



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F19-30

BRITISH COLUMBIA LOTTERY CORPORATION

Celia Francis
Adjudicator

July 29, 2019

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Summary: A journalist requested various reports which allegedly relate to a named third party. The British Columbia Lottery Corporation (BCLC) refused, under s. 8(2)(b) of *Freedom of Information and Protection of Privacy Act*, to neither confirm nor deny that the requested records exist. The adjudicator found that BCLC was authorized under s. 8(2)(b) to neither confirm nor deny that the requested records exist.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 8(2)(b), 22(2)(a), 22(2)(h), 22(3)(b), 22(4)(e).

INTRODUCTION

[1] This order concerns a journalist's request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the British Columbia Lottery Corporation (BCLC) for access to certain reports a named casino corporation allegedly submitted to BCLC. The records allegedly relate to a specific named individual (the third party). BCLC responded to the request by refusing, under s. 8(2) of FIPPA, to confirm or deny the existence of the requested records. The journalist requested a review of BCLC's decision by the Office of the Information and Privacy Commissioner (OIPC). During mediation, the journalist raised the issue of whether s. 25(1)(b) requires disclosure of the requested records.¹

¹ Section 25(1)(b) states that a public body must, without delay, disclose information the disclosure of which is clearly in the public interest.

Mediation did not resolve the issues and they proceeded to inquiry. The OIPC received submissions from BCLC and the journalist. In its initial submission, BCLC clarified that it was relying on s. 8(2)(b).

Preliminary issue

[2] The notice for this inquiry stated that the adjudicator would consider whether s. 25(1)(b) requires BCLC to disclose the requested records, in addition to s. 8(2). BCLC argued,² and I agree, that it is premature for me to consider s. 25(1)(b) here, as it presupposes records exist. In my view, the more practical course is to consider first whether s. 8(2)(b) applies in this case. This decision is consistent with those made in Order F17-29³ and Order F16-37⁴, other cases involving s. 8(2)(b) where the applicant raised s. 25(1)(b).

ISSUE

[3] The issue in this inquiry is whether BCLC is authorized, under s. 8(2)(b) of FIPPA, to refuse to confirm or deny the existence of records containing personal information of a third party. Section 57 of FIPPA sets out the burden of proof in inquiries but is silent respecting who has the burden regarding s. 8(2)(b).

[4] Previous orders have said that the public body bears the burden of proof in the case of s. 8(2). For example, in Order F15-01, the adjudicator expressed this view:

... [The public body] is in the best position to explain why it has refused to confirm or deny the existence of a record requested by the applicant. This is particularly the case when s. 8(2) is at issue, since public bodies often submit and rely on in camera evidence and argument that the applicant does not have access to (thus is not able to fully respond to) when this provision is at issue.⁵

[5] BCLC said that it accepted that it has the burden of proof in this case. In light of previous orders on this issue, I am satisfied that BCLC bears the burden of proof in this case.

DISCUSSION

Background

[6] BCLC is a BC provincial crown corporation and is authorized under the *Gaming Control Act* (GCA) and the *Criminal Code* to conduct and manage

² BCLC's initial submission, paras. 25, 72-76.

³ Order F17-29, 2017 BCIPC 31 (CanLII).

⁴ Order F16-37, 2016 BCIPC 41 (Can LII).

⁵ Order F15-01, 2015 BCIPC 1 (CanLII), at para. 8. See also Order F17-29, 2017 BCIPC 31 (CanLII) at paras. 6-7.

gaming in BC. It is subject to regulatory oversight by the Ministry of Attorney General’s Gaming Policy and Enforcement Branch (GPEB) under the GCA. BCLC contracts with independent service providers to provide “operational services” at BC gaming facilities, in accordance with BCLC’s rules and procedures.⁶

