Bulletin

No. A-04/98

Property & Casualty

- Auto

The confidentiality of rate filings

To the attention of all insurance companies licensed

to transact automobile insurance in Ontario

In the past 18 months, the Ontario Insurance Commission ("OIC") has responded to two appeals of decisions made under the *Freedom of Information and Protection of Privacy Act ("FOIPOP Act")* regarding the release of material filed as part of the rates and risk classification approval process. In both instances, the confidentiality of the material to which access was sought had been the subject of numerous prior discussions between the OIC and insurers. It was the OIC's belief that a mutual understanding and agreement existed in this regard. The FOIPOP appeals would indicate that this is not the case.

The purpose of this Bulletin is:

- to provide automobile insurers with another review of the impact of the *FOIPOP Act* on rate and risk classification filings ("rate filings") made under sections 410 to 415 of the *Insurance Act;*
- to summarize the OIC's position regarding the confidentiality of material filed with it; and
- to consider the impact a rate hearing has on rate filings.

FOIPOP and Rate Filings

Two prior Bulletins (OIC BULLETIN: 3/91 and 11/93) have discussed the impact of the FOIPOP Act on rate filings and should be reviewed by you. Copies of these Bulletins can be obtained from the OIC's website <http://www.ontarioinsurance.com> or by calling the Publications Request line of the OIC at 590-7298.

These Bulletins provide a general background on the freedom of information legislation and outline section 17 of the *FOIPOP Act* which deals with disclosure of third party information. Specifically the Bulletins discuss:

- the three part test that must be met before the section 17 exemption to access is claimed by the OIC;
- what information supplied by insurers will be exempt from disclosure in the event of an access request;
- why certain parts of a rate filing are considered confidential; and
- the fact that, even though insurers are advised to identify those parts of the filing that they consider to be confidential, this alone does not guarantee that the material will not be released.

The OIC has issued filing guidelines that set out the format and information requirements for rate filings. The guidelines also alert insurers to the third party information provisions of section 17 of the *FOIPOP Act* and advise them to label those parts of the filing that are considered to be confidential. As is the case with the Bulletins, the guidelines also remind insurers that labelling something confidential does not guarantee non-disclosure but assists the OIC in responding to an access request.

The Information and Privacy Commission has stated that the fact that material is communicated to an institution on the basis that it is confidential is only one of the circumstances to be considered in determining confidentiality. The others include the purpose for which the material was prepared, its availability from other sources and whether the supplier of the information had an expectation of confidentiality based on reasonable and objective grounds.

The Position of the OIC

In February of 1996, the Commissioner sent a letter to all automobile insurers advising them that information about an insurer's automobile insurance rates and rating rules would be made publicly available to anyone asking for it since that information is routinely granted when accessed through the *FOIPOP Act*. This eliminated the need for a formal access request under the *FOIPOP Act* and reinforced the already common perception that rates and rating rules are public information once approved.

A few insurers objected to this but a FOIPOP Order supporting the decision to release rates and rating rules has rendered those objections moot.

With regard to rate filings generally, the position of the OIC is that they remain confidential in their entirety pending approval or non-approval. Once approved, some sections of the filings become public information.

The portions of the filing that the OIC considers to be publicly accessible following approval are:

Section 1: Table of Contents

Section 3: Certificates of the Actuary and of the Officer

Section 8: Proposed Manual Pages Containing Revised Rates and Risk Classification System

Section 9: Affiliated Insurers - Description of Affiliated Insurers only

Section 10: Rating Examples

The OIC's position regarding rating algorithms, that they are never released and not accessible to the public, was recently upheld by the Information and Privacy Commissioner. In Order P-1526 (February 3, 1998), the Information and Privacy Commissioner upheld the OIC's decision to refuse an insurer's request for access to the algorithms of thirteen insurers on the basis of a section 17 exemption to disclosure under the *FOIPOP Act*.

Rate Filings and Hearings

Insurers should be aware, however, that if a rate filing becomes the subject of an OIC hearing, the entire filing might become part of the public record. The accessibility of the information will depend on which aspects of this filing are at issue and whether motions to keep parts confidential are made. Motions regarding the confidentiality of the filing or parts of it and whether evidence regarding a confidential aspect should be held *in camera* can be made by the parties to the hearing. If the adjudicator finds that parts of the filing are confidential, access to those parts will be as set out in the adjudicator's order.

The test for the adjudicator in determining whether or not confidentiality exists is based on a principle that hearings are to be conducted in public whenever possible. Section 9(1) of the *Statutory Powers Procedure Act*, however, states that:

9(1) An oral hearing shall be open to the public except where the tribunal is of the opinion that

a) matters involving public security may be disclosed; or

b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case the tribunal may hold the hearing in the absence of the public.

The OIC's own draft Rules of Practice and Procedure for Commissioner, Superintendent and Advisory Board Hearings (Rules 15 and 30) establish a process for dealing with confidential material in a hearing. The Rules are available on the Internet at <http://www.ontarioinsurance.com>.

Conclusion

Since its creation, the OIC has tried to balance the public's right to know with the legitimate and statutorily recognized rights of third parties. It has worked with insurers to provide the public with more information about automobile insurance rates while preserving the confidentiality of those records that can genuinely meet the section 17 test of the *FOIPOP Act*.

In the event that an access request is received involving records to which a section 17 exemption might apply, you will be notified and given an opportunity to make representations on whether access should be denied. The notice provision is set out in section 28 of the *FOIPOP Act.*

Following a review of those representations, the OIC will make its recommendations regarding access to the Ministry of Finance's FOIPOP co-ordinator. This co-ordinator is responsible for OIC access requests and makes the final determination regarding release of records. The decision to release a record or deny access to it can be appealed to the Information and Privacy Commission by the party requesting access, the OIC or a third party to whom the record relates.

Should you have any inquiries regarding this Bulletin, please contact Darlene Hall, Manager of the Rates, Classifications and Actuarial Services Branch, at 590-7291.

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Commissioner

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