therefore, any tort claims involving the applicant's vehicle would need to be addressed directly with Greyhound. This was the first time that ICBC advised the applicant of its position regarding this matter.

[23] On January 16, the independent adjuster provided a brief report to ICBC. Further, he subsequently provided additional interim reports on February 6 and 28.

[24] On March 10, the applicant's lawyer wrote to ICBC to say that he had been retained to represent the applicant regarding his claim for damages, losses and expenses arising from the accident.[11]

[25] On March 13, the independent adjuster provided the final investigation report to ICBC. ICBC did not know the final result of the investigation until this date.[12]

[26] On March 20, the applicant made a request for records under FIPPA, which ultimately gave rise to this inquiry.[13]

[27] **Records in Dispute** – There are a wide variety of records at issue in this case. ICBC is withholding most of the information in these records under ss. 13, 14, 17 and 22 of FIPPA. The types of records include:

- reports from the independent adjuster, including a number of preliminary reports and a final report.

- witness statements of people involved in the accident (other than the applicant). Most of these records are transcripts of interviews conducted by the independent adjuster. These records were provided to ICBC as enclosures to the independent adjuster's various reports. There are also written statements by a few of the claimants. ICBC has already released the transcripts of the applicant's witness statement to him.

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[11] The date on the representation form in which the applicant provided authorization to the law firm is January 16, 2014.
[12] ICBC's reply submissions at para. 7.
[13] The request is from a law firm acting for a motorist involved in the accident. However, for ease of reference, I refer to the motorist as the applicant throughout this Order. The March 20, 2014 request was for records regarding all accident claimants (including the applicant) in relation to the accident. After ICBC responded to this request, the applicant made a second request for specific types of records that ICBC had not included in its response to the first request.

- letters between the independent adjuster and claimants' lawyers. These letters were provided to ICBC as enclosures to the independent adjuster's various reports.

- printouts from ICBC's electronic claims management system for people who made claims regarding the accident. These are lengthy chronological printouts containing adjusters' notes, email correspondence, cost estimates, payments, file transfers, etc. Much of this is email correspondence between adjusters regarding liability issues.

- a letter from the independent adjuster to a claimant's doctor.

- emails between the engineers investigating the accident and the independent adjuster, ICBC, Greyhound and/or a lawyer.

- a diagram of the accident with an engineer's summary of the accident.

- notes, emails, file cover sheets, etc., for which ICBC is only withholding information under s. 22 of FIPPA. Most of this withheld information is accident victims' names, email addresses, license plate numbers and ICBC file numbers.

- miscellaneous records, including a police report, a claim file report, an invoice from the independent adjuster, photographs of a claimant, ICBC File Analysis Injury Services records, etc.

Preliminary Matter – *Admissibility of Opinion Evidence*

[28] There is a general rule of evidence that witnesses may not give opinion evidence. They may only testify as to matters within their knowledge, observation or experience. Expert evidence is an exception to this general rule. Experts are allowed to provide opinions about matters that are likely to be beyond the fact-finder's knowledge or experience.[14]

[29] Part of the evidence adduced by the applicant was an affidavit by a Litigation Support Clerk who works at the law firm representing the applicant. ICBC points out that the Litigation Support Clerk was not tendered as an expert witness, and it objects to the admissibility of six paragraphs in this affidavit on the basis that these paragraphs contain opinion evidence.[15] Further, ICBC submits that the opinions expressed are to a large extent speculative and include legal

[14] Order F15-43, 2015 BCIPC 46 (CanLII) citing *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12 at para. 55.
[15] Paragraphs 11, 12, 13, 17, 23 (last sentence), and 25 of the Litigation Support Clerk's affidavit: ICBC's reply submissions at para. 16.

argument. Moreover, it submits that most of the opinions are irrelevant to the issues before me, and therefore ought to be either disregarded or given little weight.[16]

[30] The applicant responds that the Litigation Support Clerk is an expert who has been investigating these types of accidents for 27 years, including 13 years as an ICBC claims adjuster. After working for ICBC for 13 years, the Litigation Support Clerk was hired by the law firm that represents the applicant in 2001 based on his training and experience while working for ICBC, during which time he has expanded on his knowledge and experience. The applicant submits that the Litigation Support Clerk's evidence should be considered on that basis. In the alternative, the applicant requests that if the Litigation Support Clerk's opinion is found to be inadmissible, then four paragraphs of ICBC's lead adjuster's affidavit and two paragraphs of the independent adjuster's affidavit should be disregarded on the same basis.[17]

[31] ICBC replies that the paragraphs in the ICBC lead adjuster's and independent adjuster's affidavits are factual information (*i.e.* the steps taken by the adjusters and their beliefs at the time) rather than opinions, so they differ from those at issue in the Litigation Support Clerk's affidavit.

[32] The evidence of the Litigation Support Clerk's that is being challenged by ICBC can be categorized in one of two ways. Some of it is speculation about ICBC's actions (*i.e.* why ICBC retained an independent adjuster, who is likely responsible for making decisions regarding liability, etc.). The rest are opinions relating to the accident itself and the resulting legal issues. For instance, the Litigation Support Clerk states that only ordinary legal issues arise from the accident, and he gives his views about the impact between the applicant's vehicle and another vehicle. He states that his opinions are based on his experience as an ICBC adjuster and his review of ICBC materials, such as ICBC's Claims Procedure Manual.

[33] In my view, most of the evidence in the ICBC adjuster's and independent adjuster's affidavits that the applicant is challenging is factual information (*i.e.* what steps were taken, why they were taken and the affiants' beliefs at the time). However, some of it is opinion evidence (*i.e.,* details about what cars came into contact during the accident).

[34] Many of the impugned paragraphs in the affidavits the parties are challenging contain facts and background information. I am admitting this information as evidence. This includes the information that ICBC submits is

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[16] Paragraphs 11, 12, 17, 18, and 19 of the Litigation Support Clerk's affidavit: ICBC's reply submissions at para. 16.

[17] Paragraphs 5, 8, 9 and 15 of ICBC's lead adjuster; paragraphs 3 and 5 of the independent adjuster.

irrelevant,[18] notwithstanding my agreement that some of it has little relevance in this inquiry. I nonetheless have decided to admit all of the background information.

[35] There is also opinion evidence. The independent adjuster provides an opinion about the accident and ICBC's lead adjuster provides opinions about the accident and the impact on some insureds' policy limits. The Litigation Support Clerk provides an opinion about the accident in relation to the applicant, and speculates about why the independent adjuster was retained and how ICBC made decisions regarding liability. He also opines that it was a large vehicle accident, but that no special legal issues arise from it.

[36] The Supreme Court of Canada in *R. v. Mohan* [*Mohan*][19] set out a test for when expert evidence is admissible, and the Ontario Court of Appeal suggested a two-part test for applying these principles in *R. v. Abbey* [*Abbey*].[20] However, since this is an administrative law proceeding, I am not bound by these strict rules of evidence. An absence of formally qualifying an expert does not prevent me from exercising my discretion to admit the evidence, even if the *Mohan* test is not met.[21]

[37] First acknowledging that the parties did not tender the witnesses as experts in the form that is set out in the BC Supreme Court *Civil Rules*, I nonetheless find that all of the opinion evidence is admissible. I am satisfied that all three witnesses are qualified as experts to give the opinions that they have given, that these opinions are logically relevant to a material issue, and that the proposed opinions do not run afoul of any exclusionary rule other than the expert opinion rule.[22]

[38] I find that the benefits associated with admitting the evidence outweigh the costs. The opinions are not determinative of the ultimate issues before me. Further, with respect to theories regarding the accident, it is not necessary for me to decide which opinion(s) I prefer in deciding this inquiry. In the context of this inquiry, the opinions provide background information to enable me to make an informed decision about matters before me (*i.e.*, whether litigation privilege applies, etc.). I therefore find that the opinions are admissible because they meet the *Mohan* test. However, even if I am wrong, I exercise my discretion to admit this evidence.

