

Order F25-93

**INSURANCE CORPORATION OF BRITISH COLUMBIA**

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December 8, 2025

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**Summary:** An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records from the Insurance Corporation of British Columbia (ICBC) about several motor vehicle accident claim files in which he was involved. ICBC disclosed responsive records but withheld some information and records under several FIPPA exceptions to disclosure. The adjudicator determined that ICBC may withhold some of the disputed information under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), or 15(1)(c) (harm to law enforcement). Additionally, the adjudicator determined that ICBC is required to withhold some information under s. 22(1) (unreasonable invasion of third-party personal privacy). The adjudicator required ICBC to give the applicant access to the information that it was not required or permitted to refuse to disclose.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13, 14, 15(1), 15(1)(c), 22(1), 22(4)(e), 22(3)(a), 22(3)(d), 22(3)(f), 22(2)(c), 22(2)(h).

**INTRODUCTION**

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (the applicant) requested that the Insurance Corporation of British Columbia (ICBC) provide copies of all records of information about him. The applicant also requested access to specific records relating to four motor vehicle accident files involving the applicant.

[2] In response to the applicant's request, ICBC initially provided 2,309 pages of records and withheld some information under ss. 3(5)(a), 13(1), 14, 15(1)(c), 15(1)(d), 16(1)(b), 17(1)(b), 17(1)(f), and 22(1) of FIPPA.<sup>1</sup> The applicant asked

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<sup>1</sup> All sectional references in this Order refer to FIPPA unless otherwise noted.

the Office of the Information and Privacy Commissioner (OIPC) to review ICBC's decision to withhold information.

[3] Mediation failed to resolve the issues in dispute and the applicant's request for review proceeded to this inquiry. Both parties provided written submissions for this inquiry.

### ***Preliminary Matters***

#### *FIPPA exceptions to disclosure no longer at issue*

[4] At inquiry, ICBC withdrew its reliance on ss. 3(5)(a), 15(1)(d), 16(1)(b), 17(1)(b), and 17(1)(f) and disclosed additional information to the applicant.<sup>2</sup> Consequently, I find that those sections, and any information withheld from the records only under those provisions, are no longer in dispute.

#### *Additional Records and Adequate Search Complaint*

[5] When the applicant asked the OIPC to review ICBC's decision to sever information from the records, the applicant also complained about the adequacy of ICBC's efforts to search for responsive records. In response, ICBC identified 757 more pages of records to the applicant with information withheld under ss. 13(1), 14, 15, and 22(1). After ICBC identified these additional records, the OIPC closed the applicant's adequate search file while this review continued to inquiry.<sup>3</sup>

[6] When this matter reached inquiry, there was substantial confusion among the parties about the scope of the inquiry and the specific records that remained in dispute. The applicant said that he had never received a copy of the 757 pages of additional records. Furthermore, ICBC explained that it had changed its record management software and was now unable to reproduce the 757 pages of additional records. Instead, ICBC created a new 505-page package of records and explains that the difference is possibly due to formatting or automatic filtering functions.<sup>4</sup>

[7] I wrote to the parties to clarify their position with respect to these issues and to confirm that the applicant had received a copy of all pages of records that ICBC could still locate. Then, I determined the following with respect to this inquiry:<sup>5</sup>

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<sup>2</sup> ICBC's submission at para 5.

<sup>3</sup> Letter to the Applicant re F23-92261, February 21, 2023.

<sup>4</sup> ICBC's submission at paras 4-5; Affidavit #1 of CA at paras 4-6.

<sup>5</sup> Adjudicator's Letters to the Parties, February 20, 2025, April 9, 2025, and June 12, 2025.

- The records at issue in this inquiry are the 2,309-page (2,309 Set) and 505-page packages of records (505 Set), being a total of 2,814 pages of responsive records.
- Given that ICBC can no longer reproduce the 757-page package of records, there is no severing decision for me to review in this inquiry with respect to those records.
- I would not consider the applicant's complaint about the adequacy of ICBC's search for records in this inquiry, which is limited to a review of ICBC's severing decisions.
- I provided the parties with an additional opportunity to provide written submissions, including the opportunity to withdraw any of the submissions they had previously provided.

[8] Despite being given the opportunity to do so, neither party provided additional written submissions, nor did they withdraw the submissions previously provided. Consequently, the applicant's only written submission is entirely comprised of arguments about the adequacy of ICBC's efforts to find or recreate the 757-page package of records.<sup>6</sup>

[9] The essence of the applicant's complaint is that ICBC is intentionally withholding records in order to conceal communications between its employees that discuss the applicant and his claims. The applicant says that my decision to not consider his complaint is a "deliberate refusal to engage in the issues in dispute" which he says "is a procedural error that results in the OIPC losing jurisdiction over the inquiry".<sup>7</sup>

[10] For the reasons that follow, I am not persuaded that I should consider the applicant's complaint in this inquiry.

[11] When the OIPC closed the applicant's adequate search complaint file, the OIPC informed the applicant that his complaint about the adequacy of ICBC's search for records is a separate issue from the question of whether ICBC redacted information appropriately under FIPPA.<sup>8</sup> Therefore, from an early stage of these proceedings, the applicant has been aware that his complaint would not included in this review of ICBC's severing decisions.

