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Order F18-42

## INSURANCE CORPORATION OF BRITISH COLUMBIA

Chelsea Lott  
Adjudicator

October 3, 2018

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**Summary:** An applicant requested from ICBC access to a list of Robbins Parking employees, who were authorized under an information sharing agreement to access information about vehicle owners. ICBC provided the applicant with a letter from the parking company, but withheld employee names and a cell phone number under s. 22 (disclosure harmful to personal privacy) of FIPPA. The adjudicator found that s. 22 did not apply.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 22.

### INTRODUCTION

[1] This inquiry arises from the applicant's request to the Insurance Corporation of British Columbia (ICBC) for access to the list of "authorized users" submitted by Robbins Parking Service Inc. (Robbins) to ICBC pursuant to their information sharing agreement. ICBC disclosed a letter from Robbins, but withheld names and a phone number pursuant to s. 22 (harm to third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review ICBC's decision. Mediation did not resolve the issues in dispute and the applicant requested an inquiry.

[2] After the close of submissions, I gave notice of the inquiry to Robbins under s. 54(b) of FIPPA, but Robbins declined to participate in this inquiry.

## ISSUE

[3] The sole issue is whether ICBC is required under s. 22 of FIPPA to refuse access to the requested information. The applicant has the burden of proving that disclosure of personal information would not be an unreasonable invasion of third party personal privacy under s. 22.<sup>1</sup>

## DISCUSSION

### ***Background***

[4] ICBC has an information sharing agreement (ISA) with Robbins.<sup>2</sup> The ISA provides Robbins access to personal information held by ICBC about the owners of vehicles which have been issued parking tickets by Robbins. Under the ISA, Robbins is only allowed to permit access to its employees who need the information in order to carry out collection of unpaid tickets. Robbins is required to provide ICBC with a list of the Robbins' employees authorized to access the ICBC database (Authorized Employees). The list of Authorized Employees is in a letter from Robbins' general manager to ICBC. ICBC has withheld the names of the Authorized Employees and the cell phone number of the general manager.

[5] The applicant devotes a significant portion of his submissions arguing that ICBC and Robbins are not following the terms of the ISA and as a result not adequately protecting his personal privacy. If the applicant believes this to be the case, it is open to him to make a complaint to the OIPC on the matter. However, his complaint is not at issue in this inquiry.

### ***Section 22 – harm to third party personal privacy***

[6] Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy. In Order 01-53, former Commissioner Loukidelis set out the manner in which s. 22 is to be applied.<sup>3</sup> I have followed the same analytical framework in this case.

#### *Personal information*

[7] The first question is whether the disputed information is "personal information." Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information." 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

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<sup>1</sup> Section 57(2).

<sup>2</sup> The ISA is at appendix 2 to ICBC's submissions.

<sup>3</sup> 2001 CanLII 21607 (BC IPC) at p. 7.

telephone number, business address, business email or business fax number of the individual.”<sup>4</sup>

[8] The information in dispute is clearly about identifiable individuals; the issue is whether it is “contact information.” The applicant argues that ICBC required the list of names so that it could contact the Authorized Employees at their workplace to discuss any compliance issues and, therefore, the information falls within the definition of “contact information.” ICBC says that the personal information is not to “enable members of the public to contact them at their place of business” but does not otherwise address whether it is contact information.<sup>5</sup>

[9] I find that the cell phone number of the Robbins’ general manager is contact information, as he provided it to ICBC to enable ICBC to contact him at work. This is evidenced by the record. In the general manager’s letter to ICBC, he provides his phone number to ICBC and invites ICBC to contact him with any questions. ICBC describes the cell phone as a personal cell phone; however, in an email in evidence, the general manager states that the number belongs to a cell phone that was issued to him by Robbins.<sup>6</sup> He says further, “[t]echnically its [sic] not my personal cell phone but I do carry it all the time. For matters that are not urgent I give out my direct line at the office.”<sup>7</sup> Based on this evidence, and the context in which the number appears, I find that the cell phone number is contact information. Therefore, s. 22 does not apply to it.

[10] However, I find that the names of Authorized Employees are not contact information. I disagree with the applicant’s suggestion that Robbins provided the names of the Authorized Employees in order for ICBC to contact those individuals. In his letter, the general manager provides only his phone number, not the phone numbers of the Authorized Employees, and invites ICBC to contact him with any questions. In addition, the general manager is listed in the ISA as Robbins’ “Compliance Representative” and has responsibility to ensure the Authorized Employees are following the terms of the ISA.<sup>8</sup> Thus, it makes sense that the general manager is ICBC’s contact at Robbins for any compliance matters and not the Authorized Employees. Therefore, I find that the names of the Robbins employees are their personal information and not contact information.

#### *Section 22(4) – not an unreasonable invasion of privacy*

[11] Section 22(4) of FIPPA sets out a number of categories of information for which disclosure is not an unreasonable invasion of a third party’s personal

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<sup>4</sup> See schedule 1 of FIPPA for these definitions.

<sup>5</sup> ICBC submissions at para. 19.

<sup>6</sup> Email dated April 5, 2018 at appendix 4 to ICBC submissions.

<sup>7</sup> *Ibid.*

<sup>8</sup> See p. 1 as well as clause 8.2 of the ISA. The ISA is at appendix 2 to ICBC submissions.

privacy. Neither ICBC or the applicant addressed s. 22(4). I have considered the categories which fall within s. 22(4) and I am satisfied that none apply.

#### *Section 22(3) – presumptions against disclosure*

[12] Next, I must consider whether any of the presumptions in s. 22(3) apply. If they do, disclosure is presumed to be an unreasonable invasion of third party privacy. Again, neither party addressed s. 22(3) and I am satisfied that no presumptions apply.

