



Order F21-49

## BRITISH COLUMBIA LOTTERY CORPORATION

Jay Fedorak  
Adjudicator

October 13, 2021

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**Summary:** An applicant requested the names and hometowns of the winners of a Lotto 6/49 jackpot. The BC Lottery Corporation (BCLC) refused to disclose the responsive records under s. 19(1) (disclosure harmful to individual safety) and s. 22(1) (disclosure would be an unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that ss 19(1) and 22(1) applied to the information at issue and ordered BCLC to withhold the information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 19(1), 22(1), 22(2)(a), 22(2)(e), 22(3)(f).

### INTRODUCTION

[1] A journalist (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the BC Lottery Corporation (BCLC) in May 2018 for the names and hometowns of the winners of the April 25, 2018 Lotto 6/49 jackpot. BCLC responded in June 2018 that it was withholding the information in its entirety under s. 22 (unreasonable invasion of third-party personal privacy).

[2] The applicant requested a review by the Office of the Information and Privacy Commissioner (OIPC) of the Ministry's decision to withhold the information under s. 22.

[3] Mediation by the OIPC did not resolve the matter and the applicant requested it proceed to a formal inquiry.

[4] BCLC subsequently requested permission to also apply s. 19(1) (harm to individual health or safety) to the same information. The Registrar of Inquiries

permitted BCLC to raise the application of this section, and it was added to the inquiry.

## ISSUE

[5] The issues to be decided in this inquiry are:

1. Whether s. 19(1) authorizes BCLC to withhold information; and
2. Whether s. 22(1) requires BCLC to withhold information.

Under s. 57(1) of FIPPA, BCLC has the burden of proving that s. 19(1) applies to the information withheld. Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of any personal information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1) of FIPPA.

## DISCUSSION

### *Background*

[6] BCLC is a crown corporation and an agent of the Province of British Columbia under the *Gaming Control Act*.<sup>1</sup> BCLC administers Lotto 6/49 in British Columbia. BCLC is also a co-owner and member of the Interprovincial Lottery Corporation (ILC), which manages and oversees national lottery draw games, including Lotto 6/49. In accordance with ILC rules and regulations, provincial lottery organizations are required to obtain a lottery winner's consent for the publication of their name, address, place of residence and photograph. The purpose of publishing this information is for marketing and to demonstrate that the provincial lottery organization pays only rightful winners. Most winners provide consent. In cases where a winner refuses to provide consent, the provincial lottery organization has the discretion whether to pay the prize. It is BCLC's practice to conduct a formal investigation into a request from a winner to preserve their anonymity before determining whether to pay the prize.<sup>2</sup>

[7] BCLC does not pay major lottery prize claims until it conducts an investigation that involves inspection and authentication of the winning ticket. The investigation includes an interview with the ticket holder. Questions at the interview include where and when the ticket holder purchased the ticket. The investigator will then compare the ticket holder's answers to the information in BCLC's central computer gaming system. In some cases, BCLC will review CCTV footage from the vendor of the ticket.<sup>3</sup>

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<sup>1</sup> S.B.C. 2002, c. 14.

<sup>2</sup> BCLC's initial submission, paras. 19-24.

<sup>3</sup> BCLC's initial submission, paras. 14-18.

[8] In this case, prior to the investigation, the third party wrote to BCLC requesting anonymity. The third party was concerned that, if they were publicly identified as the winner of the prize, members of their family would be at risk of kidnapping, extortion or other crimes designed to exact a ransom from the third party. The third party is an immigrant with extended family remaining in their country of origin. They asserted that it was common in that country for people of wealth to be subject to kidnapping or other forms of extortion or ransom.<sup>4</sup>

[9] Following an extensive investigation of the third party's assertions, BCLC decided not to publicize the third party's name and hometown and not to take their photo. In response to the FIPPA request from the applicant, it refused to disclose the information for the same reasons.

### ***Information at Issue***

[10] The information in dispute is the name and hometown of the winner of a Lotto 6/49 jackpot.

### ***Section 19(1) – harm to individual or public safety***

[11] The relevant provision of s. 19(1) is as follows:

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

(b) interfere with public safety.