[12] I understand that after the OIPC closed the applicant's adequate search complaint file, all copies of the 757-page package have been lost. However, the appropriate next step for the applicant to address this concern is to ask the OIPC

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<sup>6</sup> Applicant's submission, December 12, 2024.

<sup>7</sup> Applicant's email to the OIPC, June 12, 2025.

<sup>8</sup> Letter to the Applicant re F23-92261, February 21, 2023.

to re-open his complaint file so that the OIPC's investigation and mediation processes may be completed.

[13] Next, the Notice of Written Inquiry in this matter did not list the applicant's complaint as an issue. That notice advised the parties to review the *OIPC's Instructions for Written Inquiries*, which says that parties may not add new issues without the OIPC's prior permission and that any such request must be made before the date for initial submissions.<sup>9</sup> The applicant did not ask to add this complaint as a new issue before the parties submitted their initial submissions. Furthermore, the applicant did not clearly explain why his complaint should be considered in this inquiry in any of his subsequent correspondence.

[14] Finally, the applicant does not explain in his submission or correspondence how the OIPC would lose jurisdiction over this review if the applicant's complaint is not addressed in this inquiry. I am not aware of any authority that supports this position. Therefore, I am not persuaded that I have lost jurisdiction over this review of ICBC's severing decisions.

[15] Having considered these circumstances, I re-affirm my decision that it is inappropriate for me to consider the applicant's complaint in this inquiry.

[16] I have also considered whether it is fair for me to review ICBC's severing decisions without obtaining further submissions from the applicant. I provided the applicant with an additional opportunity to provide written submissions after I told him that I would not consider his complaint in this inquiry. Despite this additional opportunity, the applicant did not provide any submissions about ICBC's severing decisions. Therefore, I find that it is fair for me to proceed with this review without obtaining further submissions from the applicant.

## ISSUES AND BURDEN OF PROOF

[17] In this inquiry, I must determine whether ICBC is authorized or required to refuse to disclose any of the disputed information under ss. 13(1), 14, 15(1)(c), or 22(1) of FIPPA.

[18] Section 57(1) places the burden on ICBC, which is a public body, to prove that it is authorized to refuse access to the information and records withheld under ss. 13(1), 14, or 15(1)(c).

[19] Under s. 57(2), the applicant has the burden of proving that disclosure of personal information in the records would not be an unreasonable invasion of a third party's personal privacy. However, ICBC has the initial burden of proving the information at issue is personal information.<sup>10</sup>

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<sup>9</sup> Notice of Inquiry, June 21, 2024; Revised Notice of Written Inquiry, November 14, 2024.

<sup>10</sup> Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

## DISCUSSION

### ***Background***<sup>11</sup>

[20] ICBC is a provincial Crown corporation that provides mandatory basic auto insurance in British Columbia. ICBC also administers driver-licensing, including renewing licences, administering driving tests and issuing identification cards.

[21] The applicant was involved in four motor vehicle accidents over a period of several years. Each of the four accidents led to insurance claims with ICBC. Several years later, the applicant signed releases for each of the accidents and as a result, the associated ICBC claim files are now closed.

[22] The applicant asked ICBC to provide him with access, under FIPPA, to copies of any records in ICBC's custody or control containing the applicant's personal information. The applicant also provided a list of various records that he sought access to, all of which related to his underlying ICBC claim files and the motor vehicle accidents that led to those claims.

### ***Records and Information in Dispute***

[23] The responsive records comprise 2,814 pages of documents and ICBC withheld information from approximately half of them.

[24] The records are copies of communications, medical records, transcripts, receipts and other miscellaneous records relating to the applicant's claims with ICBC. ICBC produced copies of all disputed records for my review.

### ***Section 14 – Solicitor Client Privilege***

[25] ICBC applied s. 14 to various records of communications, which were recorded as emails, letters, and notes in ICBC's record-management system.

[26] Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. There are two categories of solicitor-client privilege, being legal advice privilege and litigation privilege.<sup>12</sup> ICBC argues that legal advice privilege applies to the records and information withheld under s. 14.<sup>13</sup> The applicant does not discuss s. 14 or solicitor-client privilege in his submission.

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<sup>11</sup> The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

<sup>12</sup> *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para 26.

<sup>13</sup> ICBC's submission at paras 25-27.

### *Legal Advice Privilege*

[27] Legal advice privilege applies to confidential communications that are part of the continuum of information exchanged between solicitors and clients, if the purpose of the communication is the seeking or giving of legal advice. This includes information the client gives to the lawyer that relates to the advice sought, including purely factual information, and internal memoranda of the client related to the legal advice received and the implications of it.<sup>14</sup>

[28] Not all communications between a client and their lawyer are protected by legal advice privilege, but the privilege will apply if the following conditions are met:

1. There is a communication between a solicitor and their client;
2. The communication entails the seeking or giving of legal advice; and
3. The parties intend the communication to be confidential.<sup>15</sup>

[29] Legal advice privilege, once established, belongs to the client and remains in place indefinitely unless the client waives it.<sup>16</sup>

### *Analysis, s. 14*

[30] ICBC argues that it is plain on the face of the records, that the communications and notes it withholds under s. 14 were intended to be confidential and entail the seeking and giving of legal advice.<sup>17</sup>

[31] Having reviewed the information that was withheld under s. 14, I can see that most of it clearly meets the criteria of legal advice privilege. In these records of correspondence, several ICBC staff members communicated with ICBC's legal counsel for the purpose of seeking or receiving legal advice. Some communications are instructions to legal counsel, which I can see were given on the basis of legal advice that the instructing ICBC employee previously received from the legal counsel.