[7] BCLC requires gaming facilities to use a “computerized incident reporting and risk management database system known as iTrak, which functions as a common reporting system among all gaming facilities throughout the province.”⁷ Gaming facilities must use iTrak to record and report “specified transactions and circumstances” to BCLC. The reports include: “Suspicious Transaction Reports” (STRs); “Large Cash Transaction Reports” (LCTRs), that is, reports of “specified individual or cumulative financial transactions of \$10,000 or greater in a 24-hour period;” and “unusual financial transactions (UFTs).” BCLC is required in turn to report specified incidents to regulators and government oversight bodies, including the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).⁸

[8] Section 86 of the GCA and its regulation require BCLC and its service providers to report to GPEB “any conduct, activity or incident at or near a gaming facility that may be contrary” to the *Criminal Code*, the GCA or its regulation. BCLC provided examples of circumstances which require the filing of a Section 86 report: cheating at play; thefts; money laundering; “suspected passing of counterfeit currency where the identity of the passer is unknown”; loan sharking; robbery; assault; threats against, or intimidation of, players or registrants; unauthorized lottery schemes; persons legally prohibited; unregistered gaming service providers; minors found in or participating in gaming in a gaming facility or attempting to play eGaming. Section 86 reports are also created in, and provided to GPEB through, iTrak.⁹

Principles for applying s. 8(2)(b)

[9] Section 8(2)(b) of FIPPA reads as follows:

8(2) ... the head of a public body may refuse in a response to confirm or deny the existence of

...

(b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party’s personal privacy.

⁶ BCLC’s initial submission, paras. 5-7.

⁷ BCLC’s initial submission, para. 13.

⁸ BCLC’s initial submission, paras. 13-15. FINTRAC is the “federal agency responsible for safeguarding the financial system from illicit activity and protecting national security by combating money laundering and terrorist financing.” BCLC’s initial submission, para. 16.

⁹ BCLC’s initial submission, paras. 20-22.

[10] For s. 8(2)(b) to apply, a public body must establish two things: that disclosure of the mere existence or non-existence of the requested records would convey third-party personal information to the applicant; and that the disclosure of the existence of the information would itself be an unreasonable invasion of that third party's personal privacy.¹⁰ Section 22 is relevant in determining what constitutes an unreasonable invasion of personal privacy for the purposes of s. 8(2)(b).¹¹

[11] I have applied these principles in determining whether, under s. 8(2)(b), BCLC is authorized to neither confirm nor deny the existence of the requested records.

Discussion and findings

[12] BCLC said that it understands that the journalist requested the following types of reports about the third party: iTrak reports, including UFTs; FINTRAC reports, including LCTRs and STRs; and Section 86 reports. In its view, both criteria required for s. 8(2)(b) to apply are present here.¹²

[13] The journalist said he focuses on “filing stories on the money laundering crisis” in BC. He argued that it is important to know what BCLC executives knew about the third party's activities, when they knew it and whether they did anything about it. However, except for some general public interest arguments, which I discuss below, the journalist's submission did not address BCLC's arguments or the criteria for applying s. 8(2)(b) and s. 22.¹³

Would disclosure of the existence or non-existence of the requested records convey third-party personal information?

[14] Personal information is defined as “recorded information about an identifiable individual other than contact information.”¹⁴

[15] BCLC argued that the journalist is seeking information related specifically to the third party and that disclosing the existence of the information would reveal personal information about the third party.¹⁵

[16] I find that revealing whether the requested records exist would reveal information about whether the third party attended the named casino's facilities

¹⁰ Order 02-35, 2002 CanLII 42469 (BC IPC), at para. 33.

¹¹ Order 02-35, at para. 33.

¹² BCLC's initial submission, paras. 10, 27.

¹³ Journalist's response submission.

¹⁴ Schedule 1 of FIPPA. Contact information is defined in Schedule 1 as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”

¹⁵ BCLC's initial submission, paras. 28-36.

and, if so, whether his gaming activity was the type that needed to be reported to regulatory and law enforcement bodies.

[17] Such information would be recorded information about an identifiable individual that is not contact information. I am satisfied that revealing the existence or non-existence of the requested records would convey personal information about the third party.

Would disclosure of the existence of the requested records be an unreasonable invasion of third-party privacy?

