



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F20-36

## BC LOTTERY CORPORATION

Jill Nevile  
Adjudicator

August 25, 2020

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**Summary:** The applicant made a request to the British Columbia Lottery Corporation (BCLC) for copies of the quarterly reports to the Minister of Finance on implementation of BC's anti-money laundering strategy. The public body disclosed information in some of the responsive records but withheld other parts under ss. 16 (harm to intergovernmental relations), 17(1) (harm to financial or economic interests of a public body), and 22 (disclosure an unreasonable invasion of third party privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator determined that ss. 16 and 17 did not apply to the withheld information, and that s. 22 only applied to a small portion of the withheld information. BCLC was ordered to disclose the remaining information to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 16(1), 17(1), and 22, *Gaming Control Act*, ss. 7(1)(f), 13, 14, and Division 2 ("Registration of Gaming Services Providers and Gaming Workers").

### INTRODUCTION

[1] An applicant requested access to copies of the quarterly reports to the Minister of Finance on implementation of BC's anti-money laundering strategy for the period of Oct. 1, 2016 to present day (October 11, 2017).

[2] The Ministry of Finance transferred the applicant's request to the British Columbia Lottery Corporation (BCLC) under section 11 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[3] BCLC provided records in response to the applicant's request but withheld some information under ss. 13 (advice or recommendations), 15 (harm to law enforcement), 16(1) (harm to intergovernmental relations), 17(1) (harm to financial or economic interests of a public body), and 22(1) (harm to third-party privacy) of the FIPPA.

[4] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review BCLC's decision. He also said that he believed that s. 25 applied as disclosure was in the public interest. During mediation, BCLC disclosed additional information and the s. 25 issue was resolved. The balance of the issues remained unresolved, however, and the applicant requested they proceed to an inquiry. The OIPC accepted some parts of BCLC's evidence and submissions *in camera*.

### ***Preliminary Matters***

[5] In its initial inquiry submission, BCLC said that it determined that some of the harm originally identified in respect of public disclosure of their records no longer existed due in part to the passage of time and subsequent public disclosures regarding BCLC's anti-money laundering program.<sup>1</sup> Therefore, BCLC determined that further information could be released to the applicant in response to the information request. In addition, BCLC said that it is no longer relying on ss. 13 and 15 to withhold information from the records. BCLC relies only on ss. 16, 17, and 22 to withhold the remaining redacted information.

### **ISSUES**

[6] The issues I must decide are:

1. Is BCLC authorized to withhold the information in dispute under ss. 16(1) and 17(1) of FIPPA?
2. Is BCLC required to withhold the information in dispute under s. 22(1) of FIPPA?

[7] Under s. 57(1) of FIPPA, BCLC bears the burden of proving that ss. 16(1) and 17(1) authorize it to refuse to disclose the information in dispute. Section 57(2) says that the applicant must prove that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1).<sup>3</sup>

### **DISCUSSION**

#### ***Background***

[8] The applicant states that the previous Minister of Finance mandated that BCLC provide quarterly reports on the implementation of BC's anti-money laundering strategy in January of 2016.<sup>2</sup> The applicant also points out that criminal activity in casinos has been a widespread topic of debate in the media.<sup>3</sup>

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<sup>1</sup> Affidavit #2, made February 11, 2020, para. 2, Exhibit A.

<sup>2</sup> Applicant's request for review, dated January 4, 2018.

<sup>3</sup> Applicant's response submission, para. 27.

[9] It is public knowledge that BCLC was engaged in the expression of interest (EOI) process to seek a potential new gambling and entertainment facility on the North Shore of Metro Vancouver.<sup>4</sup>

### **Records at issue**

[10] BCLC is only refusing access to a few phrases on page 32 “Updates on EOI’s” and page 63 “Case study” of the 246 pages of records.

#### *Section 16 – harm to intergovernmental relations*

[11] Section 16 allows a public body to withhold information that could reasonably be expected to harm the conduct of relations between the government of British Columbia and another government.

[12] BCLC relies on s. 16(1)(a) to withhold a small amount of information on page 32 which is titled “Updates on EOIs.” Although it does not specify, based on their submissions, it is clear that they are relying on ss. 16(1)(a)(ii) and 16(1)(a)(iii).<sup>5</sup> Those provisions state:

16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:

....