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[18] Paragraphs 17, 18 and 19 of the Litigation Support Clerk's affidavit.
[19] *R. v. Mohan*, [1994] 2 SCR 9, 1994 CanLII 80 (SCC).
[20] *R. v. Abbey*, 2009 ONCA 624.
[21] See *British Columbia Lottery Corp. v. Skelton*, 2013 BCSC 12 (CanLII) at paras. 58, 59 and 64.
[22] I reach this finding for all of the information, notwithstanding that the contents of one statement that supports an opinion is hearsay: para 13 of the Litigation Support Clerk. In my view, this hearsay does not impact the validity of the opinion. Further, I note that administrative tribunals may admit hearsay evidence: *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch),* 2006 BCCA 119 at para. 30.

[39] Having admitted this evidence, I note that some of the Litigation Support Clerk's opinions about the ICBC process that occurred for the accident are speculative, since he is not privy to what actually happened in this case. In my view, this information is relevant to fill in evidentiary gaps about ICBC's processes. However, to the extent that this information about general ICBC practice and procedures conflicts with evidence about what happened in this case (including the records themselves), I prefer the specific evidence and give little weight to the Litigation Support Clerk's evidence.

[40] I will now consider s. 13, before turning to ss. 14, 17 and 22 in turn.

Section 13

[41] Section 13 of FIPPA authorizes public bodies to refuse to disclose policy advice or recommendations developed by or for a public body or a minister, subject to specified exceptions in s. 13(2). Nearly all of the information at issue is withheld under s. 13.

[42] As the Supreme Court of Canada stated in *John Doe v. Ontario (Finance)* [*John Doe*], the purpose of exempting advice or recommendations from disclosure "is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice."[23] The British Columbia Court of Appeal similarly stated in the *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)* [*College*] that s. 13 of FIPPA "recognizes that some degree of deliberative secrecy fosters the decision-making process."[24]

Positions of the Parties

[43] ICBC submits that the information withheld under s. 13 constitutes advice and recommendations relating to the handling of various accident and tort claims by ICBC adjusters, which is advice within the meaning of s. 13 of FIPPA. It further submits that this information does not fall under s. 13(2).

[44] The applicant submits that the withheld information falls under s. 13(2)(a) (factual material), s. 13(2)(d) (an appraisal) or s. 13(2)(j) (field research undertaken before a policy proposal is formulated), so ICBC cannot withhold it under s. 13(1).

Section 13(1)

[45] Section 13(1) relates to "information that would reveal advice or recommendations developed by or for a public body or a minister".

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[23] *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 43. This decision was with respect to Ontario's legislative equivalent to s. 13(1) of BC's FIPPA.

[24] *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII) at para. 105.

[46] Previous orders have stated that s. 13(1) applies to information that directly reveals advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.[25] The Supreme Court of Canada confirmed in *John Doe* that policy options constitute "advice".[26] Further, in *College*, the British Columbia Court of Appeal stated that the term "advice" under s. 13 includes "expert opinion on matters of fact on which a public body must make a decision for future action."[27] For s. 13(1) to apply, the information must also have been developed by or for a public body or minister.

[47] A significant portion of the information at issue is email correspondence (most of which is part of ICBC's electronic claims management system) related to either the independent investigation or determinations of liability regarding the accident. Most of this information is correspondence among ICBC employees, or between ICBC and the independent adjuster. Given this, it is important to identify who was responsible for making the decision(s) to be able to differentiate between a circumstance when someone is providing "advice" or "recommendations", as opposed to one where a person is communicating his or her decision. Based on all of the materials that are before me, my understanding is that the lead adjuster was primarily responsible for making decisions regarding the conduct of the independent investigation,[28] and the individual ICBC adjusters were ultimately responsible for deciding liability.[29]

[48] As stated above, there is a significant amount of correspondence in which the ICBC adjusters assigned to the various accident claims discussed liability. In my view, this information – which involves ICBC adjusters discussing their opinions with other ICBC adjusters who are making the liability decisions regarding claims – is the type of information that s. 13 is intended to exempt from scrutiny to facilitate the decision-making process. I find that this information reveals advice or recommendations within the meaning of s. 13.

[49] There are also two ICBC File Analysis Injury Services reports. It is apparent that these reports were written by ICBC adjusters for their respective managers to inform them of their planned course of action, and to seek their managers' comments and feedback. These reports also contain the managers' feedback. In my view, the information in these records reveals the advice and recommendations that were flowing back and forth between the ICBC adjusters and their managers. While some of the information in these reports is factual in nature, it is in a context that would enable accurate inferences about the ICBC

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[25] Order F14-57, 2014 BCIPC No. 61 (CanLII) at para. 14.
[26] *John Doe* at para. 46, *et. al.*; also see Order F15-41, 2015 BCIPC 44 (CanLII) at para. 30.
[27] *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 113.
[28] Based on my review of the records, I find that there are also few instances where the lead adjuster seeks approval from someone else for specific matters regarding the investigation.
[29] For example, see Binder 1 of 5 at p. 229.

adjuster's advice or recommendations. Therefore, I find that disclosure of the information in these reports reveals advice or recommendations.

[50] There is also an engineering summary of the accident, as well as an accident diagram created by the engineer.[30] In my view, the engineering summary is the type of expert opinion regarding matters of fact that *College* states is "advice" within the meaning of s. 13. While the diagram appears on its face to be purely factual information, there is information in an email chain elsewhere in the records that describes how this diagram was created.[31] In light of this contextual information, I find that the diagram is actually the engineer's opinion rather than factual information, and that disclosure of the diagram would reveal the engineer's advice on a topic related to the accident.

[51] The email chain related to the engineering summary contains emails between engineers, the independent adjuster, and/or the lead adjuster.[32] These emails generally relate to the creation of the diagram that is discussed in the previous paragraph. I am somewhat constrained in what I can say about this information, since ICBC is also withholding both this email chain and the diagram as privileged information under s. 14. However, while some of the information in this email chain reveals the subject matter of the diagram and information about how the diagram was created, I find that it does not reveal advice or recommendations (*i.e.* it does not reveal the specific substantive content of the diagram that I consider to be the engineer's opinion).

[52] There are also a number of reports from the independent adjuster to ICBC. To the extent that they contain the independent adjuster's opinions or statements regarding liability, I find that they reveal the independent adjuster's advice or recommendations on these topics. Further, I find that disclosure of some of the information in these records that is more factual in nature (*i.e.* it is not expressly written as advice or a recommendation) would enable accurate inferences about the independent adjuster's advice or recommendations within the meaning in s. 13(1). However, there is also information in these reports that I find does not directly or indirectly reveal advice or recommendations, including most of the summaries of witnesses' evidence and explanations about logistics regarding scheduling witness meetings. While disclosing the summaries created by an expert may reveal advice or recommendations in many cases, it is not the case here given the context and content of the information. In this case, most of the reports merely provide summaries of the witnesses' evidence as a means of relaying the information to ICBC. Many of the reports contain little or no advice or recommendations to ICBC. Further, in any event, this summary information does not reveal the independent adjuster's advice or recommendations by virtue of being included in the summaries, as it would in some cases. I therefore find that s. 13 does not apply to this information.

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[30] Binder 1 of 3 at p. 31 to 36, *et. al*. with respect to the diagram.
[31] Binder 1 of 5 at p. 924.
[32] Binder 1 of 5 at p. 924 to 925.

[53] The independent adjuster's reports also contain enclosed documents. Most of these documents are either witness statements, or correspondence between the independent adjuster and other people connected to the accident investigation process, such as claimants' lawyers or doctors. There is also a claims application, photographs of an injured claimant, cover letters from engineers to ICBC, and an invoice that the independent adjuster issued to ICBC. In my view, the documents enclosed with the independent adjuster's reports do not reveal the independent adjuster's advice or recommendations by virtue of being enclosed to the reports. In this case, the independent adjuster had a primarily investigative role, and it is apparent that he is providing ICBC with the entirety of many of the documents he collected as part of the investigation. This is not a case where documents he attaches to his reports enable accurate inferences of an expert's advice or recommendations because it is the specific information the expert chose to gather and include. As such, I will consider these enclosure documents as if they are independent records.