[12] Section 19(1) is a harms-based exception, and the question is whether disclosure of the information in dispute could reasonably be expected to result in the identified harms. The "reasonable expectation of harm" standard is "a middle ground between that which is probable and that which is merely possible."<sup>5</sup> There is no need to show on a balance of probabilities that the harm will occur if the information is disclosed, but the public body must show that the risk of harm is well beyond the merely possible or speculative.<sup>6</sup>

[13] Although BCLC's initial submission quotes both ss. 19(1)(a) and (b), its argument and evidence only address factors relevant to s. 19(1)(a). For reasons

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<sup>4</sup> BCLC's initial submission, Affidavit of Manager, Investigations, para. 25.

<sup>5</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 201.

<sup>6</sup> *Ibid* at para. 206. See also *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras. 52-54.

that will become apparent below, I found it was only necessary to consider s. 19(1)(a).

[14] BCLC submits that there is a reasonable expectation that disclosure of the information at issue will put at risk the health and safety of the third party's extended family in his country of origin. It supports this submission with an internal report of its Manager, Investigations; a report from an independent security consultant; and a submission from the third party. BCLC's evidence is that this consultant has over 30 years of experience as an officer of the RCMP, mostly in the field of transnational organized crime and international kidnappings. His report concludes that there is a significant risk of kidnapping and extortion in the third party's country of origin, particularly in the regions where the extended family of the third party resides. He supports his conclusions with extensive statistical reports and other documentation describing the prevalence of these crimes in the third party's country of origin. The report also concludes that little could be done to mitigate these risks.<sup>7</sup>

[15] BCLC also submits that there are two harms contemplated. The first is the threat to the physical health or safety of the third party, their family and friends, posed by the risk of kidnapping and extortion. The second is for these individuals to live in fear of those crimes and suffer mental distress and anguish as a result. The third party's evidence is that they are already suffering from anxiety, which would worsen if their identity became public.<sup>8</sup>

[16] The applicant has received complete copies of this evidence, except for information identifying the third party or their country of origin. They dismiss the assertions of harm as mere speculation. They submit that, while such risks may be high in other jurisdictions, there is little evidence to suggest the threat in Canada is serious. They argue that BCLC has not met its burden of proof with respect to the harm that is likely to result from disclosure of the information at issue.

[17] BCLC responds that its primary argument is that it is individuals in another high-risk country who are at the most risk of harm. It also cites the evidence of threats of harm to lottery winners in Canada that it provided in its initial submission.<sup>9</sup>

### *Analysis*

[18] BCLC and the third party have persuaded me that the disclosure of the information at issue poses a real risk of serious harm to both the third party and their family and friends in their country of origin. BCLC has met the burden of

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<sup>7</sup> BCLC's initial submission, paras. 61-62.

<sup>8</sup> BCLC's initial submission, para. 59; Third party's submission, para 6.

<sup>9</sup> BCLC's initial submission, Exhibit A, pp. 40-45.

proof and established that s. 19(1)(a) applies. It has conducted two investigations, including one by an independent expert on international kidnapping. The outcomes of both investigations strongly support the conclusion that there is a real risk of significant harm to multiple individuals if BCLC discloses that the third party won the 6/49 lottery. The expert opinions are supported by documentary and statistical evidence. There is comprehensive and convincing evidence to conclude that disclosure could reasonably be expected to put at risk the physical safety, as well as the mental health and well-being, of multiple individuals. This is particularly the case with respect to the family and friends of the third party residing in their country of origin. While BCLC has not addressed whether disclosure could reasonably be expected to threaten public safety generally, in accordance with s. 19(1)(b), the fact that it has established that s. 19(1)(a) applies is sufficient.

[19] I find that BCLC's evidence establishes that there is a direct connection between disclosing the information in dispute and a reasonable expectation of a risk of kidnapping and extortion. With respect to mental anguish, the evidence also shows that there is the prospect of persistent long-term stress and anxiety that is more serious than merely upsetting third parties. The risk of harm in this case goes beyond the mere speculative or possible.

*Conclusion on s. 19(1)*

[20] Therefore, for the reasons above, I find that s. 19(1)(a) applies to the name and the hometown of the winner of the Lotto 6/49 jackpot in question. BCLC may withhold that information from disclosure.

[21] As I have found that s. 19(1)(a) applies to the information in dispute, I do not need to consider the application of s. 19(1)(b) as well. I also do not need to consider the application of s. 22(1). Nevertheless, I do so for the sake of completion.