(ii) the council of a municipality or the board of a regional district;

(iii) an aboriginal government;

....

[13] Section 16(1)(a) uses the language “could reasonably be expected to harm”. To establish harm, BCLC must prove that disclosure will result in a risk of harm that goes “well beyond the merely possible or speculative.”<sup>6</sup> The Supreme Court of Canada has described this standard as “a middle ground between that which is probable and that which is merely possible.”<sup>7</sup> BCLC must provide evidence “well beyond” or “considerably above” a mere possibility of harm in

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<sup>4</sup> Affidavit #1 of BCLC’s Director of Public Affairs (Director), para. 18.

<sup>5</sup> BCLC initial submission, para. 19.

<sup>6</sup> *Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3, at para. 206.

<sup>7</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC at para. 54.

order to meet the standard.<sup>8</sup> The evidence BCLC provides must demonstrate “a clear and direct connection between the disclosure of specific information and the harm” that BCLC alleges.<sup>9</sup> As stated by former Commissioner Loukidelis:

General, speculative or subjective evidence is not adequate to establish that disclosure could reasonably be expected to result in harm under s. 17(1). That exception must be applied on the basis of real grounds that are connected to the specific case. This means establishing a clear and direct connection between the disclosure of withheld information and the harm alleged. The evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information... There must be cogent, case-specific evidence of the financial or economic harm that could be expected to result.<sup>10</sup>

*Section 16(1)(a)(ii) – relations with the council of a municipality or the board of a regional district*

[14] BCLC notes that Order F12-04 found that BCLC is an agent of the government of BC.<sup>11</sup> I am satisfied that BCLC is an agency of the government of British Columbia under the *Gaming Control Act* (GCA).

[15] BCLC submits that if the disputed information on page 32 is made public, it could reasonably be expected to harm the conduct of BCLC’s relations with the council of a municipality or the board of a regional district.

[16] BCLC remits net income from its gaming operations to the Province of British Columbia pursuant to ss. 13 and 14 of the GCA.<sup>12</sup> The Province of British Columbia shares gaming revenue with each local government, including First Nations (host communities), that hosts a casino or Community Gaming Centre (CGC) in their community through Host Financial Assistance Agreements. In general, these host communities receive 10 per cent of the gambling net income to use to benefit their communities.<sup>13</sup>

[17] For this reason, BCLC says, the host communities have a significant interest in the financial performance, and the impact generally, of gaming in their communities.<sup>14</sup>

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<sup>8</sup> Order F17-01, 2017 BCIPC 1 (CanLII) at para. 21.

<sup>9</sup> Order 02-50, 2002 CanLII 42486 (BC IPC) at para. 137; Order 04-06, 2004 CanLII 34260 (BC IPC) at para. 58, referring to *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53.

<sup>10</sup> Order 02-50, 2002 CanLII 42486 (BC IPC), at para. 137.

<sup>11</sup> BCLC initial submission, para. 24 citing Order F12-04 2012 BCIPC 4 (CanLII) at para. 24

<sup>12</sup> BCLC initial submission, para. 10.

<sup>13</sup> Gambling net income defined as revenue after prizes and BCLC operating expenses. Director’s Affidavit #1, para. 14.

<sup>14</sup> Director’s Affidavit #1, para. 15.

[18] BCLC argues that releasing the information in question could lead to unfair accusations from host communities about the transparency of the EOI process, and complaints directly to the government, resulting in harm to intergovernmental relations.<sup>15</sup>

[19] BCLC relies in part on the affidavit of the Director of Public Affairs for BCLC since 1999 (Director).<sup>16</sup> The Director says he draws upon over three decades of government relations experience, including at the Province of Ontario and the Ontario Lottery Corporation prior to BCLC.<sup>17</sup> Having reviewed the withheld information, the Director concludes that the disclosure of certain non-public information about BCLC's considerations would reasonably be expected to harm intergovernmental relations, both between the Province and the council of a municipality and between the Province and an aboriginal government.<sup>18</sup> The Director states that release of the withheld information could lead to unfair accusations about the transparency of the EOI process by local governments, and complaints directly to the government of BC, resulting in harm to intergovernmental relations.<sup>19</sup>

[20] Further, BCLC argues that the background context provided by the Director, explains why the Director concludes that disclosure of the information in dispute could be harmful to intergovernmental relations. The Director says:

