



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

Order 03-36

**INSURANCE CORPORATION OF BRITISH COLUMBIA**

Michael T. Skinner, Adjudicator  
October 10, 2003

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**Summary:** The applicant sought from the public body information that might confirm the applicant's suspicions that the public body was systematically biased against him. The public body withheld from applicant under s. 19 certain information, on the basis of a perceived threat by the applicant to the safety of public body employees. Public body submitted evidence of applicant's past behaviour, but such evidence was insufficient to satisfy the test of reasonable expectation of threat set out in s. 19(1). Applicant's personal information withheld under s. 22 is ordered disclosed. Other s. 22 severances upheld relating to applicant's family members.

**Key Words:** reasonable expectation of threat to safety – unreasonable invasion of personal privacy.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 19(1), 22(1), 22(2)(a), (e) and (h), 22(3)(a), (d) and (f).

**Authorities Considered: B.C.:** Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43; Order 02-17. [2002] B.C.I.P.C.D. No. 17.

## 1.0 INTRODUCTION

[1] The matter I am considering in this inquiry began with an applicant's request, by way of two undated letters, to the Insurance Corporation of British Columbia ("ICBC") for access to records pertaining to him. In October 2002, ICBC responded by releasing records in severed form, although one of the records was withheld in its entirety. Those records, to which ICBC has applied ss. 19 and 22 of the Act, are the subject of this order. In November 2002, the applicant requested that this Office review ICBC's actions under the *Freedom of Information and Protection of Privacy Act* ("Act"). During mediation by this Office, the applicant's request was narrowed significantly and, by March 2003, at

which time the applicant requested that an inquiry be held, only three records remained in issue. As the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act, I have dealt with this inquiry by making all findings of fact and law and any necessary order under s. 58 of the Act.

## 2.0 ISSUES

[2] The issues before me in this inquiry are as follows:

1. Does s. 19(1) authorize ICBC to refuse to disclose information?
2. Does s. 22(1) require ICBC to refuse to disclose information?

[3] Under s. 57(1) of the Act, it is up to ICBC to prove that the applicant has no right of access to the information withheld under s. 19(1). Under s. 57(2), it is up to the applicant to prove that disclosure of the information withheld under s. 22 would not be an unreasonable invasion of a third party's personal privacy.

[4] A portion of ICBC's evidence was (properly in my view) provided *in camera*.

## 3.0 DISCUSSION

[5] **3.1 Description of the Records** – The records at issue contain information about both the applicant and his daughter. The context within which the records are found is a motor vehicle injury claim brought by the applicant's daughter. The applicant states at p. 1 of his initial submission that his two daughters attended a meeting with an ICBC adjuster to provide collision information and, in the course of the meeting, the ICBC adjuster made disparaging remarks about the applicant. The applicant included with his submission statements about the meeting prepared by each of his daughters. I quote here the relevant section from each statement, beginning with the statement of the daughter who was the accident claimant:

I spoke to [name of adjuster] about my claim and he had relayed some discouraging remarks about my father that had upset me a great deal. He had informed my sister and I he wished that my father was present during this meeting so that he 'could calm him down.' When I asked to what he was referring to, he said he was told my father 'gets upset and does not like ICBC in general and everyone takes the brunt of it.' I personally felt what he said was unprofessional and prejudicial and uncalled for.

[6] The second daughter said this:

The adjuster [name of adjuster] made a remark, 'too bad your Dad didn't come in.' I asked him, 'why should he come in, he wasn't involved in the accident?' ... We once again asked [the adjuster] about his statement concerning my Dad. He said, 'He [name of father] doesn't like ICBC and others get the brunt of this.' ... I didn't think he had any business discussing my dad with us or anyone else without him being present or to the fact he'd never met him before.

[7] The daughters informed the applicant about the adjuster's comments. The applicant says he became concerned about possible systemic bias against him and states that he became suspicious about "cross claim information" being exchanged about him within ICBC. He states that he called ICBC to ask how the adjuster could have acquired the information to make such statements and was told "such an exchange wouldn't happen."

[8] The applicant thereafter made his request for records, specifically seeking "private notes passed on from ICBC adjusters to other adjusters and statements of a prejudicial nature, left on open chat lines between adjusters dating back to 1990." The applicant supplemented this request by seeking the Claims Work Management System ("CWMS") notes from specific claims files in which he or his daughter had been, or continue to be, involved.