[54] As stated above, the witness statements are the full witness statements that the independent investigator gathered as part of his investigation into the accident. They are not selected excerpts the independent adjuster is highlighting as part of his analysis in a context that reveals his advice or recommendations to ICBC. In these circumstances, I find that this information neither directly reveals, nor enables accurate inferences about, the independent adjuster's advice or recommendations. I reach this same conclusion for much of the information the independent adjuster enclosed with his reports, which includes photographs of a claimant (which show that claimant's injuries), cover letters, the independent adjuster's invoice and the police report. In my view, these records were provided to ICBC as a function of the independent adjuster passing along source materials he received during the course of his investigation, as opposed to selected information that would reveal the independent adjuster's advice or recommendations due to its enclosure to the reports. Similarly, the doctor and lawyers' letters are communications with parties who are adverse in interest to ICBC regarding the accident, and I find that they do not reveal the independent adjuster's advice or recommendations.

[55] ICBC is also withholding a claim file report under s. 13. It is a standard form, of which less than half of the page is filled out.[33] When reviewed in context,[34] it is apparent that the claim file report was the record an ICBC employee created when this individual first telephoned to report his claim to ICBC. The information contained in this record is primarily administrative *(i.e.* contact information, etc.), but there is also a brief description of the accident and the form contains a planned stated course of action. While this stated course of action is procedural rather than substantive, I nonetheless find that it is advice or recommendations that the person who created the record was giving

[33] Binder 1 of 5 at p. 2959.
[34] Binder 1 of 5 at p. 2960.

the adjuster who would be assigned the claim. However, I find that the remainder of the information in the record does not reveal advice or recommendations.

[56] Further, there is an email an engineer (who had been retained by ICBC) sent to Greyhound representatives, which was also cc'd to ICBC and the independent adjuster.[35] This email is an adversarial exchange in relation to data about the accident. It was developed "by or for" ICBC in the sense that it is apparent that the engineer was acting as an agent for ICBC, but not in the sense that the advice and recommendations are about actions the engineer believed Greyhound should take. Section 13 of FIPPA relates to a public body's decision-making process. This does not describe the information in this email, which I characterize as instructions and warnings to an adverse party about a technical matter. I therefore find that it is not advice or recommendations developed by or for ICBC within the meaning of s. 13(1).

[57] In addition to the information addressed above, there is also withheld information about matters other than accident liability. ICBC's electronic claims management system contains a significant amount of other information. There are other emails, notes, cost or cost estimate entries, file transfers, etc. There is information that records events which had already happened – such as notes about what claimants told adjusters during telephone calls and recordings of payments that ICBC made regarding claimants' claims. There is also information about the conduct the independent investigation and internal communications that relate to the procedural or logistical handling of claims files. I find that very little of this information reveals advice or recommendations.

Section 13(2)

[58] As stated above, ICBC must not refuse to disclose information under s. 13(1) if s. 13(2) applies to it. For most of the withheld information, I will only address s. 13 for the information I have determined reveals advice or recommendations under s. 13(1).

"Factual Material" – s. 13(2)(a)

[59] Section 13(2)(a) provides that s. 13(1) does not apply to factual material. This provision has been addressed in a number of previous orders and court decisions. In *Insurance Corp. of British Columbia v. Automotive Retailers Association*,[36] the Court stated that background facts in isolation are not protected. However, where an expert assembles information from other sources

[35] Binder 1 of 5 at p. 491.
[36] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII) at para. 52.

and includes the information in a record that becomes integral to his or her analysis and views expressed in the document that is created, s. 13(2)(a) does not apply.

[60] As stated above, some of the information in the body of the independent adjuster's reports that I determined reveals advice or recommendations is factual in nature. However, in my view, this information is not factual material within the meaning of s. 13(2)(a) because it was included in the report by the independent adjuster (an expert) to advise ICBC in a manner that would reveal advice or recommendations. Further, I similarly find that the information in emails in which ICBC adjusters discussed liability is not factual material under s. 13(2)(a).

[61] There is also a diagram withheld under s. 13. This diagram was created by an engineer who evidently had to exercise his judgment and expertise in expressing his opinion that is conveyed by the diagram. I am satisfied by an email chain contained elsewhere in the records that this diagram reveals his opinion. I therefore find it is not factual material within the meaning of s. 13(2)(a) of FIPPA.

[62] I have already determined that the witness statements, and the independent adjuster's letters with lawyers and a doctor, do not reveal advice or recommendations within the meaning of s. 13(1). However, even if I am wrong, I find that this information is factual material under s. 13(2)(a). It is source material that has an independent existence from the independent adjuster's opinions. Further, in my view, it was created as part of an investigative or information gathering process (pursuant to the s. 73 of the *Insurance (Vehicle) Regulation*), as opposed to the independent adjuster's deliberative process.

[63] In summary, I find that none of the information that is advice or recommendations is factual material within the meaning of s. 13(2)(a).

"Appraisal" – s. 13(2)(d)

[64] Section 13(2)(d) provides that s. 13(1) does not apply to "an appraisal". The applicant submits that s. 13(2)(d) applies, although he does not explain this in further detail. ICBC submits that s. 13(2)(d) does not apply, specifically stating that the engineering advice at issue does not constitute a determination of what constitutes a fair price, valuation or estimation of worth.

[65] In Order F11-19, Adjudicator Fedorak applied the following definition for "an appraisal" from Black's Law Dictionary when considering s. 13(2)(d): "the determination of what constitutes a fair price; valuation; estimation of worth".[37] I agree that is the appropriate definition here.

[37] Order F11-19, 2011 BCIPC 25 (CanLII) at para. 17.

[66] Based on my review of the records at issue under s. 13, I find that none of them are "an appraisal" because they are not about the determination of what constitutes a fair price, valuation or estimation of worth. I therefore find that s. 13(2)(d) does not apply.

"Field research undertaken before a policy proposal is formulated" – s. 13(2)(j)

[67] Section 13(2)(j) provides that s. 13(1) does not apply to "a report on the results of field research undertaken before a policy proposal is formulated". Thus, for s. 13(2)(j) to apply, the report must relate to the formulation of a "policy proposal".

[68] The reports at issue in this case relate to determinations of liability regarding a motor vehicle accident. It is about how to handle a specific event, not the creation of a "policy". I therefore find that s. 13(2)(j) does not apply to the withheld information.

Conclusions for s. 13

[69] For the reasons above, I find that s. 13 of FIPPA applies to portions of the independent adjuster's reports, information which reveals the ICBC adjusters' discussions of liability, ICBC File Analysis Injury Services reports, an excerpt in a claim file report, an engineering summary, and an engineering diagram.

Section 14

[70] ICBC is withholding nearly all of the withheld information under s. 14 of FIPPA. I will not consider whether s. 14 applies to the information I have already determined that ICBC may withhold under s. 13.

[71] Section 14 states:

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

[72] Previous orders have stated that s. 14 encompasses both legal advice privilege (also referred to as solicitor-client privilege or legal professional privilege) and litigation privilege. ICBC is withholding information in this case on the basis that litigation privilege applies.

[73] There is a two part test for litigation privilege, which is described in *Keefer Laundry Ltd. v. Pellerin Milnor Corp.* as follows:

> Litigation Privilege must be established document by document. To invoke the privilege, counsel must establish two facts for each document over which the privilege is claimed:

> 1. that litigation was ongoing or was reasonably contemplated at the time the document was created; and
>
> 2. that the dominant purpose of creating the document was to prepare for that litigation.
>
> …
>
> The focus of the enquiry is on the time and purpose for which the document was created…[38]
>
> [Citations Removed]

[74] The onus is on the party claiming privilege to establish on a balance of probabilities that both elements of the test are met in connection for each document falling within the claim of litigation privilege.[39]

Reasonable Contemplation of Litigation – (part 1)

[75] Part one of the test for litigation privilege is whether litigation was "in reasonable prospect" when the document was created. In *Raj v. Khosravi*[40] [*Raj*], the British Columbia Court of Appeal explained that:

> **10** The threshold for determining whether litigation is "in reasonable prospect" is a low one. It is an objective test based on reasonableness. It does not require certainty but the claimant must establish something more than mere speculation. A bare assertion of "in reasonable prospect" will not be sufficient…
>
> **11** In *Sauvé v. ICBC*, 2010 BCSC 763, Mr. Justice Joyce succinctly summarized this part of the test as follows:
>
> > [30] Obviously, the court must consider the particular circumstances of each case when applying the legal test. As was stated in *Hamalainen*, the first part of the test will often not be hard to meet. "Reasonable prospect" does not mean certainty. It does not require the commencement of an action. The essential question is this: would a reasonable person being aware of the circumstances conclude that the claim will not likely be resolved without litigation? [Emphasis added.]

