

## ***Access Policies Under Freedom of Information Legislation at the Insurance Corporation of British Columbia***

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The Insurance Corporation of British Columbia (ICBC) is a crown corporation, incorporated under British Columbia's *Insurance Corporation Act*, and responsible for operating Autoplan, a compulsory automobile insurance programme introduced to British Columbia in 1974. The Corporation's mandate is to provide the minimum third party liability coverage required by law, presently set at \$200,000, and accident benefits for all vehicles required to be licensed and insured in the province. ICBC is also authorized to sell, in competition with private insurance companies, additional insurance such as liability coverage in excess of the minimum limit, own damage coverage, and various special policies. In addition, ICBC conducts research, education, and training in the area of traffic safety, and processes the registration and licensing of vehicles on behalf of the province's Motor Vehicle Branch.

ICBC has 3,900 employees, located at its head office in North Vancouver and at forty-nine claim centres and six salvage yards throughout the province. In 1992 the Corporation sold just under 2,300,000 insurance policies and settled 825,000 claims, paying out \$5,600,000 per working day in claim settlements.

From its creation in 1973 the Insurance Corporation of British Columbia made several attempts to develop records retention schedules and set up a corporate archive. It was not until 1986, however, that the Corporation established a formal records management and archives programme. Since 1986 the Records Management Unit has grown to five archivists/records managers.

British Columbia's *Freedom of Information and Protection of Privacy Act* (SBC 1992, c. 61) applies to ICBC, and to all other crown agencies and levels of government in British Columbia, with the exception of the BC Railway Company Limited. ICBC, however, is the only crown corporation in the province with a corporate archive. Until proclamation of the *Act*, ICBC did not release much information to the public if the information did not already exist in published form, and the Corporation rarely released records. Unlike government archives, ICBC's Corporate Archive was not open to the public. The Public Information department

reviewed requests for information from the public, to determine the sensitivity of the information and the amount of staff time required to collect it. The Corporation occasionally released statistical data that had already been compiled for internal use, but it did not normally collect and compile information to respond to a query from a member of the public.

ICBC released documents containing personal information to an individual if that individual had signed the document when it had been created. The Corporation did not release documents such as medical reports, police reports, or witness statements to the individual who was the subject of such documents. An individual was shown the specific documents bearing his or her signature, but not the whole file. Even when compelled to release information to a court of law, the Corporation released specific documents to the court, not an entire file. At the same time, the Corporation released personal information, without the individual's knowledge or consent to other government institutions for a "compatible" reason. For instance, medical reports might be given to a government agency such as the Ministry of Health.

The corporate archive is located in a records retention centre thirteen kilometres from ICBC's Head Office. Finding aids are maintained on a computer database at Head Office; the archive services internal reference requests by asking the retention centre clerks to send the archival records to the employee's office. In a few cases an archivist will accompany an employee to the archive to assist the employee search through records. In most cases, however, employees know which files they wish to consult, as their department sent the files to the archive in the first place.

Before the proclamation of the *Freedom of Information and Protection of Privacy Act* the corporate archive was not open to the public. It made archival records available to Corporate departments who wished to consult records before releasing information to the public, but did not allow the public direct access to records in the archive.

In most cases, while corporate records in the archive generally were open to any employee of the Corporation, departments could stipulate that access restrictions be applied to records that they had transferred. Access to collective agreement negotiation files, for example, was restricted to staff of the Labour Relations department. An employee wishing to consult restricted records had to obtain written permission from the manager of the department that had placed the restriction before being allowed to consult the records; no request for access to restricted records had ever been refused.

Access to corporate records by both employees and the public is now governed by the *Freedom of Information and Protection of Privacy Act*. Unless the Corporation can demonstrate that an exemption under the *Act* permits or requires ICBC to restrict access to a record, the Corporation must release documents and raw statistical data to the public. The few existing restrictions on access by employees to archival records have ceased to be valid, as there is no point in preventing an employee from seeing a file to which he or she can obtain access to it as a member of the public under the legislation.

The *Freedom of Information and Protection of Privacy Act* has become, in effect, the access policy for ICBC's corporate archive. The policies that the Corporation has so far developed to implement the legislation cover all Corporate records, not just those in the archive.

