



FORM 66

(RULES 16-1 (2) AND 21-5 (14))

S-195045

NO.

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

UBER CANADA INC., UBER TECHNOLOGIES, INC. and UBER B.V.

Petitioners

AND

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR
BRITISH COLUMBIA and [Access applicant]

Respondents

PETITION TO THE COURT

ON NOTICE TO:

Office of the Information and Privacy Commissioner for British Columbia
4th Floor, 947 Fort Street
Victoria, BC V8V 3K3

AND TO:

[Access Applicant
contact information
withheld upon request]

AND TO:

Insurance Corporation of British Columbia
c/o Deborah K. Lovett, Q.C.
Partner, Lovett Westmacott
Suite 12, 2544 Dunlevy St.
Victoria, BC V8R 5Z2

This proceeding is brought for the relief set out in Part 1 below, by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts 800 Smithe Street Vancouver, BC
(2)	The ADDRESS FOR SERVICE of the petitioners is: McCarthy Tétrault LLP 745 Thurlow Street, Suite 2400 Vancouver, BC V6E 0C5 Attention: Christine Lonsdale / Angela Juba / Ryan Maclsaac Fax number address for service of the petitioners: 604-643-7900 E-mail address for service of the petitioners: clonsdale@mccarthy.ca / ajuba@mccarthy.ca / rmacisaac@mccarthy.ca
(3)	The name and office address of the petitioners' lawyers is: Christine Lonsdale / Angela Juba / Ryan Maclsaac McCarthy Tétrault LLP 745 Thurlow Street, Suite 2400 Vancouver, BC V6E 0C5

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. An Order in the nature of *certiorari* quashing, in whole or in part, Order F19-17 (the "**Decision**") dated March 29, 2019 of the respondent Information and Privacy Commissioner for British Columbia (the "**Commissioner**"), which ordered certain records be disclosed by the Insurance Corporation of British Columbia ("**ICBC**");
2. A Declaration that the correspondence identified as pages 71 to 72 of the subject records (the "**Letter**") between ICBC and the petitioner Uber (as defined below) is exempt from disclosure pursuant to the exception in s. 21(1) of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 ("**FIPPA**");
3. A Declaration that disclosure of the Letter is also exempt from disclosure pursuant to the exception in s. 17 of *FIPPA*;
4. In the alternative to the relief in paragraphs 2 and 3, an Order remitting the matter back to a different delegate of the Commissioner for redetermination in accordance with the Court's reasons;
5. An Order sealing *in camera* material that was before the Commissioner in the below proceedings and the Court Clerk's notes made in this proceeding regarding this sealed *in camera* material;
6. An Order authorizing Uber and the Commissioner to make *in camera* submissions to this Honourable Court regarding materials sealed by the Order in paragraph 5;
7. Costs of this application; and
8. Such further and other relief as counsel to Uber may advise and this Honourable Court may find appropriate.

Part 2: FACTUAL BASIS

1. The petitioners, Uber Canada Inc., Uber Technologies, Inc. and Uber B.V (together with relevant affiliates, "**Uber**"), invent, develop, license, operate, and improve innovative software applications. Uber's business includes offering two related smartphone software applications (the "**Apps**"). The Apps provide a digital system for passengers to request transportation services from independent third-party transportation providers. This is known as peer-to-peer ("**P2P**") ridesharing, and companies such as Uber are referred to as transportation network companies ("**TNCs**").¹
2. In British Columbia, the provincial government has taken the position that P2P ridesharing is prohibited under its current laws. However, the government has also indicated its desire to move forward with legislative amendments that would regulate TNCs and P2P ridesharing in the province.

¹ In the provincial government's proposed legislation, TNCs are called "Transportation Network Services".

3. The consideration of legislative amendments includes establishing a vehicle insurance regulatory framework for P2P ridesharing. The Ministry of Transportation and Infrastructure therefore tasked ICBC with consulting and providing feedback on options for insurance regulatory changes (the "**Consultations**").
4. ICBC is the province's largest insurer and is established by statute. Broadly speaking, ICBC sells two types of automobile insurance. The first is "basic" coverage which is required for every automobile in British Columbia and which is only sold through ICBC. The second is "optional" coverage, which is sold by ICBC and other insurers in a competitive marketplace, and which would include optional ridesharing insurance.
5. The Consultations were highly confidential. Every government or ICBC employee involved in the Consultations was required to sign a confidentiality undertaking.
6. As part of the Ministry-directed Consultations, ICBC and Uber began confidential discussions so that ICBC could understand the TNC perspective on a workable ridesharing insurance regime. This included discussing commercially agreeable terms and conditions for an optional ridesharing insurance product.
7. The discussions between ICBC and Uber were also highly confidential. The confidential information shared between ICBC and Uber was subject to a non-disclosure agreement (the "**NDA**").
8. As part of their discussions, Uber supplied ICBC with what it considered to be commercially acceptable terms and conditions for a ridesharing insurance product for both basic and optional coverages, on the mutual understanding that Uber would likely, in the future, purchase such product from ICBC under those terms and conditions.
9. In turn, ICBC sent responses that reflected Uber's proposals as well as pricing based on the confidential information Uber had supplied.
10. In particular, on March 1, 2017, ICBC and Uber engaged in correspondence (defined above as the "Letter") which contained, among other things, the following information:
 - (a) A statement that the Letter was sent pursuant to the NDA;
 - (b) Uber's requested terms and conditions for optional insurance coverages;²
 - (c) ICBC's response, which included modelling the confidential information and data that Uber had provided and expressing the corresponding insurance premium in a certain dollar amount;
 - (d) Uber's requested policy term; and
 - (e) ICBC's response regarding the policy term requested by Uber.
11. While the government has taken legislative steps toward regulating ridesharing, as of yet there is no contract between ICBC and Uber for ridesharing insurance.

