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No. A-3/91

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FOIPOP and Rate Filings

The purpose of this Bulletin is to inform automobile insurers about the impact of the [Freedom of Information and Protection of Privacy Act](#) (FOIPOP Act) on filings made under sections 369 and 370 of the [Insurance Act](#). Many insurers are not aware of the [FOIPOP Act](#) or its purpose, that it applies to the Ontario Insurance Commission and that records furnished by insurers are subject to the [FOIPOP Act](#).

If you have not already done so, you should obtain a copy of the [FOIPOP Act](#) and have it reviewed by your legal counsel.

The following comments may be useful to you.

The purpose of the [FOIPOP Act](#) is to:

- Provide the general public with access to records in the custody or control of government institutions, subject to certain specific exemptions.
- Permit individuals to access records about themselves in the custody or control of governmental institutions and enable them to request correction of the personal information where they believe there is an error.

- Protect individuals from unwarranted invasion of their personal privacy by restricting access to records containing personal information.
- Provide for an independent review by the Information and Privacy Commissioner of decisions made by governmental institutions respecting access to records, privacy issues and the correction of personal information.

The Information and Privacy Commissioner has the power to order the release of records.

The Commission may receive access requests for any record which is within its custody or control, including information supplied by third parties. Section 17 of the FOIPOP Act recognizes that certain types of information supplied in confidence by third parties should be exempt from disclosure in the event of an access request. Section 17(1) of the FOIPOP Act states:

17(1)A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

The Information and Privacy Commissioner has interpreted the provision to protect only a narrow class of documents. Therefore section 17 should not be viewed as a blanket exemption. Only those documents which satisfy the tests set out under section 17(1), as interpreted by the Information and Privacy Commissioner, will be candidates for exemption.

You should be aware that the FOIPOP Act places an obligation on a government institution to disclose as much of a

document as can be reasonably severed without disclosing information that falls under an exemption. Therefore only those parts of a document that meet the section 17 tests will be protected.

I am aware of the competitive nature of the automobile insurance industry and the need to respect the confidentiality of certain records filed with the Commission. Therefore, it would assist me in responding to FOIPOP access requests if you would include with future filings a listing of the records that contain confidential information and the reasons you believe these records should be considered confidential.

For example, you can provide a covering letter that identifies the parts of the filing which you believe are being supplied in confidence and that disclosure would result in the harms described in section 17 of the FOIPOP Act. You can also label specific records as being confidential.

This exercise does not guarantee that records will not be released, but it will provide me with useful information which can be considered when a determination is made under the FOIPOP Act. The information would also assist the Information and Privacy Commissioner in deciding on an appeal.

Copies of the FOIPOP Act can be purchased at the Ontario Government Bookstore. The Bookstore is located at 880 Bay Street, Toronto. Telephone inquiries may be directed to (416) 326-5300 or Toll-Free 1-(800) 668-9938.

Donald C. Scott

Commissioner

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