#### *Section 22(2) – relevant circumstances*

[13] The final step in a 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).

#### *Section 22(2)(a) – public scrutiny*

[14] The applicant submits that s. 22(2)(a) applies. Section 22(2)(a) is a factor that applies if disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. The purpose behind s. 22(2)(a) is to foster accountability of a public body.<sup>9</sup> The applicant argues that s. 22(2)(a) applies because, “ICBC has crafted its relationship with these private parking lot companies in such a way that it is unable to tell individuals ... who viewed [their] information.”<sup>10</sup>

[15] It is important that public bodies be held to account for their practices around disclosing personal information to organizations not governed by FIPPA. If the disclosure of the employee names would lead in a meaningful way to this kind of public scrutiny, it would be a desirable end. However, the applicant has already been provided with substantive information and records which enable him to assess ICBC’s practices around disclosing personal information to parking companies. He has filed ICBC’s responses to his questions about such practices as evidence. I fail to understand how disclosing the names of certain Robbins employees allowed to access personal information would add further transparency to ICBC’s practices. Therefore, s. 22(2)(a) is not a relevant circumstance.

#### *Section 22(2)(c) – fair determination of applicant’s rights*

[16] The applicant also submits that s. 22(2)(c) is relevant. Section 22(2)(c) supports disclosure of personal information if it is relevant to a fair determination of the applicant’s rights.

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<sup>9</sup> Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

<sup>10</sup> Applicant submissions at p. 3.

[17] The applicant argues that the employee names would enable him to determine if a privacy breach has occurred and if so, it would provide a basis for a further complaint to the OIPC or legal action. The applicant provides no further details about the nature of his potential complaint or legal action, such as who the respondent would be or the legal basis for a proceeding. The applicant's assertion that his rights may have been affected, without any explanation or evidence supporting his suspicions, does not satisfy me that any legal rights are at stake. In any event, given my ultimate conclusion that it would not be an unreasonable invasion of privacy to disclose the names, it is not necessary for me to decide whether s. 22(2)(c) is a circumstance which also supports disclosure.

#### *Private sector employees*

[18] The circumstances relevant to whether disclosure is an unreasonable invasion of privacy are not limited to those listed in s. 22(2). ICBC argues that the information should not be disclosed because Robbins is governed by the *Personal Information Protection Act* (PIPA) and not FIPPA. ICBC says that this fact distinguishes this inquiry from orders in which the OIPC has held that disclosing the names of a public body's employees acting in their professional capacity is not an unreasonable invasion of personal privacy.<sup>11</sup> ICBC suggests that the Robbins employees would not have had any reasonable expectation that the release of their names to ICBC would result in the release of that same information publicly. ICBC relies on Order P17-01 in which the adjudicator held that disclosure of a list of union member names as well as the amount of strike pay they still owed to the Union was a violation of PIPA.<sup>12</sup>

[19] The applicant argues that PIPA has no relevance because his request was under FIPPA and the record is in the custody and control of a public body. He further suggests that Robbins knew, or ought to have known, that any records held by ICBC were subject to an access request. He says that “[n]obody forced Robbins to enter into a contract with ICBC. They did so...because they valued the vast database it carries and the potential for profit from it.”<sup>13</sup>

[20] I am not persuaded that the fact that the personal information is that of private sector employees as opposed to public sector employees is a circumstance weighing against disclosure. A similar argument about the interplay between FIPPA and PIPA was flatly rejected in Order F10-14.<sup>14</sup> In Order F10-14, the adjudicator held that there was no basis on which to distinguish between

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<sup>11</sup> For example in Order 01-22, 2001 CanLII 21576 (BC IPC) at para. 82 (names of ICBC employees acting in their professional capacities with ICBC not subject to s. 22).

<sup>12</sup> 2017 BCIPC 5.

<sup>13</sup> Applicant submissions at p. 3.

<sup>14</sup> 2010 BCIPC 23 at para. 39. Upholding Order F08-03, 2008 CanLII 13321 (BC IPC).

public body employees and those in the private sector for the purpose of s. 22.<sup>15</sup> I agree with this conclusion.

[21] As for the argument that Robbins employees would not have had a reasonable expectation that their names would be disclosed, organizations should be aware that when contracting with a public body, any information they provide to the public body may be subject to FIPPA.

### *Conclusion*

[22] There are no presumptions or circumstances weighing against disclosing the names of the Authorized Employees. I find that it would not be an unreasonable invasion of the third parties' privacy to disclose their names. The information at issue is not sensitive. It is simply the names of individuals allowed to perform a certain function at their work. Numerous past decisions have held that it is not an unreasonable invasion of personal privacy to disclose information about employees acting in a professional or employment capacity.<sup>16</sup> This conclusion applies equally to private and public sector employees. Therefore, consistent with past decisions, I conclude that s. 22 does not apply to the names of the Authorized Employees. In addition, I have found that s. 22 does not apply to the general manager's cell phone number because it is contact information. Therefore, ICBC cannot rely on s. 22 to withhold any of the information in the record.

## **CONCLUSION**

[23] I require ICBC to give the applicant access to the record by November 16, 2018. ICBC must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the record.

October 3, 2018

## **ORIGINAL SIGNED BY**

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Chelsea Lott, Adjudicator

OIPC File No.: F17-70219

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<sup>15</sup> *Ibid* at para. 34.

<sup>16</sup> Order 01-22, *supra* note 14; Order F10-14, *supra* note 18; Order F08-03, *supra* note 18 at para. 83; Order F16-46, 2016 BCIPC 51 at para. 68; Order F11-02, 2011 BCIPC 2 at para. 35.