² Although the Letter mentions basic coverage, all of the material terms relate to optional coverages which are sold in a competitive environment.

12. The respondent, [redacted] (the "Requestor") made a freedom of information request under *FIPPA* for "records relating to the change of the insurance regime with regard to Uber, Lyft and taxis." (Lyft is a TNC like Uber.)
13. ICBC identified some records that it proposed to wholly or partially disclose, and identified other records that it proposed to withhold under certain exceptions of *FIPPA*. ICBC proposed to withhold the Letter under *FIPPA* s. 21(1) [harm to third party interests] and s. 17 [harm to institution's financial or economic interests].
14. The Requestor challenged ICBC's decision to the respondent Commissioner. ICBC, the Requestor and Uber were all afforded an opportunity to make submissions.
15. In the Decision, the Commissioner ordered much of the withheld documents disclosed in whole or in part. This included ordering disclosure of sensitive portions of the Letter.
16. Such further and other factual bases as counsel to Uber may advise and this Honourable Court finds appropriate

Part 3: LEGAL BASIS

1. The Decision was unreasonable and incorrect.
2. **First**, the Commissioner unreasonably erred in her consideration—or lack thereof—of Uber's evidence regarding undue financial loss to Uber or undue financial gain to Uber's competitors [*FIPPA* s. 21(1)(c)(iii)]. The Commissioner stated that Uber's evidence on this point consisted only of the statement that disclosure "would result in undue loss to Uber". This ignores that Uber provided an **entire affidavit** that **concurrently** addressed the harms to Uber's competitive position under s. 21(1)(c)(i) **and also** the undue losses to Uber and undue gains to its competitors under s. 21(1)(c)(iii). That evidence was then reiterated and incorporated by reference in Uber's written submissions. The Commissioner's failure or refusal to engage with this sworn evidence is inexplicable.
3. **Second**, the Commissioner failed to follow previous decisions, the sworn evidence, and common sense in analyzing whether disclosure of the Letter could reasonably be expected to harm significantly Uber's competitive position [*FIPPA* s. 21(1)(c)(i)].
4. **Third**, the Commissioner erred in stating that certain portions of the Letter were not "supplied by" Uber [*FIPPA* s. 21(1)(b)]. In fact those portions reflected the confidential information and proposed terms supplied by Uber, and would permit a competitor to draw an inference as to the information supplied by Uber. The Commissioner ignored the sworn evidence from Uber on this point, as well as basic realities about how negotiations are conducted in the commercial sphere.
5. **Fourth**, the Commissioner erred in her finding regarding that disclosure of commercially sensitive insurance rate and coverage information could not reasonably be expected to result in similar information no longer being supplied to ICBC when it is in the public interest that similar information continue to be supplied [*FIPPA* s. 21(1)(c)(ii)]. To the contrary, it is reasonable to expect that Uber and other companies may avoid ICBC for optional insurance products if they know that any proposed or actual terms, conditions and prices will be available for public consumption.

6. ***Fifth***, the Commissioner erred in stating that disclosure of the Letter could not be reasonably expected to harm ICBC's financial or economic interests [*FIPPA* s. 17]. The assertion that disclosing ICBC's confidential proposed pricing terms would not hurt ICBC in a competitive marketplace for optional coverages, in the absence of a consummated contract, is unreasonable and without foundation.
7. *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 17, 21(1), 59;
8. *Judicial Review Procedure Act*, RSBC 1996, c 241;
9. *Supreme Court Civil Rules*, BC Reg 168/2009, rr. 1-3 and 16-1;
10. Practice Direction PD-35, *Sealing Orders in Civil and Family Proceedings*; and
11. Such further and other legal bases as counsel to Uber may advise and this Honourable Court finds appropriate.

Part 4: MATERIAL TO BE RELIED ON

1. Record of the proceeding before the Commissioner; and
2. Such further and other evidence as counsel to Uber may advise and this Honourable Court may admit.

The petitioners estimate that the hearing of the petition will take 1 day.

Date: 29/Apr/2019



Christine Lonsdale / Angela M. Juba / Ryan
MacIsaac
Lawyers for the Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

Date: /Apr/2019

Signature of Judge