[32] These communications occurred in the context of sensitive insurance claims that carried a risk of litigation. Additionally, there is nothing to indicate that these communications were shared outside of the lawyer-client relationship. These circumstances satisfy me that the ICBC employees and the lawyers

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<sup>14</sup> *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 (CanLII), at paras. 22-24.

<sup>15</sup> *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 (CanLII), at para 15, citing *Solosky v. The Queen*, 1979 CanLII 9 (SCC), at p. 837; Order F24-58, 2024 BCIPC 68 (CanLII) at para 16.

<sup>16</sup> *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para 37.

<sup>17</sup> ICBC's submission at para 27.

intended their communications to be confidential. ICBC also withheld some information from communications between its staff and lawyers which does not constitute the actual advice given, but is background information that I am satisfied was integral to the advice provided. I find that all of this information is subject to legal advice privilege.

[33] Some records indicate an ICBC employee's intention to seek legal advice about a particular issue. In these instances, other records of communications establish that the advice was actually sought and obtained from a lawyer. Moreover, the information that reveals the intention to seek legal advice, if disclosed, would reveal the nature of the legal advice that was sought. Consistent with the approach taken by past orders, I find that this information is also subject to legal advice privilege.<sup>18</sup>

[34] On the other hand, ICBC has withheld some information under s. 14 that does not meet the requirements of legal advice privilege.<sup>19</sup> This information does not reveal the content of confidential lawyer-client communications, nor does it indicate an intention to seek legal advice that was actually sought. ICBC does not explain how these particular records are subject to legal advice privilege. Without a clear basis to find otherwise, I find that this information is not protected by legal advice privilege. ICBC simultaneously withholds this information under other exceptions to disclosure, which I will address below.

#### *Conclusion, s. 14*

[35] Subject to the exceptions I have identified above, I find that all of the information withheld under s. 14 satisfies the requirements of legal advice privilege. I confirm that ICBC may withhold this information under s. 14 because it is subject to solicitor-client privilege.

#### **Section 13 – Policy advice or recommendations**

[36] ICBC applies s. 13(1) to a large amount of information in the disputed records. The applicant did not discuss s. 13(1) in his submission.

[37] It is unnecessary for me to consider whether s. 13(1) applies to the information that I determined may be withheld under s. 14. Therefore, the analysis below will only apply to the information that was not also withheld under s. 14 or that I determined may not be withheld under s. 14.

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<sup>18</sup> Order F17-23, 2017 BCIPC 24 (CanLII), at para 49; Order F21-63, 2021 BCIPC 72 (CanLII), at para 40.

<sup>19</sup> 505 Set at pp: 33-36, 48, 54-56, 75-77, 81, 98-105, 112-120, 140, 177-178, 241-243, 289-290, 309-313, 412, 419-420, 439, 472; 2,309 Set at pp: 147, 149, 167, 209-210, 398-410, 528-535, 879-899, 1542, 1584, 1592, 1595-1597, 1691, 1692.

[38] Section 13(1) says that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.<sup>20</sup>

[39] Section 13 protects “a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations”.<sup>21</sup>

[40] Section 13 applies not only where the information directly reveals advice or recommendations, but also where knowledge of the information would permit an accurate inference about the advice or recommendations.<sup>22</sup> This extends to factual or background information that is a necessary and integrated part of the advice or recommendation.<sup>23</sup>

### *Analysis, s. 13*

[41] The analysis under s. 13 has two steps. The first step is to determine whether disclosing the withheld information would reveal advice or recommendations developed by or for ICBC. If so, then the second step is to determine whether any of the categories or circumstances listed in s. 13(2) apply to that information, as well as determining whether the record has been in existence for more than 10 years in accordance with s. 13(3). If either ss. 13(2) or 13(3) apply, then ICBC cannot withhold the information under s. 13(1).

### Would disclosure reveal advice or recommendations?

[42] The term “recommendations” includes material relating to a suggested course of action that the one being advised will ultimately accept or reject.<sup>24</sup>

[43] On the other hand, the term “advice” has a broader meaning than “recommendations”. It includes providing relevant considerations, options, analyses, and opinions, including expert opinions on matters of fact. Advice can be an opinion about an existing set of circumstances and does not have to be a communication about a future action.<sup>25</sup>

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<sup>20</sup> *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII) at para 52.

<sup>21</sup> Order 01-15, 2001 CanLII 21569 (BCIPC) at para 22; Order F23-13, 2023 BCIPC 15 (CanLII) at para 16.

<sup>22</sup> Order 02-38, 2002 CanLII 42472 (BC IPC) at 135; Order F17-19, 2017 BCIPC 20 (CanLII) at para 19.

<sup>23</sup> *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) at para 94.

<sup>24</sup> *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII) [Doe], at para 23.

<sup>25</sup> *Doe*, *supra* note #24 at paras. 24-26 and 34; and *College*, *supra* note #12 at paras. 103 and 113.