[76] The Court further explained this test in a motor vehicle accident context in *Meyer v. Lahm*, where Master Caldwell stated:

> …[the] test is not met by an adjuster simply declaring that there was an accident, the plaintiff is claiming damages and has a lawyer, therefore we are going to litigation. There must be an objectively defensible basis for the

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[38] *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 BCSC 1180 at paras. 96 to 99 citing *Dos Santos (Committee of) v. Sun Life Assurance Co. of Canada* (2005), 40 B.C.L.R. (4th) 245, 2005 BCCA 4 at paras. 43 to 44 *et. al.*; also see *Gichuru v. British Columbia (Information and Privacy Commissioner),* 2013 BCSC 835 at para. 55.

[39] *Hamalainen (Committee of) v. Sippola*, 1991 CanLII 440 (BCCA).

[40] *Raj v. Khosravi*, 2015 BCCA 49.

> assertion that there was a reasonable prospect of litigation. Would a reasonable person, possessing the available facts, come to the conclusion that litigation was likely?[41]

[77] While in many cases there may be no reasonable prospect of litigation for a period of time after an accident, such reasonable prospect of litigation can also occur from the outset of a motor vehicle accident. For example, in *Hamalainen v. Sippola*, which involved a person who fell out of a camper mounted on the back of a pickup truck, the British Columbia Court of Appeal determined that litigation was "clearly" a reasonable prospect from the outset given the circumstances of the accident and the nature of the injuries.[42]

[78] ICBC's lead adjuster described his view immediately after the accident as follows:

> Liability (causation) and the possible application of certain litigation defenses referenced by me in some of the withheld claims file notes were expected to be contentious issues given the number of vehicles involved in the accident, the number of individuals injured in the accident, the fact of the two insurers (ICBC and Greyhound's insurer) and related subrogation issues, potential risk exposures, and the complexity of the liability issues. For this reason, the claims were handled from the outset with a litigation approach by me and the other adjusters with the expectation that litigation was inevitable. Consistent with this, I contacted ICBC's head office claims to alert them of the complexity, risk exposures, limits, and direction on handling of the claims. There was no doubt in my mind from the onset that many of these files would be litigated and that such litigation would implicate one or more of the motorists involved in the accident.[43]

[79] The Litigation Support Clerk does not agree that there is anything extraordinary about this accident. He says that the only difference in this claim is the number of people involved. He states that multi-vehicle accidents happen on a regular basis, often due to a change in weather or driving conditions. The Litigation Support Clerk says that ICBC has a significant amount of experience dealing with these types of accidents, which is why it set up teams of in-house adjusters for this accident within hours, and retained an independent adjusting company to facilitate an expedited application and investigation process. He further states that this accident only involved two insurance companies, and that ICBC has a dedicated department to deal with out-of-province claims. He also says that ordinary ICBC adjusters also deal with out-of-province insurance companies on a regular basis. He states that "no out of the ordinary legal issues, subrogation or liability issues have been identified in this accident."

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[41] *Meyer v. Lahm*, 2015 BCSC 749 at para. 11.
[42] *Hamalainen (Committee of) v. Sippola*, 1991 CanLII 440 (BCCA).
[43] Affidavit of the ICBC lead accident claims adjuster at para. 8.

[80] In my view, this is an unusual case where litigation was likely from the outset of the accident. The accident in this case was a large one involving 18 vehicles and approximately 60 people, 14 of whom were taken to hospital. Further, the accident was apparently triggered by the smoke from a fire under the bridge.[44] Moreover, while nearly all of the vehicles were insured by ICBC, a Greyhound bus containing 37 people (which appears to have been prominently involved in the accident) had a different insurer.

[81] I find that there was a reasonable prospect of litigation for ICBC as the universal automobile insurer of 17 vehicles involved in the accident. Given the legal issues involved in this accident and the sheer volume of potential plaintiffs, in my view it was unlikely that the issues arising out of the accident could be resolved without litigation. I therefore find that there was a reasonable prospect of litigation at the time that all of the records in dispute in this inquiry were created.

Dominant Purpose – (part 2)

[82] Part two of the test for litigation privilege is described in *Raj*, in part, as follows:

> **12** The second part of the test -- the "dominant purpose" of a document -- is more challenging to meet. It requires the party claiming privilege to prove that the dominant purpose of the document, when it was produced, was to obtain legal advice or to conduct or aid in the conduct of litigation (*Hamalainen* at para. 21).
>
> **16** In applying this test, it must be recognized that any particular document may have more than one purpose. When a document is produced for dual or multiple purposes, one of them being litigation, and none of the purposes are dominant, the document should be disclosed…
>
> **17** A claim of privilege will succeed when a party can establish that a document produced for dual or multiple purposes, one of them being litigation, was produced for the dominant purpose of litigation. There is no absolute rule for determining whether litigation was the dominant purpose for the document's production (*Hamalainen* at para. 25). A finding of dominant purpose involves an individualized inquiry as to whether, and if so when, the focus of the investigation/inquiry shifted to litigation. This is a factual determination to be made based on all of the circumstances and the context in which the document was produced. As Wood J.A. explained in *Hamalainen*:
>
> > [24] Even in cases where litigation is in reasonable prospect from the time a claim first arises, there is bound to be a preliminary period during which the parties are attempting to discover the cause of the accident on which it is based. At some point in the information gathering process the focus of such an inquiry will shift such that its dominant purpose will become that of preparing the party for whom it was conducted for the

[44] ICBC's reply submissions at para. 14.

> anticipated litigation. In other words, there is a continuum which begins with the incident giving rise to the claim and during which the focus of the inquiry changes. At what point the dominant purpose becomes that of furthering the course of litigation will necessarily fall to be determined by the facts peculiar to each case. [Emphasis added.]

18 Thus, the focus of an inquiry may shift to litigation at any point along the continuum between the preliminary information-gathering stage and the final litigation stage. It may occur while other investigations are being conducted and other documents are being produced with respect to related matters that are not for the dominant purpose of litigation. There is no legal requirement that every potential or conceivable purpose for the creation of a document must be negatived before it can be found that the document was produced for the dominant purpose of litigation. The effect of such a requirement would be the adoption of the "sole purpose test", which was expressly rejected in *Blank*.

19 Claims of litigation privilege in the context of investigative and/or adjusters' reports offer some additional challenges, as the issue is often framed as whether the purpose of the report was an aspect of the information-gathering, or adjusting, stage of the inquiry and therefore not in aid of or for the conduct of litigation. However, relying on categories such as "adjusting stage", "information-gathering stage" or "litigation stage" to determine whether a document is subject to litigation privilege is not particularly helpful because, as noted above, a finding that the dominant purpose of a document was litigation may occur at any one of these stages depending upon the circumstances and the context in which it was produced. Similarly, labelling a report as "for the purposes of litigation" is not determinative of whether litigation was the dominant purpose for its production (see *Vander Laan v. LSMR Developments Inc.,* 2012 BCSC 1936 at para. 17). In *Hamalainen,* Wood J.A. recognized the fallacy of a categorical approach to this issue when he observed:

> [28] I attach no particular significance to the expressions "adjusting stage" and "litigation stage". In some cases those may be effective labels with which to describe the period before and after the point in which the dominant purpose for the production of a particular document can be said to be that described by Barwick C.J. in *Grant v. Downs.* It may be that such cases are more likely to be actions for indemnification under a contract of insurance, but I do not think that the process of solving the difficult problem of privilege is made any easier by taking an inflexible approach to the use of such labels.[45]

[83] Further, in *Buettner v. Gatto*, which also addressed whether litigation privilege applied to ICBC records related to a motor vehicle accident claim, the Court stated:

> Inherent in the reasonable prospect/dominant purpose test must be the expectation or requirement that there be at least some evidence of *bona fides*, due diligence or accountability on the part of the party seeking to rely on the prospect of litigation, which was created by their own actions, to

[45] *Raj v. Khosravi*, 2015 BCCA 49.

