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Order F17-06

INSURANCE CORPORATION OF BRITISH COLUMBIA

Celia Francis
Adjudicator

February 9, 2017

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Summary: ICBC disclosed to an applicant a copy of a transcript of an interview with another individual, withholding most of the information under s. 22(1) (harm to third-party privacy). The adjudicator found that the fact that the applicant already knows almost all of the withheld information outweighs any presumed invasion of the other individual's personal privacy. The adjudicator ordered ICBC to disclose the transcript to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(f), 22(2)(g), 22(3)(b), 22(4)(a).

Authorities Considered: B.C.: Order F15-03, 2015 BCIPC 3 (CanLII); Order F15-14, 2015 BCIPC 14 (CanLII); Order 03-24, 2005 CanLII 11964 (BC IPC); Order F10-41, 2010 BCIPC No. 61; Order F17-02, 2017 BCIPC 02 (CanLII); Order F14-47, 2014 BCIPC 51 (CanLII); Order F10-37, 2010 BCIPC 55 (CanLII); Order 01-19, 2001 CanLII 21573 (BC IPC).

INTRODUCTION

[1] In late 2013, the applicant's wife was involved in a vehicle incident with another individual ("third party"). The applicant then made a request under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to the Insurance Corporation of British Columbia ("ICBC") for records related to the incident. ICBC disclosed the responsive records in severed form and the

applicant requested a review by the Information and Privacy Commissioner (“OIPC”) of ICBC’s response.¹ OIPC mediation resolved the issues in dispute regarding the severing of those records.

[2] However, mediation of that request for review led to the disclosure of a new responsive record in severed form - the transcript of an audio recording of an interview with the third party. The applicant requested a review of ICBC’s decision to withhold information from the transcript under s. 22(1) of FIPPA (harm to third-party privacy).² Mediation by the OIPC did not resolve this new matter and it proceeded to inquiry.³

ISSUE

[3] The issue before me is whether ICBC is required by s. 22(1) to deny the applicant access to information in the transcript. Under s. 57(2) of FIPPA, the applicant has the burden of proof.

DISCUSSION

Background and information in dispute

[4] The applicant’s wife and the third party were involved in a vehicle incident in a parking lot. The wife and the third party filed conflicting claims with ICBC. As part of ICBC’s Special Investigation Unit (“SIU”) investigation of the claims, the SIU investigator interviewed the third party. ICBC disclosed the transcript of this interview in severed form, withholding almost all of the information. It disclosed only the names of the SIU investigator and the third party, the date and place of the interview and brief responses such as “right,” “yeah” and “yes sir.” The withheld information is the information in dispute in this case.

Third-party privacy – s. 22(1)

[5] ICBC argued that s. 22(1) applies to the withheld information, while the applicant argued that it does not.

Approach to applying s. 22(1)

[6] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03:

Numerous orders have considered the approach to s. 22 of FIPPA, which states that a “public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of

¹ OIPC File F14-57784.

² OIPC File F15-61518.

³ ICBC and the applicant provided submissions to this inquiry. The third party could not be located.

a third party's personal privacy." This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. 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, the public body 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.⁴

[7] I have taken the same approach in considering the s. 22 issues here.

Is the information "personal information"?

[8] FIPPA defines "personal information" as recorded information about an identifiable individual, other than contact information.⁵ Neither party addressed this issue.

[9] Some of the withheld information is not about identifiable individuals, for example: the time of the interview; the date and place of the incident; the weather and traffic conditions at the time of the incident; the ICBC claim and SIU file numbers; and descriptions of the two vehicles involved in the incident.⁶ This information is not personal information. This means that s. 22(1) does not apply to it.

[10] The rest of the withheld information is about identifiable individuals, principally the wife and the third party, but also passing references to the applicant. I find that it is personal information.

Does s. 22(4) apply?

[11] Section 22(4) of FIPPA sets out a number of situations in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. Neither party addressed this issue directly, although ICBC noted that the wife had consented to the disclosure of her personal information to the applicant.⁷

⁴ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

⁵ Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual." See Schedule 1 of FIPPA for these definitions.

⁶ ICBC itself noted that much of the information was factual information about the accident; ICBC's initial submission, para. 9.

⁷ ICBC's initial submission, para. 8.

[12] Under s. 22(4)(a) of FIPPA, disclosure of information is not an unreasonable invasion of a third party's privacy if the third party consents, in writing, to the disclosure. The applicant's wife consented in writing to the disclosure of her personal information to the applicant.⁸ Thus, where the information is about the wife, its disclosure to the applicant is not an unreasonable invasion of her privacy and s. 22(1) does not apply to it.

Presumed unreasonable invasion of third-party privacy – s. 22(3)

[13] The next step is to consider whether disclosure of the information in issue is presumed to be an unreasonable invasion of a third party's personal privacy. ICBC argued that s. 22(3)(b) applies to the withheld information. This provision reads as follows:

22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if...(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

...

[14] ICBC said that the SIU investigator conducted an investigation relating to liability issues regarding the "conflicting material damage claims" that the wife and the third party filed with ICBC regarding the vehicle incident. In ICBC's view, it is evident that the third party's information falls under s. 22(3)(b) and it is irrelevant that the investigation is over.⁹

[15] The applicant argued that, under s. 22(3)(b), disclosure of the information is necessary to prosecute a violation. Specifically, he says that he needs the information for the RCMP so they can proceed with a fraud charge against the third party.¹⁰ The applicant's argument does not assist him, however, as there is no evidence that disclosure to him is necessary for any prosecution or continued investigation. It is the role of the police and BC's Crown Prosecution Service to investigate and prosecute violations of the *Criminal Code*. There is no evidence that they have enlisted the applicant's help in that regard.