Access requests from members of the public are received by the office of the Corporation's Freedom of Information Coordinator. The archivists forward to the FOI Coordinator any access requests they receive directly from the public. The FOI Coordinator asks the archivists to locate all archival documents required to respond to such requests, and may ask the archivists to assist members of the public to refine their requests for access to archival records—to make their requests as specific as possible.

Archivists review the requested archival records and make recommendations to the Corporation's Freedom of Information Coordinator regarding documents that contain information that may or must be severed under the legislation. The FOI Coordinator may call on the assistance of an Access Review Committee consisting of corporate lawyers, an archivist, and senior employees of departments with an interest in the requested records when considering the archivists' recommendations regarding the severing of records. The FOI Coordinator may also choose to examine the requested archival records personally to determine whether any of the *Act's* mandatory or discretionary exceptions to the public's right of access to information apply, and whether harm, as specified in the legislation, could result to the Corporation or to a third party from making the records available. After the review of the requested records is complete, the FOI Coordinator severs from archival records information which cannot or may not be released under the *Act* before the documents are made available to the public. As it gains experience in evaluating requests for records whose release is discretionary under the legislation, the Corporation will develop policies governing public access to specific categories of records.

The Corporation does not undertake research on behalf of members of the public. It anticipates receiving requests primarily from claimants wishing access to their claim files, journalists, lobby groups, and academics, and does not have the resources to assist researchers other than to help them identify records of interest. The Corporation is closely monitoring the time the archivists/records managers spend assisting the FOI Coordinator find current records requested under the *Act* and serving on the Access Review Committee. It is anticipated that the demands placed on the time of the archivists/records managers will decrease as the Corporation gains experience in responding to access requests; perhaps in a year or so it may change its policy, enabling the archivists to spend more time assisting researchers using archival records.

To comply with the privacy protection provisions of the legislation, personal information of anyone other than the individual making the access request may have to be severed from the records before they are released. Apart from restricting public access to personal information about individuals, the legislation requires the archivists at ICBC to restrict access *by employees of the Corporation* to the personal information of individuals contained in Corporate records if the proposed use of such information would violate the privacy provisions of the *Act*. The Archive can

no longer follow the practice of consulting finding aids at Head Office and then shipping archival records directly from the Archive vault to an employee's desk. Staff must first review and, in some instances, sever personal information from archival records before they can be used by employees.

Staff must also examine archival records requested by the public, or by an employee for a use not consistent with the purpose for which personal information was collected, on a document-by-document basis, severing individual words conveying personal information before records can be released to a member of the public. For example, before the Corporation can allow citizens to read their own claim files, staff must review all documents in the files, photocopy all pages containing personal information about other individuals (such as witnesses and third parties to the claim), black out this personal information on the photocopied pages, make photocopies of the photocopied pages with blacked out words so that the words cannot be read through the back of the pages, and place these second photocopies in the files. The original pages are filed elsewhere until they can be returned to the files after they have been read by the members of the public. Such exercises in severing information are time consuming and expensive. Reviewing and severing personal information from a case file for a contentious claim can take several days. ICBC is investigating imaging technology to see whether it can be used cost effectively as a tool for severing information from documents.

British Columbia's Freedom of Information legislation gives ICBC the authority to use its discretion in releasing personal information for research or historical purposes as long as certain conditions are met. Section 35 states that a public body may disclose personal information for a research purpose, including statistical research only if:

- a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form, or the research purpose has been approved by the commissioner;
- b) any record linkage is not harmful to the individual that the information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- c) the head of the public body concerned has approved conditions relating to the following:
  - i) security and confidentiality;
  - ii) the removal or destruction of individual identifiers at the earliest reasonable time;
  - iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body; and
- d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, the *Act*, and any of the public body's policies and procedures relating to the confidentiality of personal information.

Section 36 states that the archives of a public body may disclose personal information for archival or historical purposes if:

- a) the disclosure would not be an unreasonable invasion of personal privacy under section 22;

- b) the disclosure is for historical research and is in accordance with section 35;
- c) the information is about someone who has been dead for 20 or more years; or
- d) the information is in a record that has been in existence for 100 or more years.