[18] BCLC argued that disclosure of the existence of the requested records would be an unreasonable invasion of the third party's privacy.¹⁶ As noted above, the journalist did not address the specifics of ss. 22(2)-(4). He did, however, make some general public interest arguments which I consider below in my discussion of s. 22(2)(a).

[19] Determining whether disclosure of the existence of the requested records would be an unreasonable invasion of third-party privacy entails a consideration of s. 22 of FIPPA.¹⁷ The principles for applying s. 22 have long been established.¹⁸ After determining if information is "personal information," it is necessary to consider if s. 22(4) applies. Section 22(4) lists a number of types of personal information the disclosure of which is not an unreasonable invasion of third-party personal privacy.

[20] If s. 22(4) does not apply, s. 22(3) specifies information disclosure of which is presumed to be an unreasonable invasion of a third party's personal privacy. Next, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy. It is at this stage that any s. 22(3) presumptions may be rebutted.

Section 22(4)

[21] BCLC said that none of the circumstances in s. 22(4) is applicable in this case.¹⁹ I agree. There is no basis in the material before me to indicate that s. 22(4) applies in this case. For example, confirming the existence of the requested records would not reveal information about a public body employee's position or functions under s. 22(4)(e). I find that s. 22(4) does not apply.

¹⁶ BCLC's initial submission, para. 41.

¹⁷ Order 02-35, 2002 CanLII 42469 (BC IPC), at para. 39.

¹⁸ See, for example, Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

¹⁹ BCLC's initial submission, para. 42.

Section 22(3) – presumed invasion of privacy

[22] BCLC argued that ss. 22(3)(b) and (f) apply here. Sections 22(3)(b) and (f) read as follows:

- 22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
- ...
- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

Investigation into possible violation of law – s. 22(3)(b)

[23] I agree with Order 01-12, where former Commissioner Loukidelis found that, for the purposes of s. 22(3)(b),

... "law" refers to (1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law. ...²⁰

[24] BCLC said that LCTRs, STRs and UFT reports are created for the purpose of BCLC's compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Proceeds of Crime Act)*²¹ and its regulations. BCLC added that Section 86 reports are created for the purpose of compliance with the GCA and its regulation, to enable GPEB to detect and investigate *Criminal Code* and GCA offences.²²

[25] The *Proceeds of Crime Act* is a federal statute that provides for penalties for the violation of that Act and, in my view, it is a "law" under s. 22(3)(b). The purpose of the *Proceeds of Crime Act* is "to facilitate combatting the laundering of proceeds of crime and combatting the financing of terrorist activities, ..." ²³ This includes the requirement to report "suspicious financial transactions and ... cross-border movements of currency and monetary instruments."²⁴ The *Proceeds of Crime Act* also establishes FINTRAC and tasks it with ensuring compliance

²⁰ Order 01-12, 2001 CanLII 21566 (BC IPC), at para. 17.

²¹ S.C. 2000, c. 17.

²² Preamble to the *Proceeds of Crime Act*.

²³ Preamble to the *Proceeds of Crime Act*.

²⁴ Section 7 of the *Proceeds of Crime Act*.

with the Act.²⁵ It also provides for the designation of violations and penalties.²⁶ I am, therefore, satisfied that any LCTRs, STRs and UFT reports about the gaming activities of the third party, if they exist, would contain personal information that was compiled and is identifiable as part of an investigation into a possible violation of law.

[26] Section 86 of the GCA requires BCLC to report certain transactions and activities to GPEB which is responsible for the enforcement of the GCA. I am satisfied that, if Section 86 reports about the third party exist, they must have been compiled or created as part of an investigation into a possible violation of law. This finding is consistent with what former Commissioner Loukidelis said about Section 86 reports in Order F08-03:

It is clear to me that the s. 86 reports themselves were compiled and are identifiable as part of an investigation into a possible violation of the law. With a very few exceptions (e.g., the reporting of a patron health emergency), the very subject matter of the withheld reports is suspected or actual criminal activity taking place in casinos which will form the focus of some investigation by the Ministry and, in some cases, the police as well.²⁷

[27] For these reasons, therefore, I find that disclosing the existence of the requested records would reveal personal information that was compiled or and is identifiable as part of an investigation into a possible violation of law. There is no indication here that disclosure is necessary to prosecute the violation or to continue the investigation. Disclosure of the existence of the requested records is therefore presumed to be an unreasonable invasion of the third party's personal privacy under s. 22(3)(b).