[9] ICBC disclosed more than 400 pages of records in response to the applicant's request and severed or withheld records under ss. 14, 17, 19 and 22 of the Act. As noted previously, only three records remain at issue. Only ss. 19 and 22 are at issue in this inquiry.

[10] **3.2 Threat to Safety** – The relevant portion of s. 19 of the Act reads as follows:

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

- (a) threaten anyone else's safety or mental or physical health, or
- (b) interfere with public safety.

[11] In ICBC's initial submission, it argues "the applicant has in the past exhibited violent and abusive behaviour when dealing with ICBC staff" (para. 4). ICBC also states that "the records withheld pursuant to s. 19 are ICBC file notes which staff at the ICBC claim centre fear could, if released to the Applicant, anger him and cause him to react violently toward staff handling his daughter's claim" (para. 5).

[12] ICBC's evidence consists of affidavits submitted *in camera* attesting to the circumstances of the applicant's alleged violent and abusive behaviour. On reviewing the affidavits, I am satisfied that the applicant did at one time exhibit aggressive and abusive behaviour in dealing with employees of ICBC. While he has not physically assaulted an employee of ICBC, there is no question that his behaviour was intimidating – and the applicant has admitted this in his own submission.

[13] The applicant, on the other hand, submitted a reply pointing out that his indiscretions stemmed from a 1990 claim, which included a wage loss component in respect of which he felt he was dealt with unfairly by ICBC. He states, at p. 5 of his reply submission:

... the adjuster [name omitted] on a whim would cancel the benefits at any time he chose to apply financial pressure and distress to the family of six. The adjuster on numerous times would force my wife to tears and extreme distress when he had a meeting with her. ... I regret that I stooped to the level of ICBC adjusters, but the duress and stress and financial hardship of the continuing circumstances had to be changed.

[14] The applicant also argues, at the same page of his reply submission,

The adjuster had us filmed and followed continuously, getting reports filed by a very poor quality of investigator. I had to phone I.C.B.C. and tell them they needed a more responsible investigator, as the one they were using was driving recklessly and in a manner that could create a collision, forcing a new claim to be filed.

[15] Is the evidence in this inquiry sufficient to uphold ICBC's application of s. 19(1)? ICBC argues that Order 02-17, [2002] B.C.I.P.C.D. No. 17, sets the standard which it must meet:

[19] It is not necessary to establish a reasonable expectation of harm for the purposes of s. 19(1)(a). The section calls for a reasonable expectation of a threat to health or safety. ... There is evidence of a pattern of behaviour on the applicant's part that strongly supports the finding that the necessary reasonable expectation under s. 19(1)(a) has been established. (Order 02-17, para. 19)

[16] Although the affidavits submitted by ICBC attest persuasively to the fact that the applicant may have – or may have had, given the age of the incident in question – an anger management problem (or perhaps that the applicant behaves most aggressively where the interests of his family are involved), I am not persuaded that ICBC has made its case in this inquiry. I am satisfied that the information set out in the affidavits submitted by ICBC is well known to the applicant – after all, he is the subject of the incidents described. More importantly, the information *about the applicant* that has been severed or withheld in the disputed records is essentially historical information known by the applicant. In my view, given his dealings with ICBC in or about 1990 to 1992, he, or any person in his position, should not be surprised that employees talk about him and communicate concerns to one another when they learn that a colleague will be dealing with the applicant or a member of the applicant's family.

[17] I am also concerned about the paucity of evidence presented by ICBC concerning the applicant's current conduct. In my view, for s. 19 to apply, there must be some reasonable case made that the conduct which is "expected to threaten anyone's safety or mental health" can be presumed to be a continuing matter, or that past incidents can be taken as a reliable predictor of future behaviour. I note that ICBC's submission focusses on behaviour in the past (initial submission, p. 2; affidavit of Norman Ridley, para. 5), with no substantive evidence relating to the applicant's conduct over the last ten years. The applicant argues that ICBC staff "fail to note no such [threatening] actions since the

first claim, although the applicant has been in their office at least four times”. I note the evidence of the applicant’s daughters (excerpts from which are set out above), who stated that the adjuster with whom they met had said that he wished the daughters had brought their father with them, so he could “calm him down.” This does not suggest a threat or perception of it by that adjuster, since it could equally suggest that the applicant did not pose a threat to the adjuster, who indicated an interest in speaking to him.