[44] Past orders have held that s. 13(1) applies to information that would directly reveal advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.<sup>26</sup>

[45] Based on my review of the records, the information that ICBC withheld under s. 13 was recorded in the context of ICBC deciding how to manage its insurance claim files. This information includes records of correspondence between ICBC employees as well as formal reports that ICBC hired professionals to prepare.

[46] In most of the correspondence withheld under s. 13, an ICBC employee presents an intended course of action to another employee for advice or approval. Based on what this information reveals, I find that this is information that permits accurate inferences about the advice that is given. In addition, I find that the responses to these enquiries plainly fall within the meaning of advice or recommendations, depending on the specific response in question.

[47] Some of the information withheld under s. 13 includes background information exchanged between ICBC employees or information that ICBC received from a professional investigator. In these cases, I can see that this information is integral to the advice being provided and would likely reveal the content of the advice that was ultimately provided. For these reasons, I find that the background information ICBC withheld under s. 13 is an integral part of the advice and recommendations that accompany it.

[48] ICBC also withheld information under s. 13(1) that it received through formal investigation processes. I am satisfied that this information constitutes advice because it provided ICBC employees with relevant considerations, options, analyses, and opinions for the purpose of informing ICBC's decisions about claim settlement and litigation strategy.

[49] Despite my findings above, ICBC also withheld some information under s. 13(1) which does not include any advice or recommendations.<sup>27</sup> ICBC also withheld some information that it disclosed elsewhere in the disputed records.<sup>28</sup> ICBC does not clearly or persuasively explain how any of this information constitutes advice or recommendations.

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<sup>26</sup> Order F16-11, 2016 BCIPC 13 (CanLII) at para 21; Order F14-57, 2014 BCIPC 61 (CanLII), at para 14.

<sup>27</sup> 505 Set at pp: 98-105, 112-120, 177-178, 229, 230, 232, 234, 243 (in part), 310 (in part), 439, and 472; 2,309 Set at pp: 95, 139, 141 (in part), 209-210 (in part), 398, 528, 1233, 1588 (in part), 1701, and 2064.

<sup>28</sup> The information withheld from 505 Set at pp: 191-197, 199, and 200 appear unsevered at pp: 201-203 and 206-221. Some of the information withheld from 505 Set at pp: 230 and 232 appears unsevered at pp: 231 and 233.

[50] For example, ICBC argues that some information it withheld under s. 13(1) is factual information provided to ICBC employees that would allow the applicant to draw inferences about the advice or recommendations received.<sup>29</sup> However, my review of this information indicates that some of it only reveals the use of investigators to obtain advice while revealing nothing about the substance of that advice.<sup>30</sup>

[51] ICBC applied other exceptions to almost all of the information that I determined does not constitute advice or recommendations so I cannot describe it in greater detail without first considering whether another exception applies.

Do any of the exceptions in s. 13(2) apply?

[52] Next, I must consider whether any of the circumstances under s. 13(2) apply to the information that I found would reveal advice developed by or for ICBC. Subsection 13(2) identifies certain types of records and information that may not be withheld under s. 13(1).

[53] Neither of the parties discuss the circumstances and categories of information listed in s. 13(2). I have considered whether any of the circumstances set out in s. 13(2) apply to the information that I determined are advice or recommendations and I find that none of those circumstances apply.

Does the exception in s. 13(3) apply?

[54] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. The parties do not discuss s. 13(3) in their submissions.

[55] It is clear to me that s. 13(3) does not apply to the information that I determined to be advice or recommendations. Most of the disputed records include dates which do not establish the passage of ten years. Additionally, the motor vehicle incidents which triggered the applicant's claims with ICBC occurred fewer than 10 years ago. Consequently, I find that s. 13(3) does not apply to any of the disputed information withheld under s. 13(1).

*Conclusion, s. 13*

[56] I conclude that some of the information withheld by ICBC under s. 13(1), which I have not otherwise determined may be withheld under s. 14, constitutes advice or recommendations developed by or for ICBC. ICBC may withhold that information under s. 13(1).

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<sup>29</sup> ICBC's submission at para 23.

<sup>30</sup> 2,309 Set at pp: 147, 149, 151 (in part), 152 (in part), 900, 1592, 1595, 1597, 1662, 1691, and 1692.

***Unreasonable Invasion of Third-Party Personal Privacy – s. 22***

[57] ICBC withheld a large amount of information under s. 22, including some information that was withheld under multiple FIPPA exceptions to disclosure. The applicant did not discuss s. 22 in his submission.

[58] In the s. 22 analysis below, I will not consider any information that I determined ICBC may withhold under ss. 13(1) or 14.

***Analysis, s. 22***

[59] There are four steps in the s. 22 analysis, and I apply each step under the headings that follow.<sup>31</sup>

***Personal Information***

[60] The first step in the s. 22 analysis is to determine whether the information in dispute is “personal information” within the meaning of FIPPA.

[61] Schedule 1 of FIPPA defines personal information as “recorded information about an identifiable individual other than contact information” and contact information as “information to enable an individual at a place of business to be contacted [including] the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”

[62] The information that I am considering includes details about third parties’ insurance claims, insurance status, professional relationships with the applicant and other third parties, medical histories, biographical information, past interactions with the legal system, and written descriptions of what certain third parties said or did. Some, but not all of this information is also about the applicant. ICBC primarily withholds this information from records of correspondence, but some information was withheld from official forms, written statements, and reports.