- BCLC remits net income from its gaming operations to the Province of British Columbia;
- the Province in turn, enters into Host Financial Assistance Agreements with host local governments, including First Nations, in which the local governments receive 10 per cent of the gambling net income, which is used to benefit their communities;
- host local governments have an interest in the financial performance and impact generally of gaming in their communities; and
- host local governments will often bypass BCLC and go straight to the Minister responsible for BCLC to voice their issues related to gaming and BCLC.<sup>20</sup>

[21] BCLC submits that it properly exercised its discretion to withhold the severed portions of p. 32 of the records under s.16(1)(a). BCLC says that the above background context, along with the evidence in the Director's affidavit (some of which is *in camera*) supports BCLC's exercise of discretion.<sup>21</sup>

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<sup>15</sup> Director's Affidavit #1, paras. 13, 15.

<sup>16</sup> BCLC's initial submissions at para. 25.

<sup>17</sup> Director's Affidavit #1, paras. 12.

<sup>18</sup> Director's Affidavit #1, para. 17.

<sup>19</sup> Director's Affidavit #1, para. 22.

<sup>20</sup> BCLC's initial submission at para. 27 and Director's Affidavit #1, paras. 11, 14, 15, 16.

<sup>21</sup> BCLC's initial submission at para. 28.

[22] The applicant contends that BCLC is merely relying on speculation and has not met the requisite burden of proof.<sup>22</sup>

[23] The applicant explains why he believes the information should be disclosed. He refers to a memo from the Gaming Policy and Enforcement Branch which states: “The Gaming Policy Enforcement Branch Intelligence Unit reports that organized crime presence in and around BC casinos presents a viable threat to public safety.”<sup>23</sup> The applicant also states that the previous BC Liberal government claimed that it was already concerned about money laundering, before the NDP government under Premier John Horgan was sworn-in during July 2017. He wishes for those efforts be fully disclosed, in order to give the public confidence that elected and appointed officials were acting in the interests of the public, rather than the interests of themselves and their political party’s donors, which include companies that operate casinos with BCLC.<sup>24</sup>

[24] I also understand the applicant to be arguing that disclosure of the disputed information could not make BCLC’s relations with municipalities any worse than they are already. The applicant notes that BCLC’s reputation has already suffered because of the money laundering scandal.<sup>25</sup> The applicant submits that evidence of recent events shows that BCLC has poor relations with local governments, and a majority of those governments, representing a vast majority of North Shore residents, did not want to do business with BCLC. He points to a North Shore News article, which he says supports that conclusion.<sup>26</sup>

[25] The applicant in the current inquiry further states that “BCLC is a state monopoly. Casino companies in B.C. may only operate in partnership with BCLC, in a regional franchise model system. Therefore, BCLC arguments about competition must be given no weight. BCLC has no competitors in the business of bricks and mortar gambling in the Province of British Columbia.”<sup>27</sup>

[26] The applicant states that after BCLC sought EOIs from West Vancouver, the two North Vancouver municipalities and the Squamish and Tsleil-Waututh First Nations, only the City of North Vancouver and Tsleil-Waututh responded. The rest refused.<sup>28</sup> He contends that the “proposal ship has sailed” and therefore disclosure of the withheld information could not harm the province.<sup>29</sup>

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<sup>22</sup> Applicant’s response submission, para. 6.

<sup>23</sup> Applicant’s request for review, dated January 4, 2018.

<sup>24</sup> Applicant’s response submission, para. 2.

<sup>25</sup> Applicant’s response submission, para. 16.

<sup>26</sup> *BCLC halts plans for North Shore Casino*, North Shore News, March 2019, <https://www.nsnews.com/news/bclc-halts-plans-for-north-shore-casino-1.23658158>

<sup>27</sup> Applicant’s response submission, para. 19.

<sup>28</sup> Applicant’s response submission, para. 10.

<sup>29</sup> Applicant’s response submission, paras. 11,12.

[27] The applicant also cites Order No. 285-1998, in which former Commissioner Flaherty found that BCLC's arguments were not persuasive and it had not proven that s. 16(1)(a)(ii) applied to the amount of gross slot machine revenue.<sup>30</sup>

[28] Former Commissioner Flaherty did not elaborate. It is apparent to me that both the arguments and the information in dispute in the present case are not the same as in Order No. 285-1998, and I distinguish the earlier case on that basis.