> support their claim of litigation privilege. Absent such requirement the test itself becomes meaningless. This is particularly of concern where, as here, the same insurer provides coverage for both parties and, presumably, owes each a duty of some form of meaningful investigation and determination of facts before reaching a decision on an issue as important as fault or liability for a motor vehicle accident.[46]

[84] In considering the dominant purpose of the creation of a record, *Raj* makes it clear that delineating between the "adjusting stage" and the "litigation stage" is not the determinative question to consider, since a record may be created for a dominant purpose of litigation (or not) at either stage. However, while this does not provide a bright line answer as to the dominant purpose for creating a record, considering the background context of the status of a claim at the time a record is created may assist in determining the purpose of its creation. For example, in *Hamalainen v. Sippola*,[47] the BC Court of Appeal upheld a Master's decision that litigation privilege applied to investigative reports and witness statements after liability was formally denied, but not before such denial of liability.

Positions of the Parties

[85] ICBC submits that litigation privilege applies to the information withheld under s. 14 of FIPPA. The records at issue predominantly relate to the independent adjuster's work, and ICBC submits that the dominant purpose of the independent adjuster's involvement was to investigate possible litigation defenses with respect to anticipated litigation.

[86] The applicant submits that litigation privilege does not apply, and that the evidence suggests that the dominant purpose of the independent adjuster's communications and activity was to determine information about insurance coverage and liability matters. Further, he submits that "if" there is a time when the dominant purpose is met, it could only be at some point after ICBC received the independent adjuster's report on March 14, 2014.

Application to the records at issue in this case

[87] Many of the records at issue under s. 14, and most of the parties' submissions and evidence, relate to records created by the independent adjuster. ICBC's lead adjuster and the independent adjuster both state that ICBC's lead adjuster retained the independent adjuster on November 18, 2013 to investigate the accident, and that he was instructed "to arrange with police, engineers and adjuster support for preliminary interviews aimed at determining information about insurance coverage and liability matters relating to all drivers in

[46] *Buettner v. Gatto*, 2015 BCSC 1374 at para. 33.
[47] *Hamalainen v. Sippola*, 1991 CanLII 440 (BCCA).

the accident."[48] The independent adjuster in turn retained engineers to examine the vehicles involved in the crash.

[88] ICBC's lead adjuster states that "the main purpose for retaining the independent adjuster was to gather information relating to one of the tort defenses"[49] identified by the lead adjuster. The independent adjuster states that he expected liability to be a contentious issue give the complexity of the liability/causation issues, and that he understood that his reports would be protected by litigation privilege.

[89] In support of his view the litigation privilege does not apply, the applicant emphasizes the independent adjuster's evidence that the adjuster was instructed to arrange for "preliminary interviews aimed at determining information about insurance coverage and liability matters relating to all drivers in the accident". The applicant submits that this is not a litigation purpose, and he deposes that these above stated purposes are consistent with what was explained to him when he was interviewed by the independent adjuster.

[90] The applicant explains that the independent adjuster attended his residence and interviewed him regarding the circumstances of the accident. The applicant states that the independent adjuster advised him that he was required to provide the statement and sign forms to assist with the investigation of the accident and advance the applicant's claim for benefits. He also states that the independent adjuster never suggested to him at any time that the purpose of his statement was to defend the applicant if someone later made a claim against the applicant as a result of his involvement in the accident.

[91] The applicant submits that the independent adjuster told him that having the applicant provide a statement and sign forms is part of the normal adjusting practices outlined in ICBC's Independent Adjuster Performance Standards. The applicant further submits that these standards do not suggest that an independent adjuster's work and/or reports will be subject to litigation privilege. The applicant also deposes that the independent adjuster advised him when taking his statement that the applicant would receive a copy of his statement once transcribed. The independent adjuster does not dispute this in his evidence.

[92] The applicant further submits that the information that resulted in the creation of the witness statements was not requested or provided on a litigation basis, as the cooperation and information that he and other insureds provided to the independent adjuster was required to under s. 73 of the *Insurance (Vehicle) Regulation*. He points out that ICBC does not dispute this fact.

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[48] Affidavit of ICBC's lead adjuster at para. 10; Affidavit of the independent adjuster at para. 2.
[49] Affidavit of ICBC's lead adjuster at para. 9.

[93] In my view, the materials before me establish that there were multiple purposes for the creation of the records at issue. I am satisfied that ICBC was alive to the possibility of litigation from the outset. However, in my view, litigation was not the primary purpose for the creation of most of the records I am considering under s. 14.

[94] I find that the predominant purpose of most of the independent adjuster's investigation relates to investigations to determine facts and liability, and that the records created for this purpose are adjusting-type records. In reaching this conclusion, I am mindful that ICBC's lead adjuster states that the main purpose for retaining the independent adjuster was to gather information relating to one of the tort defenses. However, only a small number of the records created by the independent adjuster are specifically about this issue. Further, the evidence does not persuade me that this was the dominant purpose of the independent adjuster's investigation. In my view, the investigation of the tort defence issue was a subset of a larger investigation that in most instances was an ancillary to the primary purpose of determining facts and liability in deciding how to process the insurance claims.

[95] In my view, the dominant purpose for the creation of the independent adjuster's reports[50] and witness statements (with one exception, which is addressed below) was to determine insurance coverage and liability matters related to the accident, rather than for a litigation purpose. The contents of many of the independent adjuster's reports support the conclusion that the dominant purpose of creating the reports was to determine liability in furtherance of the claims adjusting process.[51]

[96] This conclusion is consistent with the evidence (including information contained in the records) that the witness statements were provided under s. 73 of the *Insurance (Vehicle) Regulation*.[52] It is also consistent with the independent adjuster informing the applicant that he would receive a copy of the transcript. The applicant's interests may be adverse to ICBC, and the evidence does not suggest that ICBC was gathering this information for the purpose of

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[50] I note I have already determined that ICBC may withhold portions of the body of the independent adjuster's reports under s. 13 of FIPPA. However, I will also address these records here because I determined that some of these reports did not fall under s. 13.

[51] I note it could be argued that each report with enclosures could be viewed as one record, in which case I would be determining the independent adjuster's dominant purpose for creating the overall report, rather than the dominant purpose for each of the component documents (*i.e.* witness statements). However, given the specific context and contents of these reports, in my view the enclosures to the report were independent records rather than one solitary record. I also note that if the reports were considered to be one solitary record, the witness statements and other records also had an independent existence in the hands of the independent adjuster when he created them, and they would have been in ICBC's "control" regardless of custody. In any event, nothing turns on this distinction due to my findings about whether s. 14 applies to the body of the independent adjuster's report.

[52] There is one witness statement that was not provided under s. 73 of the *Insurance (Vehicle) Regulation*.

defending the applicant in the event someone else made a claim against him regarding the accident, so in my view the independent adjuster would not have informed the applicant that he would receive a copy of the transcript if he believed the witness statements were being created for the dominant purpose of litigation. This is because such a promise is inconsistent with the purpose of litigation privilege, which is to create a zone of privacy in relation to pending or apprehended litigation"[53] to "ensure the efficacy of the adversarial process".[54] Further, the materials before me suggest that a relatively uniform approach was taken with respect to gathering evidence from the insureds involved in the accident, so absent evidence to the contrary I find all but one of the witness statements were created for the same purposes.[55]

[97] Based on my review of the materials before me, with the exception of one subset of records I will discuss in the next paragraph, I find that litigation was not the dominant purpose of the creation of the records I am considering under s. 14. The contents of the records suggest that they were created for determining liability and adjusting purposes. Further, they were created at a time when ICBC and its consultants were conducting investigations, which was prior to ICBC concluding which parties it believed were liable for the accident.[56] This timing of the creation of the records is not, by itself, determinative. However, in my view, the fact that ICBC had not yet determined liability – and by extension it did not yet know for certain which insureds would be adverse in interest to ICBC with respect to liability – supports the conclusion that the records were primarily created for adjusting purposes, such as recreating the accident and determining liability, rather than litigation.[57]

[98] There is one category of records that is an exception to my finding above that the records I am considering under s. 14 were not created for the dominant purpose of litigation. These records are about one specific issue related to a litigation defence that the independent adjuster investigated for ICBC. One of these records is a witness statement of a person who was not involved in the accident who had information about this specific issue.[58] While information on this subject matter would have had utility in informing ICBC's determinations regarding liability for adjusting purpose, in my view the preponderance of the

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[53] *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 34.
[54] *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 27.
[55] I note that a few of the witness statements were created by claimants or their representatives, and were not created by ICBC or the independent adjuster.
[56] I note that ICBC advised the applicant that its view was that the Greyhound bus was responsible for the applicant's accident so the applicant should address his tort claims directly with Greyhound on January 14, nearly three months prior to the final independent adjuster's report. However, this potentially significant point does not influence my decision with respect to the dominant purpose of the creation of the specific records I am considering in this inquiry.
[57] I note that there are a few records that were created after ICBC received the independent adjuster's final report. Most of these records related to the assessment of liability. For clarity, I find that none of these records were created for the dominant purpose of litigation.
[58] Binder 1 of 3 at pp. 1080 to 1090.

materials before me (including the records)[59] satisfy me that litigation was the dominant purpose for the creation of the records that solely relate to this topic. Further, to the extent that there are records regarding both this and other issues, I find that litigation was the dominant purpose of the creation of some – but not all – of these records, depending on the content and context of these specific records.