[63] It is clear on the face of the records that the vast majority of information withheld under s. 22 is about identifiable individuals. However, in a few instances ICBC withheld information that is not about an identifiable individual and ICBC does not explain why it constitutes personal information.<sup>32</sup> I am not satisfied that this information falls within the meaning of “personal information” under FIPPA. Consequently, ICBC is not required to withhold it under s. 22.

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<sup>31</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

<sup>32</sup> 2,309 Set at pp: 508, 509 (in part), 1289, 1290 (in part), and 1588 (in part).

[64] In addition, some information about identifiable individuals is plainly intended to enable a third-party individual to be contacted for business purposes,<sup>33</sup> including a law firm's main phone number and a professional investigator's name, phone and email address.<sup>34</sup> I am satisfied that this information meets the definition of "contact information" described above, so ICBC may not withhold it under s. 22.

[65] There is some information withheld under s. 22 that could be considered contact information under other circumstances, such as email addresses and names. In this matter, however, that information reveals that certain medical practitioners, insurance administrators, and legal professionals were used by individual third parties in the context of their insurance claims and physical rehabilitation. Therefore, my findings above respecting contact information do not extend to all instances of professionals' names, phone numbers, and email addresses that ICBC withholds under s. 22.

[66] In summary, I find that most of the information ICBC withholds under s. 22 is personal information. Additionally, I determined that some of the withheld information is not personal information because it not about an identifiable individual or because it is contact information, so s. 22 does not apply to it.

*Not an Unreasonable Invasion of Privacy, s. 22(4)*

[67] The second step of the analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If the information falls into one of the circumstances listed in s. 22(4), then s. 22(1) does not apply and ICBC cannot withhold it on that basis.

[68] ICBC says that there are no applicable s. 22(4) circumstances.<sup>35</sup> The applicant does not discuss s. 22(4) in his submission. Having considered the nature of the information withheld under s. 22, I find that s. 22(4)(e) warrants further consideration.

Information About a Third Party's Position or Functions – s. 22(4)(e)

[69] Section 22(4)(e) says that disclosure of third-party personal information is not an unreasonable invasion of third-party personal privacy if the information is about the third party's position, functions, or remuneration as an officer or employee of a public body.

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<sup>33</sup> 505 Set at pp: 1, 243 (in part), 310 (in part), 312-313 (in part); 2,309 Set at p 900.

<sup>34</sup> The identity and phone number of the professional investigator was disclosed in the 2,309 Set at p 273.

<sup>35</sup> ICBC's submission at para 38.

[70] Past orders have found that s. 22(4)(e) applies to information about a public body employee's job duties in the normal course of work, including objective, factual information about what the individual said or did while discharging their job duties. However, if the information at issue appears in a context that reveals more than just the third party's name, job title, duties, functions, remuneration, position, or what they did in the normal course of their work, then s. 22(4)(e) may not apply.<sup>36</sup>

[71] In this matter, there are many records of correspondence involving ICBC employees from which some information has been severed under s. 22. However, the personal information at issue is not purely about the actions of third-party ICBC employees. Instead, this information is about the personal affairs of individuals affected by various insurance claims ICBC administered. Therefore, notwithstanding the fact that the severed personal information was discussed by ICBC employees in the normal course of performing their job duties, I find that s. 22(4)(e) does not apply on the basis that the information is, in essence, about the personal affairs of third parties who were not employed by ICBC.

*Section 22(3) – Presumed to be an Unreasonable Invasion of Personal Privacy*

[72] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

[73] ICBC argues that ss. 22(3)(a), (d), and (f) apply to the disputed information.<sup>37</sup> I will consider each of these provisions.

Medical, Psychiatric or Psychological History – s. 22(3)(a)

[74] Section 22(3)(a) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation. ICBC argues that some of the information it severed under s. 22 includes third parties' medical information.

[75] Based on my review of the withheld information, I can see that it includes some details about the injuries, treatments, medical and psychological status of third parties recorded in the context of insurance claim administration and litigation. This information plainly relates to third parties' medical histories, diagnoses, conditions and treatments, so I find that s. 22(3)(a) applies to it.

<sup>36</sup> Order F23-28, 2023 BCIPC 32 (CanLII), at paras 41-42.

<sup>37</sup> ICBC's submission at paras 39-42.

Consequently, disclosing this information is presumptively an unreasonable invasion of those third parties' personal privacy.

Employment, Occupational or Educational history – s. 22(3)(d)

[76] Section 22(3)(d) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the employment, occupational, or educational history of a third party. ICBC argues that s. 22(3)(d) applies to some of the information it withheld under s. 22 because it relates to third parties' employment history and training.<sup>38</sup>

[77] I can see that a substantial portion of the withheld personal information is about the employment and occupational history of third parties that do not work for ICBC. This information appears in the context of ICBC assessing the third parties' employability, past earnings, total history of employment and occupational rehabilitation after those third parties suffered motor vehicle collisions. This information plainly relates to third-party employment history, and I conclude that s. 22(3)(d) applies to it.

[78] Very little of the personal information is about the employment history of ICBC employees. This information is limited to brief statements about the reasons that specific employees were absent from their regular working hours. I find that this information is clearly about the employment history of the relevant third parties so s. 22(3)(d) applies to it.