The legislation, supplemented by a policy and procedures manual written by the provincial government's Information and Privacy Branch, provides the access policies that archivists at ICBC must follow when considering access requests for archival records containing personal information. Although sections 35 and 36 of the *Act* are discretionary, leaving the Corporation the right to refuse researchers access to archival records, any internal policies and procedures regarding the application of sections 35 and 36 should not run counter to the intentions of the government to make public bodies more open and accountable to the public.

A minor problem arising from granting public access to ICBC's corporate archive is one of terminology. We have been writing our finding aids for an "audience" of Corporate employees, who are familiar with the Corporation's organizational structure, business functions, and insurance terminology. To implement successfully a policy of providing public access to archival records at ICBC, the archive will have to review its finding aids to determine how comprehensible they are to the general public, and may have to rewrite some finding aids to provide more detailed information using less insurance industry jargon.

The British Columbia freedom of information legislation specifically includes records in electronic form, thereby launching the archivist/records managers at ICBC into the realm of electronic records. Implementing public access to electronic records will require the Corporation to publish retention schedules and descriptions of mainframe and personal computer databases. The Corporation will also have to re-engineer some computer databases to meet the privacy protection provisions of the *Act* within three to five years.

The Records Management Unit is well placed to extend its mandate to include electronic records, as it comprises half of the Data Management department in the Information Services (or computer) Division. The Unit intends to integrate itself into the existing analysis and design phases of computer systems development so that records classification, retention scheduling, archival appraisal requirements, and access conditions are built into the design of databases and other types of electronic records.

By identifying data fields containing information that should not be released under the legislation and building appropriate access restrictions into a computer system, ICBC will facilitate the severing of information from electronic records once they are transferred to the custody of the archive; it could be done at the touch of a key. In a few years time, when a member of the public wishes to have access to an archival computer record, the Corporation could give that individual a system sign-on identity code that automatically prevents the person from viewing or generating reports of fields that must be severed under the legislation.

British Columbia's *Freedom of Information and Protection of Privacy Act* has had both positive and negative repercussions for the records management/archival programme at ICBC. Developing or amending policies and procedures in response

to the legislation, and assisting the Corporation's Freedom of Information Coordinator to prepare the Corporation for proclamation of the legislation was time consuming, absorbing the equivalent of six months' labour on the part of an archivist/records manager.

The freedom of information legislation has radically altered the access policies of ICBC's corporate archive, removing much of its autonomy, both as archivists and as a Corporation, in determining access policies for the Corporate archive. The legislation requires the Corporation to provide public access to archival records for the first time, and to sever individual words from documents rather than applying access restrictions to entire record series or subseries. The broad policies that ICBC has developed in response to the legislation apply to both current and archival records; the Corporation will refer to the Information and Privacy Branch's interpretation of sections 35 and 36 of the *Act* and will also be studying the rulings of the Information and Privacy Commissioner as they are issued, when developing more specific policies and procedures for public access to archival records.

The requirement to review and possibly sever personal information from archival records requested by employees imposes a new burden on the archivists: the archive cannot meet its previous standard of delivering archival records to an employee making a request within twenty-four hours. Fortunately, many of the record series and subseries in the Corporate Archive do not contain personal information and so can be sent directly from the archive vault to an employee's office by a retention centre clerk without first being reviewed by an archivist.

The Corporation has minimized the impact on the archivists of public access to the Corporate Archive by channelling all requests for access to records from members of the public through the FOI Coordinator's office. When the Coordinator receives a request for records that are in the Corporate Archive the archivist locates and sends them to the FOI Coordinator, who reviews the records and severs them as required by the *Act*.

The freedom of information legislation has had some positive benefits on the ICBC records management/archive programme. The legislation makes specific references to records management and archival activities, and the accompanying policies and procedures for implementing the legislation developed by the provincial government's Information and Privacy Branch assign responsibilities under the *Act* to records managers and archivists in public bodies such as ICBC. These legislative and quasi-legislative statements have raised the profile and importance of the records management/archive programme within the Corporation.

The legislation, by referring to electronic records, also enables the Corporate Archive to expand its mandate to include electronic records and thus provides us with the opportunity to integrate policies and procedures for classifying, scheduling, and appraising electronic records into the Corporation's existing systems design and development processes.

### Notes

- \* A version of this paper was first presented at the Association of Canadian Archivists conference in St. John's Newfoundland, in July 1993.