Conclusions for s. 14

[99] For the reasons above, I find that litigation privilege does not apply to most of the records I am considering under s. 14 of FIPPA. However, I find that it applies to some records.[60]

Section 17

[100] Section 17 of FIPPA authorizes public bodies to refuse to disclose information that "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". Sections 17(1)(a) to (f) are examples of this harm, but disclosing information that does not fit into these enumerated examples may still constitute harm under s. 17(1). As for how to interpret ss. 17(1)(a) to (f), former Commissioner Loukidelis stated in Order F08-22 that:

> The intent and meaning of the listed examples are interpreted in relation to the opening words of s. 17(1), which, together with the listed examples, are interpreted in light of the purposes in s. 2(1) and the context of the statute as a whole.[61]

[101] The standard of proof for s. 17 is whether disclosure could reasonably be expected to result in the specified harm. The Supreme Court of Canada has described this standard as requiring a reasonable expectation of probable harm from disclosure of the information.[62] It is a middle ground between what is probable and that which is merely possible. A public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach this standard. The determination of whether the standard of proof has been met is contextual, and the quantity and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and the "inherent

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[59] For example, Binder 1 of 5 at pp. 191 and 192.

[60] Binder 1 of 3 at pp. 1080 to 1099. Binder 1 of 5 at middle of p. 228; bottom of p. 189 to the top of p. 191; bottom of p. 191 to 193. The records identified in Binder 1 of 5 are contained in ICBC's electronic claims management system, which collates independent records in chronological order. The reason why s .14 applies to some of the information on these pages, but not other information, is because there are independent records on the same page.

[61] Order F08-22, 2008 CanLII 70316 (BC IPC) at para. 43.

[62] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

probabilities or improbabilities or the seriousness of the allegations or consequences".[63]

Positions of the Parties

[102] ICBC submits that much of the same information it is withholding under s. 13 is also protected from disclosure under s. 17 because it reveals ICBC's litigation strategies, including the amount of money it has reserved or set aside to settle the claims ("reserve information"). The reserve calculations are the only information that ICBC specifically addresses under s. 17.

[103] The applicant submits that the withheld financial information does not fall under s. 17. He further submits that ICBC is withholding factual information that will be producible in litigation in any event, so ICBC is significantly increasing its litigation costs and causing itself financial harm by withholding it.

Application to the information at issue in this case

[104] I have already determined that ICBC may withhold the reserve information under s. 13 because the withheld reserve information is proposed reserved amounts that were part of the advice and recommendations flowing back and forth between the ICBC adjusters and their managers. Therefore, it is unnecessary for me to consider this information under s. 17. ICBC does not provide evidence or argument about the rest of the information it is withholding under s. 17 other than to say that disclosure would reveal its litigation strategies. For example, it does not explain how disclosure of the remaining withheld information would reveal its litigation strategies, or how disclosure of this information could reasonably be expected to harm its financial interests.

[105] For most of the remaining withheld information, it is not apparent to me how disclosure would reveal ICBC's litigation strategies, let alone that such disclosure could reasonably be expected to harm ICBC's financial interests. However, there is some factual information that may be relevant to litigation strategies, and a small subset of this information is more directly tied to pertinent legal issues. While it could be argued that this information may to some extent reveal ICBC's likely position in potential litigation, they are facts and issues that naturally arise from the accident (*i.e.* they are already apparent to the applicant and others, or they would become apparent in the pleadings in a court action).

[106] Based on my review of the materials before me, including my review of the records themselves, I am not satisfied that disclosure of the information withheld under s. 17 could reasonably be expected to harm the financial or economic interests of ICBC. I therefore find that s. 17 does not apply.

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[63] *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3 at para 94 citing *F.H. v. McDougall*, 2008 SCC 53, at para. 40.

Section 22

[107] Section 22 of FIPPA requires public bodies to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. ICBC is withholding nearly all of the withheld information under s. 22.

[108] Numerous orders have considered the approach to s. 22 of FIPPA. Since s. 22 only applies to the personal information of third parties, it is first necessary to determine whether the information is the personal information of one or more third party. Section 22(4) then lists circumstances where disclosure is not unreasonable. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, public bodies must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.

Positions of the Parties

[109] ICBC submits that it is withholding contact information, insurance claims information, addresses, driver/vehicle license information and medical information, which it submits is clearly protected from disclosure under s. 22.

[110] The applicant replies that "no personal information is being requested", but, even if it was, disclosure would not be an unreasonable invasion of a third party's personal privacy under s. 22(2)(c) of FIPPA.

[111] While the applicant states that he is not requesting any personal information, his submissions suggest otherwise. For example, he provides argument about why he is entitled to witness statements and other information that in my view contain personal information.[64] Given this discrepancy, I will consider whether s. 22 applies to all of the remaining information that ICBC is withholding under s. 22 of FIPPA.

Personal Information

[112] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.[65] Information is about an identifiable individual when it is reasonably capable of identifying an individual

[64] I note that the applicant refers to Order 00-42, 2000 CanLII 14407 (BC IPC) elsewhere in his submissions. In this order the former Commissioner Loukidelis determined that third party witness statements were not "personal information" as defined in FIPPA. However, the definition of "personal information" has since changed.
[65] Definitions are in Schedule 1 of FIPPA.

or a small group of identifiable people, either alone or when combined with other available sources of information.[66] Contact information is not personal information. FIPPA defines contact information, in part, as "information to enable an individual at a place of business to be contacted".

[113] Most of the remaining information is the personal information of individuals involved in the accident. It is the information contained in their claims files, such as their names, email addresses, license plate numbers, ICBC file numbers, witness statements, costs associated with the accident, interactions between ICBC and the claimants, and other claims information.[67]

[114] There is also information that is internal ICBC communications that relate to the procedural or logistical handling of claims files, such as inquiries about when the independent adjuster's report will be completed, gathering information to forward to claimants, etc. Most of this information is about multiple claims. While it does not specifically name the claimants, I find that the claimants are identifiable when combined with other available information.[68] However, this information is innocuous and does not reveal any meaningful information about the claimants or their claims. This information is also about identifiable ICBC employees who are carrying out their ordinary work tasks associated with the handling of the claims files.[69] While this information is the personal information of ICBC employees, it is innocuous information generated by the ICBC employees in the course of their employment. Therefore, notwithstanding that this information is personal information, for brevity, I find that s. 22 clearly does not apply to it and I will not consider it below in further detail.[70]

Section 22(4)

[115] Section 22(4) of FIPPA lists circumstances in which the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy under s. 22. Neither party submits that s. 22(4) applies in the case. Based on the materials before me, I find that none of the grounds listed in s. 22(4) apply to the withheld information.

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[66] See Order P12-01, 2012 BCIPC 25 (CanLII) at para. 85.

[67] I note ICBC has already disclosed significant portions of the applicant's claims file to him, and I have determined that much of the withheld information falls under s. 13. Therefore, there is very little information contained in the applicant's claims file that I am considering under s. 22.

[68] The third parties may be identifiable because the information is collated under headings that tie the information to specific claimants. Further, most of this information is part of ICBC's electronic claims management system, which has a claim file number at the top of every page.