[79] In accordance with s. 22(3)(d), I conclude that disclosing any of the information I determined relates to third-party employment history is presumptively an unreasonable invasion of the relevant third parties' personal privacy.

Third Party Financial Information, s. 22(3)(f)

[80] Section 22(3)(f) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[81] ICBC argues that s. 22(3)(f) applies to details about a third party's motor vehicle insurance coverage and policy information. ICBC says that such information includes policy dates, rate class, type of use, third-party liability limit, collision deductible and comprehensive deductible, because this information describes a third party's finances and financial history.<sup>39</sup>

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<sup>38</sup> ICBC's submission at para 41.

<sup>39</sup> ICBC's submission at para 42.

[82] I have reviewed all of the information ICBC withholds under s. 22 and I can see that approximately half of it relates to financial details of third parties' insurance policies, including all of the specific types of information noted above. Consistent with the approach taken in past orders, I find that this information is about third parties' finances, liabilities, financial history and activities.<sup>40</sup> Therefore, under s. 22(3)(f) I find that disclosing such information is presumptively an unreasonable invasion of the relevant third parties' personal privacy.

### *Section 22(2) – All Relevant Circumstances*

[83] The next step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this stage that the applicant may rebut the presumptions created under ss. 22(3)(a), (d), and (f).

[84] ICBC does not argue that any specific provision of s. 22(2) supports withholding the information I am considering. However, ICBC argues that it has already disclosed any information where it is clear on the face of the claim file that the applicant already knows that information.<sup>41</sup>

[85] While the parties did not discuss any of the specific circumstances listed at s. 22(2), in my view, the nature of the personal information at issue requires some consideration of ss. 22(2)(c) and (h) as well as some additional unlisted circumstances.

### Relevant to a fair determination of the applicant's rights, s. 22(2)(c)

[86] Section 22(2)(c) asks whether the withheld personal information is relevant to a fair determination of the applicant's rights. If it does, then this is a circumstance that favours disclosing that information. Previous orders have held that an essential element required to engage s. 22(2)(c) is that the right in question must relate to a proceeding that is underway or contemplated.<sup>42</sup>

[87] The withheld personal information relates to the applicant's insurance claim files. However, each of the applicant's claims with ICBC has already been settled.<sup>43</sup> It is not clear, nor does the applicant explain, how the personal information at issue is relevant to a fair determination of his rights in the context of his claims now that those claims are settled.

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<sup>40</sup> For example, see Order F23-17, 2023 BCIPC 20 (CanLII) at para 77; and Order F18-04, 2018 BCIPC 4 (CanLII) at para 126.

<sup>41</sup> ICBC's submission at paras 44-45.

<sup>42</sup> Order F16-36, 2016 BCIPC 40 at paras 40-51; Order F24-100, 2024 BCIPC 114 (CanLII) at para 106.

<sup>43</sup> ICBC's submission at para 12.

[88] The applicant's request to the OIPC to conduct this review of ICBC's severing decision includes a claim that an ICBC staff member threatened to expose the applicant's allegedly unlawful conduct, and that the applicant viewed this as an improper attempt to intimidate him.<sup>44</sup> The applicant does not point to any proceedings that are underway or contemplated, which would address the threat he describes.

[89] For the reasons given above, I find that s. 22(2)(c) does not favour disclosing any of the disputed personal information.

Unfair Damage to Reputation, s. 22(2)(h)

[90] Section 22(2)(h) asks whether disclosing the disputed personal information would unfairly damage the reputation of any person referred to in the records. If so, this is a circumstance that favours withholding the information.

[91] Section 22(2)(h) has two requirements. First, the information must damage an individual's reputation. Second, the damage to that individual's reputation must be unfair.<sup>45</sup>

[92] There is some personal information that I did not find to be subject to a presumption under ss. 22(3)(a), (d), or (f). Nearly all of this information is about third parties who were involved, to varying degrees, in various insurance claims ICBC administered. It is information that was recorded in the context of ICBC employees discussing the credibility of third parties and the validity of information they supplied. The subjects discussed vary widely but generally relate to third parties' past interactions with the legal system and unlawful activities.

[93] I find that disclosing this information would damage the reputation of the relevant third parties. The nature of this information is inherently disparaging to those third parties' reputations because it explores the possibility that the third parties are criminals.

[94] ICBC employees discussed this information for the purpose of administering insurance claims within ICBC's internal administrative processes. There was little to no opportunity for the third parties to answer allegations of wrongdoing and many of the issues discussed did not lead to any finding of wrongdoing at all. Under these circumstances, I find that any reputational damage following disclosure would be unfair to the relevant third parties.

[95] These circumstances satisfy me that disclosure would unfairly damage the reputation of one or more third parties referred-to in the records. Therefore, I find

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<sup>44</sup> Applicant's request for review, February 14, 2023, at p 3.

<sup>45</sup> Order F19-02, 2019 BCIPC 2 at para 69.



that s. 22(2)(h) weighs against disclosing the personal information I am considering.

#### Applicant's Own Personal Information

[96] If the withheld information is an applicant's own personal information, this will weigh in favour of disclosure.<sup>46</sup>

[97] A small amount of personal information is simultaneously about the applicant and one or more third parties. The fact that it is about the applicant weighs somewhat in favour of disclosing it. Other withheld personal information is not about the applicant at all, which weighs neither for nor against disclosure. Finally, a very small amount of withheld personal information is only about the applicant, which weighs strongly in favour of disclosing that information.