[29] The information that is being withheld under s. 16 is about plans BCLC was considering.<sup>31</sup> BCLC's arguments and evidence as a whole do not adequately explain how releasing this information could reasonably be expected to harm relations with the council of a municipality or the board of a regional district. I find that BCLC's evidence and submissions do not meet the standard for establishing the harm described in s. 16(1), which is "a middle ground between that which is probable and that which is merely possible". I find that BCLC's evidence as a whole does not provide a clear and direct connection between disclosure and the harm alleged. BCLC has not proven that it is authorized to withhold this information under s. 16(1)(a)(ii). I turn now to BCLC's application of s. 16(1)(a)(iii).

*Section 16(1)(a)(iii) – relations with aboriginal governments*

[30] BCLC also withheld the information on page 32 on the basis that disclosing it could reasonably be expected to harm the conduct of BCLC's relations with an aboriginal government.

[31] First, I must determine whether the information at issue relates to "aboriginal governments" within the meaning of FIPPA. Under FIPPA, "aboriginal government" means an aboriginal organization exercising governmental functions."<sup>32</sup>

[32] Without disclosing the name(s) of the aboriginal government(s) at issue, which is information that was accepted *in camera*, I can state that there is no doubt they fall within the definition of "aboriginal government" within the meaning of FIPPA.

[33] Next, I turn to whether disclosure of the disputed information could reasonably be expected to harm the conduct of relations with these aboriginal government(s).

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<sup>30</sup> Order No. 285-1998, 1998 CanLII 3251 (BCIPC).

<sup>31</sup> Director's Affidavit #1, para. 18 indicates the withheld information was being 'considered'.

<sup>32</sup> See FIPPA, Schedule 1 for this definition.

[34] The Director states that, in his opinion, there is a substantial likelihood that release of the withheld information to the public would harm relations between the government of British Columbia and the aboriginal government(s).<sup>33</sup> He says that disclosure has the potential to erode trust and lead to unfair accusations about the transparency of the EOI process and cause complaints to government. He provides the balance of his reasons *in camera*, so I will not relate them here.<sup>34</sup>

[35] The applicant does not separate his arguments under 16(1), and I have considered them here under s. 16(1)(ii) as well.

[36] After reviewing the records and BCLC's evidence and arguments, I am not persuaded that releasing the information on page 32 could reasonably be expected to harm relations with an aboriginal government. I do not find the withheld information, if released, would meet the threshold for the harm described in s. 16(1), that which is "a middle ground between that which is probable and that which is merely possible". The information BCLC provided to support its argument is speculative at most. I find that BCLC has not proven that it is authorized to withhold this information under s. 16(1)(a)(iii).

*Section 17 – harm to the financial or economic interests of a public body*

[37] Section 17 is designed to protect the financial interests of public bodies from harm.<sup>35</sup>

[38] Section 17 allows a public body to refuse to disclose information that could reasonably be expected to harm its financial or economic interests. The relevant parts of s. 17 are:

17 (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

....

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

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<sup>33</sup> Director's Affidavit #1, para. 21.

<sup>34</sup> Director's Affidavit #1, para. 19-21, and Exhibit B.

<sup>35</sup> *Architectural Institute of B.C. v. Information and Privacy Commissioner for B.C.*, 2004 BCSC 217 (CanLII) at para. 14.



(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

....

[39] As with s. 16, s. 17 is a harms-based exception. BCLC must show that the information in dispute, if disclosed, could reasonably be expected to result in the alleged harm. BCLC must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to meet the standard.

[40] To rely on s. 17, BCLC must establish that disclosure of the information could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy. Previous orders describe subsections 17(1)(a) to (f) as examples of information that may result in harm under s. 17.<sup>36</sup> Past orders have also stated that the subsections do not function as stand-alone provisions; therefore, even if information falls into one of the subsections, BCLC must still prove the harm described in the opening words of s. 17.<sup>37</sup>

[41] BCLC cites several cases that say the s. 17 exception is based on the risk of future harm weighed according to real and substantial possibility, which is established by applying reason to evidence.<sup>38</sup>

[42] BCLC notes that FIPPA does not define “financial interests”, but says the Provincial Government’s own *FOIPPA Policy & Procedures Manual* defines it as follows:<sup>39</sup>

**“Financial interests”** refers to the financial position of a public body or the government of British Columbia. It includes the management of assets and liabilities, and the ability of the public body or the government to protect its own interests in financial transactions with third parties.... The financial interests of the government of British Columbia include the ability to ... generate revenues.<sup>40</sup>

[43] BCLC states that, therefore, harm to the financial interests of a public body or the government of British Columbia could involve monetary loss, or loss of assets with a monetary value.<sup>41</sup>

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<sup>36</sup> Order F17-01, 2017 BCIPC 1 (CanLII) at para. 20.