Financial history – s. 22(3)(f)

[28] BCLC said that disclosing the existence of the requested records “will reveal whether” the third party has visited a gaming facility and, if so, how often, and whether he has engaged in certain types of reportable financial transactions. BCLC argued that doing so would reveal the third party's financial history.²⁸

[29] In light of my finding that s. 22(3)(b) applies in this case, I need not consider whether s. 22(3)(f) also applies.

²⁵ Section 41 of the *Proceeds of Crime Act*.

²⁶ Part 4.1 of the *Proceeds of Crime Act*.

²⁷ Order F08-03, 2008 CanLII 13321 (BC IPC).

²⁸ BCLC's initial submission, paras. 51-57.

Section 22(2) – relevant circumstances

[30] BCLC raised the following relevant circumstances:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant ...

Desirable for public scrutiny – s. 22(2)(a)

[31] In BCLC's view, disclosure of the existence of the requested records would not be desirable for subjecting BCLC to public scrutiny, as it would not tell the public anything meaningful about BCLC's activities.²⁹

[32] The journalist argued that there is a public interest in knowing what, if anything, BCLC knew and did about the third party's alleged activities, so that BCLC may be held to account. He said he "can provide the Fintrac document filed by BCLC that outlines BCLC's knowledge of [the third party's] activities, as well as other documents." He also attached links to several online news articles that appear to concern money laundering, among other things.³⁰ The journalist did not, however, provide for my review a copy of the "Fintrac document," the "other documents" or the news articles. While he did provide a copy of a Civil Forfeiture Office application and a court decision connected to a search warrant, their relevance to the issues before me is not apparent and he did not explain.

[33] I understand that the journalist has concerns about BCLC and about the third party's alleged actions. It is not, however, clear how disclosing the existence of the requested records would shed any light on BCLC's activities. Rather, I agree with BCLC that, if anything, such disclosure would subject the third party's activities to public scrutiny. I find, therefore, that disclosure of the existence of the requested records in this case is not desirable for the purposes of s. 22(2)(a).

²⁹ BCLC's initial submission, paras. 65-69.

³⁰ Journalist's response submission.

Unfair damage to reputation – s. 22(2)(h)

[34] BCLC said that disclosing the existence of the various reports would suggest that the third party had been observed engaging in potentially criminal conduct, including money laundering or financing terrorist activities. Disclosing the existence of these “obviously disreputable activities” would BCLC argued, unfairly damage the third party’s reputation, as it would not prove that the third party had done anything criminal.³¹

[35] I agree that disclosing the existence of the requested records could, for the reasons BCLC suggested, unfairly damage the third party’s reputation. I find, therefore, that disclosing the existence of the requested records could unfairly damage the third party’s reputation for the purposes of s. 22(2)(h).³²

Conclusion on s. 22

[36] I found above that s. 22(4) does not apply here but that s. 22(3)(b) does. I also found that s. 22(2)(a) does not apply but that s. 22(2)(h) does apply. The factor in s. 22(2)(h) favours withholding information about the existence of the requested records and I give it considerable weight.

[37] While the applicant does not have the burden of proof in this case, he did not, apart from his public interest arguments, address the elements of s. 8(2)(b) and s. 22. He also did not, in my view, adequately counter the s. 22(3)(b) presumption. I find disclosure of the existence of the requested records would be an unreasonable invasion of the third party’s personal privacy.

CONCLUSION

[38] For reasons given above, I find that BCLC is authorized by s. 8(2)(b) of FIPPA to neither confirm nor deny the existence of the requested records.

July 29, 2019

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F18-73434

³¹ BCLC’s initial submission, paras. 60-64.

³² Order F08-03 made a similar finding at para. 96.