[18] In light of all the evidence, and applying the approach indicated in Order 02-17 and other decisions respecting s. 19(1), I find that ICBC is not authorized by s. 19(1) to withhold information.

[19] **3.3 Unreasonable Invasion of Personal Privacy** – The next issue is whether s. 22 requires ICBC to refuse disclosure of certain personal information. The relevant parts of s. 22 follow below:

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
  - (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal privacy the head of a public body must consider all the relevant circumstances, including whether
    - (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
    - ...
    - (e) the third party will be exposed unfairly to financial or other harm,
    - ...
    - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
  - (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if
    - (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,
    - ...

[20] The personal information severed or withheld from the records at issue concerns the applicant, the third-party accident claimant – who the applicant knows is his daughter – and various employees of ICBC. I will consider the application of s. 22 to each of these parties.

***The applicant's personal information***

[21] As noted previously, the information about the applicant is his personal information, unless an applicable exception in the Act can be invoked. ICBC did not submit any argument in this respect, to be applied in the event the s. 19 submission failed. The material before me does not support a finding that another individual's personal privacy will be invaded, much less unreasonably, if the information at issue is released to the applicant. I therefore find he is entitled to those portions of the records that deal specifically with him.

***The daughter's personal information***

[22] The information about the daughter is her personal information. The fact that the applicant is her father does not give him the right to her information by virtue of them being related. The applicant therefore stands in the position of a third party in seeking information concerning his daughter. While the daughter is at liberty either to make her own request for records or consent in writing to the disclosure of her personal information, there is no evidence that she has consented in writing as contemplated by s. 22(4)(a).

[23] ICBC argues that the information pertaining to the daughter “relates to dealings between a claimant and an adjuster in circumstances where there must be a reasonable expectation of confidentiality.” I find that ss. 22(3)(a), (d) and (f) are applicable to information in the disputed records. I also find that none of the relevant circumstances, including those set out in s. 22(2), applies in this case. I find that disclosure of the daughter's personal information would constitute an unreasonable invasion of her privacy.

***ICBC employees' identifying information***

[24] In like manner, I consider that disclosure of the names of ICBC employees, in the context of reports of the applicant's behaviour, would not be an unreasonable invasion of their personal privacy. The following passage from Order No. 330-1999, [1999] B.C.I.P.C.D. No. 43, at p. 13, is useful here:

The author's name – which is already known to the applicant, according to the Ministry – is found in the various e-mails. So is his job title within the Ministry, his work telephone and fax numbers, and a Website apparently associated with part of the Ministry. Some of this information technically qualifies as “personal information” about the author, but the personal information is work-related. The e-mails do not, to say the very least, include recorded information about the author's personal life. Section 22(4)(e) of the Act says that it “is not an unreasonable invasion” of the author's personal privacy if personal information is

disclosed about his “position” or “functions” as a Ministry employee (which would entail disclosing the author’s name as well). Even if there is personal information of the author in the e-mails that is not covered by s. 22(4)(e), it is my view that disclosure of the other personal information would not unreasonably invade the author’s personal privacy.

[25] ICBC has not advanced any argument that disclosure of the disputed information would unreasonably invade the personal privacy of its employees. Nothing in the circumstances of this case indicates that any of the presumed unreasonable invasions of personal privacy under s. 22(3) is raised. Nor do any of the relevant circumstances, including under s. 22(2), support the finding that the ICBC employees’ identifying information is required to be withheld under s. 22.

#### **4.0 CONCLUSION**

[26] As I have found that ICBC is neither authorized nor required to refuse access to the disputed information under section 58(2)(a) of the Act, I require ICBC to give the applicant access to the disputed information. As an exception to this, under s. 58(2)(c) of the Act, I require ICBC to refuse to disclose the personal information of the applicant’s daughter found in the disputed records, as shown on the copy of the records delivered to ICBC with its copy of this order.

October 10, 2003

#### **ORIGINAL SIGNED BY**

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Michael T. Skinner  
Adjudicator