<sup>37</sup> Order F19-03, 2019 BCIPC 4 (CanLII), 2019 BCIPC 04 at para. 22.

<sup>38</sup> Order F08-22, 2008 CanLII 70316 (BC IPC) at paras. 44-45, citing *Athey v. Leonati*, 1996 CanLII 183 (SCC) at paras. 26-29.

<sup>39</sup> *Manual*, Section 17, *Interpretation Note 1 (Section 17(1))*. See also *Manual*, Policy Definitions, “financial”. While not a definitive interpretation tool, it can be used as an interpretive aid. See for example: Order F11- 23, 2011 BCIPC 29 (CanLII) at para. 19.

<sup>40</sup> BCLC initial submission para. 33 (emphasis added).

<sup>41</sup> BCLC initial submission para. 34.

[44] BCLC contends that if the withheld information became public, it would harm BCLC's reputation and standing, negatively affect BCLC's revenue through reduced foot traffic as potential patrons look for other entertainment options, and result in a poorer player experience caused by significant staff turnover and declining productivity of staff given the air of uncertainty and alarm that would be created by the release of the withheld information.<sup>42</sup> As with the s. 16(1)(a) harm discussed above, the Director says that he draws upon his decades of experience in public affairs, which includes issues and reputation management.<sup>43</sup> The Director provides further information *in camera* to support the above conclusions.<sup>44</sup>

[45] BCLC contends that disclosure could reasonably be expected to also result in harms in the specific ways contemplated under s.17(1)(c) and s.17(1)(d), namely that the withheld information would result in the premature disclosure of a proposal or project and that the disclosure of the withheld information could reasonably be expected to result in undue financial loss to third parties.<sup>45</sup>

[46] The applicant cites several orders in which the adjudicator found that the public body failed to provide sufficient evidence to establish that s. 17 applied. For instance, the applicant cites Order 02-50 where the adjudicator said that general, speculative or subjective evidence is not adequate to establish that disclosure could reasonably be expected to result in harm under section 17(1), and that "the evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information".<sup>46</sup> In Order 14-37 the adjudicator found that s. 17(1)(d) did not apply to cost estimates because they are general estimates only and not actual bids.<sup>47</sup> Finally, the applicant raises Order F16-27, where the adjudicator said that the public body did not provide sufficient convincing detail to support its assertions that s. 17 applied to information in a contract, including an explanation about the competitive nature of the industry in which it operates, among other factors.<sup>48</sup>

[47] I have considered all of the above cases in making my decision.

#### *Section 17(1)(c)*

[48] BCLC relies on 17(1)(c) to withhold information from page 32. BCLC submits that the information includes "plans that relate to the management of personnel or the administration of a public body and that have not yet been

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<sup>42</sup> Director's Affidavit #1, para. 24.

<sup>43</sup> Director's Affidavit #1, para. 12.

<sup>44</sup> Director's Affidavit #1, Exhibit B.

<sup>45</sup> BCLC initial submission, para. 41.

<sup>46</sup> Applicant's submission at para. 17, citing Order 02-50, 2002 CanLII 42486 (BC IPC), at para 137.

<sup>47</sup> Applicant's submission at para. 18, citing Order F14-37, 2014 BCIPC 40 (CanLII) at para. 29.

<sup>48</sup> Applicant's submission at para. 20, citing Order F16-27, 2016 BCIPC 29 (CanLII).

implemented or made public.”<sup>49</sup> BCLC says that the Director’s affidavit evidence *in camera* details the nature of the withheld information which constitute “administration of a public body,” and he specifically refers to the impact to the “management of [BCLC] personnel”.