[16] However, although ICBC did not elaborate on its argument, I am satisfied that there was an investigation of a possible violation of a law.¹¹ I am therefore satisfied that the withheld information was compiled and is identifiable as part of an investigation into a possible violation of law and I find that s. 22(3)(b) applies

⁸ ICBC provided a copy of this consent.

⁹ ICBC's submission, paras. 3-6.

¹⁰ Applicant's reply submission.

¹¹ See withheld information on p. 139. Although the transcript is the only record in issue here, ICBC provided copies of the records the applicant requested earlier.

to it. This means its disclosure is presumed to be an unreasonable invasion of third-party privacy.

Relevant circumstances – s. 22(2)

[17] In determining whether disclosure of personal information is an unreasonable invasion of third-party personal privacy under s. 22(1) or 22(3), a public body must consider all the relevant circumstances, including those set out in s. 22(2). At this point, the presumption that disclosure of the withheld information would be an unreasonable invasion of personal privacy may be rebutted.

[18] Supplied in confidence and unfair damage to reputation – ICBC raised ss. 22(2)(f) and (h), which read as follows:

22 (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

...

[19] ICBC argued that s. 22(2)(f) does not apply to the transcript as the SIU investigator did not give the third party any assurances of confidentiality during the interview. There is no indication in the material before me that the third party agreed to be interviewed in confidence. I therefore agree with ICBC that the factor in s. 22(2)(f) does not favour withholding the information in dispute.

[20] ICBC also argued that s. 22(2)(h) does not apply. I discuss below that the applicant already knows almost all of the withheld information. He could therefore distribute or publicize what he knows, although there is no evidence that he has done so or that he intends to do so. Nor is it clear how doing so could unfairly damage the third party's reputation. In light of this, I do not see how disclosure of the withheld information would damage the third party's reputation, unfairly or otherwise. I therefore find that the factor in s. 22(2)(h) does not favour withholding the information in dispute.

[21] Applicant's knowledge – Previous orders have found that a relevant circumstance under s. 22(2) is the fact that an applicant is aware of or already knows the personal information in issue, for example, from other sources or from

the disclosed records. This factor may or may not favour disclosure, depending on the case.¹²

[22] ICBC admitted that the applicant and his wife already know what the wife and the third party said to each other at the time of the incident. It suggested that this factor favours disclosure of the withheld information to the applicant.¹³

[23] The information the applicant has already received shows that he already knows the third party's account of the vehicle incident, his driver's licence number and his date of birth.¹⁴ It also shows that he has received a "redacted" copy of the SIU report¹⁵ and that he thus already knows at least some of what the third party said to the SIU investigator during the interview.¹⁶ His submission confirms this.

[24] In short, the material before me indicates that the applicant already knows almost all of the withheld information. In my view, the applicant's knowledge of most of the withheld information weighs heavily in favour of its disclosure.

[25] Legitimate interest – ICBC argued that the applicant's wife has a legitimate interest in receiving the withheld information, as she was involved in the incident with the third party.¹⁷ Past orders have said that this factor favours disclosure of withheld information.¹⁸ The material before me shows that the applicant and his wife acted jointly in dealing with ICBC over their claim, although he apparently took the lead. It also indicates that the applicant represented his wife in making the access request. I therefore agree with ICBC that the applicant and his wife have a legitimate interest in obtaining the withheld information, for the reason ICBC cites, and that this factor favours disclosure of the withheld information.

Conclusion on s. 22(1)

[26] I found above that s. 22(1) does not apply to some of the withheld information because it is not personal information or s. 22(4)(a) applies to it.

[27] I also found that the rest of the withheld information is personal information and that the presumption in s. 22(3)(b) applies to it. However, I find that the factors favouring disclosure rebut the s. 22(3)(b) presumption for this

¹² See, for example, Order F15-14, 2015 BCIPC 14 (CanLII), Order 03-24, 2005 CanLII 11964 (BC IPC), Order F10-41, 2010 BCIPC No. 61 and Order F17-02, 2017 BCIPC 02 (CanLII).

¹³ ICBC's initial submission, para. 9.

¹⁴ See, for example, note of 28DEC13, middle of p. 93, and note of 30DEC13, middle of p. 94.

¹⁵ See note of 24MAR14 on p. 14.

¹⁶ This includes what the third party said to the SIU investigator about posters the applicant had put up in a store, asking for witnesses to the incident.

¹⁷ ICBC's initial submission, para. 10.

¹⁸ See for example, Order F14-47, 2014 BCIPC 51 (CanLII), Order F10-37, 2010 BCIPC 55 (CanLII), Order 01-19, 2001 CanLII 21573 (BC IPC).

information. I therefore find that disclosure would not be an unreasonable invasion of third-party personal privacy and that s. 22(1) does not apply.

CONCLUSION

[28] For reasons given above, under s. 58(2)(a) of FIPPA, I require ICBC to give the applicant access to the information it withheld under s. 22(1). I require ICBC to give the applicant access to this information by March 24, 2017. ICBC must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

February 9, 2017

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F15-61948