[69] There a few short excerpts in the records about a leave from work a specific ICBC employee was going to take. I find that s. 22(3)(d) applies to this information and that no factors rebut this presumption, so ICBC is required to withhold it under s. 22 of FIPPA: Binders 1 of 5 at pp. 230, 231, 1626 and 2545.

[70] None of the provisions in ss. 22(2), (3) or (4) apply to this information. I find that disclosure would not be an unreasonable invasion of the personal privacy of these third parties within the meaning of s. 22(1).

Section 22(3)

[116] Section 22(3) states that the disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if any of the circumstances in s. 22(3) apply. It states in part:

> A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
> …
> (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,

Medical Information

[117] Some of the information at issue relates to third parties' medical histories, diagnoses, conditions, treatments or evaluations. For instance, there are photographs of an injured person, and excerpts in the witness statements about claimants' injuries and medical histories. Based on my review of the records, I find that s. 22(3)(a) applies to this type of information, and that there is a presumption that its disclosure would be an unreasonable invasion of the personal privacy of third parties.

Employment, Occupational and Educational History

[118] There is a small amount of withheld information that relates to the occupation or employment of third parties involved in the accident. I find that s. 22(3)(d) applies to this information, and that there is a presumption that its disclosure would be an unreasonable invasion of these third parties' personal privacy.

Financial Information

[119] There is a small amount of withheld information that is financial in nature. For example, there is insurance policy information, information relating to ICBC payments to or on behalf of third parties, and estimates about vehicle values.

[120] Former Commissioner Loukidelis addressed some of these types of information in Order 01-46, in which he stated:

> Details of the third party's ICBC insurance are, in my view, personal information of the third party. This information consists of policy dates, rate class, type of use, third-party liability limit, collision deductible, comprehensive deductible, the third party's place on ICBC's claims-rated scale, whether the third party had underinsured motorist's protection and any loss of use limit in the third party's insurance policy. As this information about the third party is about his finances and history, it is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(f)...[71]

[121] I agree with the above quote, and find that s. 22(3)(f) applies to this policy information. This includes the information relating to ICBC payments to or on behalf of third parties regarding the accident.

[122] I also find that s. 22(3)(f) applies to estimates of vehicle values in relation to the accident. In Order F06-19, the adjudicator concluded that this information is about the vehicle and not about the individual.[72] However, in context, these sums relate to the value of an insured's asset and/or a possible payment the insured is likely to receive from ICBC. In light of this, I find that this information falls under s. 22(3)(f). I find there is a presumption that disclosure of the withheld financial information of third parties would be an unreasonable invasion of their personal privacy.

Section 22(2)

[123] Section 22(2) states that all relevant circumstances, including those listed in s. 22(2), must be considered. Section 22(2) states in part:

> 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
>
> …
>
> (c) the personal information is relevant to a fair determination of the applicant's rights,
>
> …
>
> (f) the personal information has been supplied in confidence,
>
> …

[124] ICBC does not refer to any of the provisions under s. 22(2). The applicant submits that s. 22(2)(c) supports disclosure of the withheld information. I will address ss. 22(2)(c) and (f) in turn, followed by other relevant circumstances.

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[71] See Order 01-46, 2001 CanLII 21600 (BC IPC) at para. 42.
[72] Order F06-19, 2006 CanLII 37939 (BC IPC) at paras. 155 and 156.

Fair Determination of the Applicant's Rights

[125] Section 22(2)(c) is a factor in favour of disclosure where the personal information is relevant to a fair determination of the applicant's rights. The applicant submits that s. 22(2)(c) applies.

[126] Previous orders have held that s. 22(2)(c) only applies if all of the following circumstances are met:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds.

2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed.

3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question.

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[73]

[127] In this case, personal information about how the accident occurred clearly relates to a legal right. I am also satisfied that a litigation proceeding is contemplated.[74] Further, I am satisfied that the third party personal information which relates to how the accident occurred has some significance for the applicant's legal rights that are in question (*i.e.,* liability in relation to the accident), and that this information is necessary in order to prepare for the proceeding or to ensure a fair hearing.[75] For the above reasons, I find that s. 22(2)(c) applies in this case to the personal information about how the accident occurred.

[128] In considering the weight to give s. 22(2)(c), I note that the applicant will likely also be able to receive this personal information as part of civil proceedings pursuant to the *Supreme Court Civil Rules*.[76] The applicant submits that there will be additional and significant litigation costs if this information is not disclosed as part of this inquiry.[77] However, I am not persuaded by the materials before me that this will be the case, or that the applicant will be prejudiced if the withheld information is not disclosed to him in this inquiry. Therefore, I do not attribute

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[73] Order 01-07, 2001 CanLII 21561 at para. 31 citing Ontario Order P-651, [1994] O.I.P.C. No. 104.
[74] Order F16-36, 2016 BCIPC 40 (CanLII) at para. 50.
[75] I make this finding notwithstanding the fact that the applicant could likely receive this information as part of the disclosure process in litigation: see Order F16-36, 2016 BCIPC 40 (CanLII) at paras. 54 to 63.
[76] Order F16-36, 2016 BCIPC 40 (CanLII).
[77] Applicant's submissions at para. 27 in the context of s. 17 of FIPPA.

much weight to s. 22(2)(c) in determining whether disclosure of this information would be an unreasonable invasion of the personal privacy of a third party under s. 22(1).

Supplied in Confidence

[129] Section 22(2)(f) is a factor that applies if personal information has been supplied in confidence. The parties did not address this provision.

[130] A significant amount of the remaining information at issue, such a witness statements and claims information, was supplied by third parties who were involved in the accident. The witness statements, and arguably some of the other information, were supplied under s. 73 of the *Insurance (Vehicle) Regulation*. Further, most of this information was provided by third parties in the context of making insurance claims to ICBC.

[131] In my view, there is ordinarily an expectation of privacy to some degree when people submit information to an insurer with respect to an insurance claim, at least until the dispute escalates. As an extreme example of this point, I expect that it would be contrary to the reasonable expectations of the person supplying the information if the insurer posted the claims information on its website. Therefore, absent evidence on this point, in my view it is reasonable to expect that the third parties would have supplied this information in confidence to ICBC, with the understanding that it may be provided to other people whose rights and obligations (insurance liability or otherwise) may be impacted by the claim. While the applicant is one of these people, in my view this does not vitiate the applicability of s. 22(2)(f) because – in contrast to disclosure to another party in the course of a proceeding (which ordinarily have undertakings of confidentiality or limited use) – orders of this office have consistently determined that disclosure to an applicant is disclosure to the world.[78]

[132] Therefore, for the reasons above, I find that s. 22(2)(f) favours withholding the information that was supplied by third parties.

Other Factors

Applicant's Knowledge of Information & Motor Vehicle Legislation

[133] In my view, another relevant consideration in this case is s. 68 of the *Motor Vehicle Act*. Section 68(1)(c) requires the driver of a vehicle directly or indirectly involved in an accident to:

> (c) produce in writing to any other driver involved in the accident and to anyone sustaining loss or injury, and, on request, to a witness

[78] For example, Order F15-63, 2015 BCIPC 69 (CanLII) at para. 47.

> (i) his or her name and address,
> (ii) the name and address of the registered owner of the vehicle,
> (iii) the licence number of the vehicle, and
> (iv) particulars of the motor vehicle liability insurance card or financial responsibility card for that vehicle,
>
> or such of that information as is requested.

[134] In my view, the above legislation reflects a policy choice by the Legislature to impose duties that require individuals involved in vehicle accidents to exchange certain personal information (*i.e.* name and address, license number, etc.), and that this requirement overrides the individual's privacy rights to that personal information in this context. Since the applicant was involved in the accident,[79] I find that the third parties have a diminished expectation of privacy of the personal information listed in s. 68(1)(c) of the *Motor Vehicle Act* vis-à-vis the applicant. This is a factor in favour of disclosing this information to the applicant.

[135] Further, the RCMP has already provided the applicant with a redacted version of the police report, which includes the types of personal information listed in s. 68 of the *Motor Vehicle Act*, as well as some basic accident scene injury classification information. The applicant clearly obtained this information from a reliable source, which in my view supports a finding that a repeat disclosure of this same information would not be an unreasonable invasion of the personal privacy of these third parties.