[49] I have reviewed all of the evidence, and I am not satisfied that disclosure of the very small amount of information on page 32<sup>50</sup> could reasonably be expected to harm the financial or economic interests of BCLC with respect to plans that relate to the management of personnel or the administration of a public body and that have not yet been implemented or made public. Past orders have said that a “plan” within the context of s. 17 is “something that sets out detailed methods and action required to implement a policy.”<sup>51</sup> BCLC’s evidence is that this information is information that was being considered,<sup>52</sup> and I agree with that characterization of it. I do not find that it is a “plan” as previous orders have interpreted that term.

[50] I also find BCLC’s evidence about harm under s. 17(1)(c) to be speculative and lacking in specifics. BCLC does not show the direct connection between disclosure and the alleged harm. For that reason, I find that BCLC has not provided persuasive evidence to establish that disclosure could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy.

#### *Section 17(1)(d)*

[51] BCLC contends that it is clear from the nature of the withheld information that it fits into the first part of s. 17(1)(d), as the withheld information, if disclosed, could reasonably be expected to result in the “premature disclosure of a proposal or project”.

[52] Previous orders have determined that a “proposal” means a record that sets out “detailed methods for implementing a particular policy or decision”, and a “project” means a “planned undertaking.”<sup>53</sup> Based on my review of the submissions and the withheld evidence, including the evidence provided *in camera*, I am not persuaded that the small amount of information under consideration that was withheld on page 32 is either a “proposal” or a “project” within the meaning of s. 17(1)(d).

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<sup>49</sup> BCLC initial submission, para. 37.

<sup>50</sup> Director’s Affidavit #1, para. 18 indicates the withheld information was being ‘considered’.

<sup>51</sup> See, for example, Order F17-03, 2017 BCIPC 3 (CanLII), 2017 BCIPC 03, para. 13, citing Order F12-02, 2012 BCIPC 2 (CanLII), para. 40.

<sup>52</sup> Director’s Affidavit #1, para. 18 indicates the withheld information was being ‘considered’.

<sup>53</sup> Order 326-1999, 1999 CanLII 4353 (BC IPC).

[53] BCLC notes that the second part of section 17(1)(d) refers to information the disclosure of which could reasonably be expected to result in “undue financial loss ... to a third party”. BCLC contends that this subsection clearly contemplates the effect of disclosure on third parties, both in respect of gains as well as losses.

[54] BCLC says that it engages independent service providers who are registered with the Gaming Policy Enforcement Branch of the Government of British Columbia (“GPEB”) and have regulatory certification from GPEB, to provide operational services to BCLC at casino facilities.<sup>54</sup>

[55] BCLC notes that the Director’s evidence is that independent service providers who provide operational services at casino facilities, and local governments, including First Nations, share in provincial casino and CGC revenue. BCLC contends that for the same reasons why BCLC would suffer revenue loss from disclosure of the withheld information, the third parties identified by the Director would also experience undue financial loss.<sup>55</sup>

[56] I have reviewed the evidence as a whole, and I find that BCLC did not provide evidence that provides sufficient detail and connection to be convincing enough to establish specifically how releasing the information could reasonably be expected to result in the undue financial loss or gain to a third party. BCLC’s arguments and evidence in this regard are speculative and do not establish a clear and direct link between disclosure of the information in question and the reasonable expectation of harm.

#### *Conclusion – 17(1)*

[57] BCLC’s submission and evidence as a whole do not persuade me that disclosure of the withheld information could reasonably be expected to result in harm under s. 17(1). BCLC alleges that disclosure could result in harm to its reputation and standing, thus negatively affecting BCLC’s revenue through reduced foot traffic or staff turnover. However, BCLC has not provided sufficiently detailed evidence and/or argument to establish a clear and direct connection between disclosure of the information in dispute and the harm it alleges. BCLC has not provided “evidence ‘well beyond’ or ‘considerably above’ a mere possibility of harm.” BCLC has not met its burden of proof in this case. I find that s. 17(1) does not apply to the information BCLC withheld under that exception on page 32 of the records.

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<sup>54</sup> Director’s Affidavit #1, para. 10; GCA ss. 7(1)(f), and Division 2 (“Registration of Gaming Services Providers and Gaming Workers”)

<sup>55</sup> Director’s Affidavit #1, para. 24, Exhibit A.