#### *Conclusion, s. 22(1)*

[98] I determined that almost all of the disputed information ICBC withheld under s. 22 is the personal information of one or more third parties. On the other hand, I also found that some information is not about an identifiable individual, or that it is contact information, which ICBC may not withhold under s. 22.

[99] I found that most of the disputed personal information is subject to a presumption that disclosure would be an unreasonable invasion of third parties' personal privacy under s. 22(3)(a), (d), or (f) because it is about those third parties' employment history, medical history, or financial affairs.

[100] Turning to the circumstances set out under s. 22(2), I determined that the withheld personal information is not relevant to a fair determination of the applicant's rights. For nearly all of the personal information that is not subject to a presumption under s. 22(3), I found that disclosure would unfairly damage the reputation of one or more persons referred-to in the disputed records, which weighs against disclosing it. On the other hand, some of the withheld information is about the applicant, which favours disclosure.

[101] Taking all relevant circumstances into consideration, I draw the following conclusions.

[102] I find that the presumptions under s. 22(3)(a), (d) and (f) are not rebutted and disclosing any of the personal information to which they apply would be an unreasonable invasion of one or more third parties' personal privacy.

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<sup>46</sup> Order F10-10, 2010 BCIPC 17 (CanLII) at para 37; Order F20-13, 2020 BCIPC 15 (CanLII) at para 73.

[103] In addition, I find that it would be an unreasonable invasion of third parties' personal privacy to disclose the personal information that was not subject to a presumption under s. 22(3) largely because disclosure would unfairly damage the reputation of one or more third parties.

### **Section 15 – Harm to Law Enforcement**

[104] ICBC applied s. 15(1) to various information in the disputed records. Specifically, ICBC argues that s. 15(1)(c) authorizes it to withhold this information because disclosure would harm the effectiveness of investigative techniques and procedures that are currently used, or likely to be used, in law enforcement.<sup>47</sup> The applicant did not discuss s. 15 in his submission.

[105] I previously determined that some information withheld under s. 15(1) was properly withheld under ss. 13, 14, or 22(1). Therefore, in the s. 15(1) analysis below I will only consider whether s. 15(1) applies to the information that was not properly withheld under another exception to disclosure.<sup>48</sup>

#### *Harm to Investigative Law Enforcement Techniques, s. 15(1)(c)*

[106] The relevant parts of s. 15(1) state as follows:

**15 (1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to...

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,  
...

**"law enforcement"** means

(a) policing, including criminal intelligence operations,

(b) investigations that lead or could lead to a penalty or sanction being imposed, or

(c) proceedings that lead or could lead to a penalty or sanction being imposed;

[107] Past orders have interpreted the term "investigative techniques and procedures" as applying to "technologies and technical processes used in law enforcement".<sup>49</sup> I will apply this interpretation in the analysis below.

<sup>47</sup> ICBC's submission at paras 28 and 33.

<sup>48</sup> The records containing this information appear at: 505 Set at p 472; 2,309 Set at pp: 95, 105, 139, 141, 151, 152, 167, 188, 190, 1542, 1582, 1586, 1588, 1589, 1636, 1652, 1664, 1671, 1701, 1702, and 2064.

<sup>49</sup> Order 00-08, 2000 CanLII 9491 (BC IPC), p 4.

*Analysis, s. 15(1)(c)*

Are ICBC's investigative activities considered "law enforcement"?

[108] ICBC explains that its "Special Investigation Unit" (SIU) investigates matters of potential insurance fraud and may refer any findings of insurance fraud to the criminal justice branch for possible criminal charges.<sup>50</sup>

[109] ICBC's arguments under s. 15(1) discuss the possibility of harm to SIU's investigative techniques and procedures. ICBC does not argue that disclosure can be reasonably expected to harm any other entity that meets the definition of "law enforcement" under FIPPA.

[110] ICBC is a public body with many administrative functions under the *Insurance Corporation Act* that distinguish it from a private for-profit insurance company, including the fact that ICBC acts as an agent for the Province of British Columbia.<sup>51</sup> This legislative scheme provides ICBC with an effective monopoly on compulsory automotive insurance in BC. Therefore, it is logical to expect that in BC, evidence of automotive insurance fraud is gathered, assessed, and compiled by ICBC before it is transmitted to the authorities in the criminal justice system for possible prosecution.

[111] I am satisfied by these circumstances that ICBC's activities, specifically the activities of SIU in relation to insurance fraud, constitute an investigation that could lead to a penalty or sanction being imposed. Therefore, I conclude that this activity meets the definition of "law enforcement" for the purpose of s. 15(1)(c).

Can disclosure be reasonably expected to lead to the expected harm?

[112] The "reasonable expectation of harm" standard is "a middle ground between that which is probable and that which is merely possible." As the public body, ICBC must establish that the risk of harm resulting from disclosure is well beyond the merely possible or speculative, but it does not need to prove on a balance of probabilities that the harm will actually occur if the information is disclosed.<sup>52</sup>

[113] ICBC says that SIU reviewed the applicant's claim files. ICBC argues that it withholds information obtained by SIU to protect the SIU's investigative

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<sup>50</sup> ICBC's submission at para 33; Affidavit #1 of CA at para 16.