Sensitivity of the Information and Applicant's Connection to the Information

[136] A number of previous orders have considered the sensitivity of the withheld personal information,[80] and the applicant's connection to the personal information,[81] when determining whether disclosure would be an unreasonable invasion of personal privacy under s. 22(1) of FIPPA.

[137] The applicant in this case was involved in the same accident as the third parties whose personal information is at issue. As such, they were at the same accident scene, observed many of the same things, and the applicant and the third parties may have interrelated legal rights and obligations. In short, the applicant is connected to this information. While such personal information would reveal that the third party made an insurance claim to ICBC, the applicant likely already knows much of this information due to his firsthand knowledge of

[79] While the accident may be characterized as multiple different accidents in close succession, in my view there is a sufficient nexus between the accidents in this case for the applicant to be – at least –"indirectly involved" in the accidents.
[80] For example, Order F10-09, 2010 BCIPC 14 (CanLII) at para. 123.
[81] For example, Order F16-36, 2016 BCIPC 40 (CanLII).

the accident. In my view, the applicant's connection to the withheld information favours disclosure in this case.

[138] Further, I have also considered the relative sensitivity of the various types of personal information. Some of the withheld information is relatively sensitive information, such as medical information. However, there is also other information that in my view is relatively innocuous and not sensitive. For example, some of the withheld information is about procedural steps or other information about the independent investigation or claims adjusting processes that does not in any way reflect on the merits of the third parties' claims, or reveal their alleged injuries or loss.

[139] Most of the witness statements are factual accounts of what happened leading up to and during the accident. It is information about how fast the person was driving, what lane they were in, what they observed leading up to the crash, and the other vehicles and objects they came in contact with during the crash. This witness statement information about what happened leading up to and during the accident is analogous to some extent the witness statements that were at issue in Order 01-19.[82]

[140] In Order 01-19, an applicant was seeking the interview notes taken by a Workers' Compensation Board investigator who was investigating a workplace accident in which the applicant's husband was fatally electrocuted. In that case, after determining that the witnesses' factual observations about the accident itself were not personal information due to the wording of "personal information" as it was then,[83] former Commissioner Loukidelis stated in part that:

> … As for statements by witnesses about the facts of what they did on the job, or what others did, I have concluded that the WCB is not required by s. 22(1) to refuse to disclose this information. In this case, the statements are factual and contain no evaluative aspect, in terms of anyone's job performance. It is, moreover, a relevant circumstance that the applicant is the next of kin of the deceased worker and legitimately wishes to know what happened on the fatal day…[84]

[141] While the above quote does not expressly say so, it is apparent that former Commissioner Loukidelis did not consider factual statements of people's actions in relation to the accident to be sensitive, and this favoured disclosing these statements. I agree with this assessment. In my view, the witness statement information contains factual accounts of what these third parties did or observed in relation to the accident, which is not particularly sensitive.

[142] Further, it is also apparent that in Order 01-19, former Commissioner Loukidelis considered the applicant's connection to the accident (*i.e.* she was the

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[82] Order 01-19, 2001 CanLII 21573 (BC IPC).
[83] The definition of "personal information" in FIPPA has changed since Order 01-19.
[84] Order 01-19, 2001 CanLII 21573 (BC IPC) at para. 44.

deceased's next of kin) as a factor in favour of disclosure. I similarly find that the applicant's connection to the accident favours disclosure in this case.

[143] In summary, I find that the lack of sensitivity of some of the procedural and other information contained in the ICBC claims files, as well as portions of the witness statements, favour disclosure in this case. However, this does not apply to all of the information. Further, I find that the applicant's connection to the accident favours disclosure of the personal information in this case.

Section 22(1) Conclusions

[144] Section 22(1) requires a determination of whether disclosure to the applicant would be an unreasonable invasion of a third party's personal privacy. To summarize, the withheld information contains personal information and s. 22(4) does not apply. There is also a presumption that disclosure of some of the withheld information would be an unreasonable invasion of personal privacy because it relates to third parties' medical histories, diagnoses, conditions, treatments or evaluations under s. 22(3)(a), employment histories of third parties under s. 22(3)(d), or financial information under s. 22(3)(f).

[145] With respect to the information for which there is a presumption under s. 22(3), I find that there are no factors sufficient to rebut the presumption that disclosure would be an unreasonable invasion of the personal privacy of a third party, except for a small amount of this information that the applicant has received as part of records disclosed to him by the RCMP.[85] I therefore find that ICBC is required to withhold this information under s. 22 of FIPPA, except for the information that the applicant already possesses.

[146] For the remaining information, I find that s. 22(2)(f) favours withholding the personal information that was supplied by third parties because it was supplied in confidence. In contrast, I find that s. 22(2)(c) favours disclosure of the withheld information about how and why the accident occurred, although I give this factor little weight. Further, the applicant's knowledge of the information and motor vehicle legislation favours the disclosure of some information, as does the fact that some of the information is innocuous and not sensitive. Moreover, the applicant's connection to the information favours disclosure.

[147] After weighing all relevant factors, I find that there are three types of information I am considering under s. 22 of FIPPA for which disclosure would not be an unreasonable invasion of personal privacy of third parties.

[148] The first type of information is information that was disclosed to the applicant in the RCMP police reports, such as the identity and vehicle information

[85] For example, see Binder 1 of 3 at p. 37 and the affidavit of the Litigation Support Clerk at Exhibit "A".

of the third parties involved in the accident. Motor vehicle legislation requires people involved in accidents to disclose this information to others involved in the accident, and the applicant already clearly knows this information. In my view, this favours disclosure in this case, and I find that disclosure of this information to the applicant would not be an unreasonable invasion of the personal privacy of the third parties within the meaning of s. 22.

[149] The second type of information is information contained in the third parties' ICBC claims files that does not in any way reveal the merits of the parties' claims, or their alleged injuries or damage. Given the applicant's connection to the accident and these third parties as people involved in the accident, I find that disclosure of this innocuous information (most of which reveal procedural action taken by ICBC as part of the adjusting process) would not be an unreasonable invasion of the personal privacy of the third parties.

[150] The third type of information is the witness statement information about the accident, other than the information that is subject to a presumption under s. 22(3) of FIPPA.[86] This information is the third parties' accounts of the moments leading up to the accident and the accident itself. This information was supplied in confidence. However, it is relatively factual information that is not particularly sensitive, s. 22(2)(c) weighs in favour of disclosure, and the applicant is connected to the information (*i.e.* he was involved in the accident). After considering all of the relevant factors, I find that disclosure of this information would not be an unreasonable invasion of the personal privacy of third parties.[87]

[151] For all other information I am considering under s. 22 of FIPPA, I find that the applicant has not met his burden of proof in establishing that disclosure would not be an unreasonable invasion of personal privacy. I therefore find that s. 22 requires ICBC to refuse to disclose all of the information I am considering under s. 22 of FIPPA, except for the three types of information identified above.

CONCLUSION

[152] In summary, I find that ICBC is authorized to refuse to disclose some of the information it is withholding under ss. 13 and 14 of FIPPA. It is not authorized to refuse to disclose the remaining information under s. 17 of FIPPA, but it is required to refuse to disclose some information under s. 22 of FIPPA. ICBC is required to disclose portions of the witness statements and some other accident scene information to the applicant.

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[86] I note that this does not include information about the claimants' birthdates, occupations, etc.

[87] This finding includes the statement made by RCMP about the accident in part 99 of a Police Report at p. 37 of Binder 1 of 3, which has not previously been disclosed to the applicant.

[153] For the reasons given above, under s. 58 of FIPPA, I order that ICBC is:

a) authorized to refuse to disclose some of the withheld information under ss. 13 and 14 of FIPPA;

b) not authorized to withhold information under s. 17 of FIPPA;

c) required to refuse to disclose some of the information under s. 22 of FIPPA;

d) required to give the applicant access to the information I have not highlighted in the excerpted pages of the records that will be sent to ICBC along with this decision, by **September 7, 2016**, pursuant to s. 59 of FIPPA.[88] ICBC must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

July 22, 2016

ORIGINAL SIGNED BY

Ross Alexander, Adjudicator OIPC File No.: F14-58236

[88] ICBC is not required to provide duplicate copies of the same records, and some duplicate pages have been omitted from these excerpted records.