**Section 22 - Unreasonable invasion of third party personal privacy**

[58] Section 22(1) states that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[59] Past orders describe the analytical approach to s. 22. First, the public body must determine if the information in dispute is personal information. If so, it must consider whether any of the information meets the criteria identified in s. 22(4), in which case disclosure would not be an unreasonable invasion of third party personal privacy and s. 22(1) would not apply. If s. 22(4) does not apply, the third step for the public body is to determine whether disclosure of the information falls within s. 22(3), in which case it would be presumed to be an unreasonable invasion of third party privacy. If the presumption applies, it is necessary to consider whether or not the presumption has been rebutted by considering all relevant circumstances, including those listed in s. 22(2).<sup>56</sup>

[60] BCLC relies on s. 22 of FIPPA for all of the withheld information on page 63 of the records.

*Personal Information*

[61] Section 22 of FIPPA only applies to “personal information”, which is recorded information about an identifiable individual other than contact information. The withheld information contains the name, financial activities, and details of possible criminal activity of an identifiable third party. All of the information BCLC has withheld under s. 22 is personal information.

*Not an unreasonable invasion of privacy – section 22(4)*

[62] The information cannot be withheld if the circumstances in s. 22(4) apply.

[63] The applicant raises 22(4)(b)<sup>57</sup>, which states that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if there are “compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party.”

[64] Past orders have found that s. 22(4)(b) does not apply when a public body has refused to disclose information to an applicant.<sup>58</sup> Section 22(4)(b) allows a public body to establish that its decision to disclose personal information is not an unreasonable invasion of third party personal privacy.<sup>59</sup> For s. 22(4)(b) to apply, a public body must have:

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<sup>56</sup> Order F13-09, 2013 BCIPC 10 (CanLII) at para. 18.

<sup>57</sup> Applicant's submission at para. 22.

<sup>58</sup> Order F19-02, 2019 BCIPC 2 (CanLII) at paras. 21-24.

<sup>59</sup> *Ibid* at para. 27.

- a) decided to disclose third party personal information because of compelling circumstances affecting someone's health or safety; and
- b) mailed a notice to the third party at his or her last known address, advising that his or her personal information has been disclosed.

[65] In this case, BCLC has refused to disclose the information, therefore s. 22(4)(b) does not apply.

[66] The applicant also raises ss. 22(4)(i) and 22(4)(j).<sup>60</sup> Section 22(4)(i) is about information related to a licence, permit or any other similar discretionary benefit, a degree, diploma or certificate. Section 22(4)(j) is about information related to a discretionary benefit of a financial nature. BCLC says that the withheld information does not refer to any benefit granted to a third party by a public body.<sup>61</sup>

[67] I find that the information is not about the matters in ss. 22(4)(i) and (j), so those provisions do not apply.

[68] I have also considered the remaining subsections of s. 22(4) and find that none of them apply here.

*Presumed unreasonable invasion of privacy – section 22(3)*

[69] There is a presumption that disclosure is an unreasonable invasion of a third party's personal privacy if any of the provisions in s. 22(3) apply to the personal information. BCLC submits that ss. 22(3)(b) and (f) apply. The applicant does not address s. 22(3) in his submission.

[70] Sections 22(3)(b) and (f) state:

(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

<sup>60</sup> The applicant alludes to this possibility at para. 24 of his submission.

<sup>61</sup> BCLC reply submission, paras. 11-12.

[71] I find that the presumption under s. 22(3)(b) applies to portions of the withheld information. It is clear from the already disclosed information on this page that an RCMP investigation is underway, and I find portions of the withheld information were compiled and is identifiable as part of an investigation into a possible violation of law.

[72] I also find that the presumption under s. 22(3)(f) applies to other portions of the withheld information as it clearly describes the third party's financial history or activities.

[73] I conclude that disclosure of the withheld information is presumed to be an unreasonable invasion of the third party's personal privacy under ss. 22(3)(b) and 22(3)(f).

*Relevant circumstances – section 22(2)*

[74] The final step in the analysis is to consider all of the relevant circumstances, including those set out in s. 22(2), to determine whether disclosure of the withheld information constitutes an unreasonable invasion of third-party personal privacy. It is at this step that the relevant circumstances may rebut the s. 22(3) presumptions.

[75] Section 22(2) states in part:  
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,

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

...