<sup>51</sup> *Insurance Corporation Act*, RSBC 1996, c 228, s 13.

<sup>52</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, paras 201 and 206; *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31, paras. 52-54.

techniques and procedures, whose effectiveness ICBC says would be hampered by disclosure.<sup>53</sup>

[114] Some information withheld under s. 15(1) only reveals that ICBC referred the applicant's claim files to SIU for further investigation or that SIU produced an investigative report. ICBC openly disclosed the fact of its investigation in its submission for this inquiry,<sup>54</sup> so the fact of the investigation is already known to the applicant. Additionally, ICBC does not explain how the existence of SIU's investigation and report reveals anything about SIU's investigative techniques or procedures. For these reasons, I find that disclosing the information that reveals SIU's investigation into the applicant cannot be reasonably expected to harm the effectiveness of investigative techniques or procedures used in law enforcement. Consequently, ICBC may not withhold this information under s. 15(1).<sup>55</sup>

[115] On the other hand, I find that some of the information withheld under s. 15(1) could, if disclosed, be reasonably expected to harm the effectiveness of SIU's investigative techniques or procedures. Some of this information reveals the circumstances that trigger an escalation of investigative procedures. Other information reveals the initial and most common sources of information that SIU collects. I can see that disclosing this information would enable parties to take steps that lessen the likelihood of SIU being asked to investigate at all, or that frustrate and impede SIU's ability to access information from certain sources. I am satisfied that there is a reasonable expectation that such harm to SIU's investigative techniques and procedures would result from disclosure.<sup>56</sup>

#### *Conclusion, s. 15(1)(c)*

[116] I find that ICBC may withhold some, but not all, of the information it withholds under s. 15(1)(c) because disclosure can be reasonably expected to harm the effectiveness of investigative techniques and procedures currently used in law enforcement.

### **CONCLUSION**

[117] For the reasons given above, I make the following order under s. 58 of FIPPA:

1. Subject to item #2 below, ICBC is authorized, in part, to refuse access to the information it withheld under s. 14.

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<sup>53</sup> ICBC's submission at para 33; Affidavit #1 of CA at para 16.

<sup>54</sup> *Ibid.*

<sup>55</sup> 505 Set at p 472; 2,309 Set at pp: 115, 139, 141, 152 (in part), 190 (in part), 1537 (in part), 1586 (in part), 1588 (in part), 1652, 1664, 1671, 1701, and 2064.

<sup>56</sup> 2,309 Set at pp: 95, 105, 112-114 (in part), 151, 152 (in part), 167, 188, 190 (in part), 1542, 1582, 1589, 1636, and 1647.

2. ICBC is not authorized under s. 14 to refuse access to the information it withheld from the records located at: 505 Set on pages 33-36, 48, 54-56, 75-77, 81, 98-105, 112-120, 140, 177, 178, 241-243, 289, 290, 309-313, 412, 419, 420, 439, 472; and 2,309 Set on pages 147, 149, 167, 209, 210, 398-410, 528-535, 879-899, 1542, 1584, 1592, 1595-1597, 1691, and 1692.
3. Subject to item #4 below, ICBC is authorized, in part, to refuse access to the information that I considered under s. 13 at paragraph #37 above.
4. ICBC is not authorized under s. 13(1) to refuse access to the information it withheld from the records located at: 505 Set on pages 98-105, 112-120, 140, 177-178, 191-197, 199-200, 229-230, 232-234, 243 (in part), 310 (in part), 439, and 472; and 2,309 Set on pages 95, 139, 141 (in part), 147, 149, 152 (in part), 209, 210 (in part), 398, 528, 900, 1233, 1588 (in part), 1592, 1595, 1597, 1662, 1691-1692, 1701, and 2064.
5. Subject to item #6 below, ICBC is required, in part, to refuse access to the information that I considered under s. 22 at paragraph #58 above.
6. ICBC is not required under s. 22 to refuse access to the information it withheld from the records located at: 505 Set on pages 1, 243 (in part), and 310 (in part); and 2,309 Set on pages 508, 509 (in part), 900, 1289, 1290 (in part), 1588 (in part), 1647 (in part), and 1652.
7. Subject to item #8 below, ICBC is authorized, in part, to refuse access to the information the information that I considered under s. 15(1) at paragraph #105 above.
8. ICBC is not authorized under s. 15(1) to refuse access to the information it withheld from the records located at: 505 Set on page 472; and the 2,309 Set on pages 139, 141, 152 (in part), 190 (in part), 900, 1537 (in part), 1586 (in part), 1588 (in part), 1652, 1664, 1671, 1701, and 2064.
9. I require ICBC to give the applicant access to the information that it is not required or authorized to withhold under ss. 13, 14, 15(1), or 22, which I have highlighted in green, in a copy of the records that will be provided to ICBC along with this order.
10. ICBC must concurrently copy the OIPC registrar of inquiries when it provides the applicant with the information described at item #9 above and all accompanying cover letters.

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Pursuant to s. 59(1) of FIPPA, ICBC is required to comply with this order by January 22, 2026.

December 8, 2025

**ORIGINAL SIGNED BY**

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Alexander R. Lonergan, Legal Counsel

OIPC File No.: F23-92290