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

[76] The applicant relies on s. 22(2)(a), arguing that releasing the withheld information is desirable to subject the activities of BCLC to public scrutiny.<sup>62</sup>

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<sup>62</sup> Applicant's response submission, para. 28.

[77] The applicant also relies on s. 22(2)(b) to argue disclosure would promote public health and safety.<sup>63</sup> The applicant says that BCLC is more concerned with protecting the identity of a gambler than with the health or safety of those who work inside the casino or the members of the public who patronize the casino.<sup>64</sup>

[78] BCLC points out that the applicant has not explained how revealing the names of specific players would help subject the activities of BCLC to public scrutiny or promote any of the alleged health and safety objectives the applicant cites.<sup>65</sup>

[79] BCLC submits that release of the withheld information may unfairly damage the reputation of the individual within the meaning of s. 22(2)(h), since it refers to information about an individual that gave rise to a request by BCLC for an RCMP investigation. The withheld information does not include any information regarding violations of the law that have been the subject of a conviction in Court or a judicial finding, confirming the individual has violated the law. BCLC submits that there is a clear risk that the applicant or the public at large may misunderstand the nature of the information in the records and believe that it proves the individual is involved in criminal activity.<sup>66</sup>

[80] Having considered all of the relevant circumstances, for the following reasons, I find that that the ss. 22(3)(b) and (f) presumptions have not been rebutted when it comes to the third party's name, but they have been rebutted for the balance of the information in dispute on page 63.

[81] I agree with the applicant that ss. 22(2)(a) and 22(2)(b) are relevant circumstances with respect to some of the personal information. With the exception of the third party's name, I find that disclosing the personal information would be helpful to the public in scrutinizing BCLC's conduct and management of gaming because it would show how BCLC deals with such situations. Knowing the measures BCLC took in the circumstances could also promote the health and safety of those who work inside the casino or the members of the public who patronize the casino by giving them a sense of reassurance.

[82] However, I also agree with BCLC that s. 22(2)(h) is a relevant circumstance with respect to the individual name of the third party. Page 63 of the records is a "Case Study" of the third party who is part of an investigation into criminal activity. In light of the context in which the third party has been identified, the release of his or her identity could unfairly damage that individual's reputation. Past orders have said, to the extent personal information is that of a

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<sup>63</sup> Applicant's response submission, para. 22.

<sup>64</sup> Applicant's response submission, para. 23.

<sup>65</sup> BCLC reply submission, paras. 4-5.

<sup>66</sup> BCLC initial submission paras. 58-59.



target of an investigation, s. 22(2)(h) is a relevant circumstance,<sup>67</sup> and unproven allegations of criminality may unfairly damage a person's reputation within the meaning of s. 22(2)(h).<sup>68</sup> This relevant circumstance reinforces the s. 22(3)(b) and (f) presumption against disclosure of the personal information on page 63 of the records.

### *Conclusion – section 22*

[83] Section 22(1) requires BCLC to withhold the name of the third party in the case study, but not the other withheld information on page 63 of the records, which I am satisfied can be disclosed without revealing the third party's identity. For clarity, I have highlighted the instances where the third party's name appears in a copy of page 63 that will be sent to BCLC with this order.

### **CONCLUSION**

[84] For the reasons given above, under s. 58 of FIPPA, I make the following order:

1. BCLC is not authorized to refuse access to the information it withheld under ss. 16(1) or 17(1) of FIPPA, and it is required to give the applicant access to that information.
2. The only information that BCLC is required to refuse to give the applicant access to under s. 22(1) is the third party's name which I have highlighted in the copy of page 63 of the records that has been sent to BCLC with this order. BCLC is required to disclose the rest of the information on page 63 to the applicant.
3. When BCLC gives the applicant access to the information that it is not authorized or required to withhold, it must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, along with a copy of the relevant records.

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<sup>67</sup> Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 96.

<sup>68</sup> See e.g., Order F18-04, 2018 BCIPC 4 (CanLII) at para. 134; Order F17-56, 2017 BCIPC 61 (CanLII) at para. 114; and Order F14-10, 2001 CanLII 21561 (BC IPC) at para. 36.

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[85] Pursuant to s. 59 of FIPPA, BCLC is required to comply with this order by October 7, 2020.

August 25, 2020

**ORIGINAL SIGNED BY**

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Jill Nevile, Adjudicator

OIPC File No.: F18-73217