***Section 22 – harm to third-party personal privacy***

[22] The proper approach to the application of s. 22(1) of FIPPA has been the subject of analysis in previous Orders. A clear and concise description of this approach is available in Order F15-03, where the adjudicator stated the following:

This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, 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.<sup>10</sup>

I have taken the same approach in considering the application of s. 22(1) here.

*Step 1: Is the information “personal information”?*

[23] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “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.”

[24] BCLC and the third party submit that the name and hometown of the winner of the Lotto 6/49 jackpot is personal information. The applicant does not deny this.

[25] I find that the information is clearly information about an identifiable individual and not contact information. I find that the information at issue is personal information.

*Step 2: Does s. 22(4) apply?*

[26] BCLC argues that none of the provisions in s. 22(4) apply in this case. The applicant makes no comment about the applicability of s. 22(4). None of them appear to me to apply. Therefore, I find that none of the information falls within s. 22(4).

*Step 3. Does s. 22(3) apply?*

[27] The relevant provision in s. 22(3) reads as follows:

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness

[28] BCLC asserts that disclosing the information at issue would reveal the financial information of the third party. It argues that disclosure of the name would identify the third party as having acquired a large financial prize in the Lotto 6/49 jackpot. The applicant does not contest this point.

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<sup>10</sup> Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

[29] I find that s. 22(3)(f) applies and that disclosure of the information at issue would be presumed to be an unreasonable invasion of the third party's personal privacy.

*Step 4: Do the relevant circumstance in s. 22(2) rebut the presumption of invasion of privacy?*

[30] The relevant provisions are ss. 22(2)(a) and (e), which state as follows:

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) for the purpose of subjecting the activities of the government of British Columbia to public scrutiny.

...

(e) the third party will be exposed unfairly to financial or other harm,

### **Section 22(a) – public scrutiny**

[31] The purpose of this provision is as follows:

What lies behind s. 22(2)(a) of the Act is the notion that, where disclosure of records would foster accountability of a public body, this may in some circumstances provide the foundation for a finding that the release of third party personal information would not constitute an unreasonable invasion of personal privacy.<sup>11</sup>

[32] The applicant cites s. 22(2)(a) as a relevant circumstance in this case. They assert that it is essential to verify the winners of lotteries to ensure the integrity of the lottery games and to hold BCLC accountable for managing the lottery games. They cite past examples of abuse of lottery games by retailers as examples of past corruption that needs to be exposed and prevented. Otherwise, they argue, the public will lose trust in the integrity of the lottery games and will cease to participate. This would result in a loss of revenue to the artistic and athletic organizations that receive charitable grants from BCLC. They believe that it is in the public interest to promote these organizations through a vibrant lottery game industry that is transparent.

[33] BCLC suggests that, in this case, disclosure would not serve a public purpose, nor would it facilitate accountability for BCLC. It states that s. 22(a) would only apply in cases where the jackpot winner was an insider or had some connection with BCLC, which it asserts does not apply here.

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<sup>11</sup> Order F05-18 2005 BCIPC 24734 (CanLII), para. 49

[34] I disagree with BCLC on this point. Transparency and accountability require the public to see when the public bodies are following policy, procedures and law, as well as when they are not. For example, the public cannot be sure that the total number of cases of fraud correspond to only those cases that the public body has publicised, unless it has access to information about the other cases.

[35] I note that it is the policy of BCLC to disclose the information at issue in almost all cases, not only when the winner is an insider or has connections to BCLC. The publishing of the information of legitimate winners is to demonstrate that the winner is, in fact, legitimate. Moreover, in practice, BCLC rarely withholds the information of winners. It is aware that there are many inappropriate reasons why a winner of a jackpot would wish to remain anonymous, such as to avoid paying legitimate debts. This is the reason that it conducts investigations into requests for anonymity: to ensure the request is legitimate and verify that the winner does not have any other vested interests in requesting anonymity. While BCLC may argue that accountability is not necessary in this case, the fact that it publishes the information in other cases demonstrates that it believes that accountability is important.

[36] That there might be good reasons to keep the information confidential in this case does not invalidate the argument that disclosure would be desirable for purposes of accountability. Both considerations can apply in the same case. The issue then becomes to determine which consideration carries more weight.

[37] For s. 22(2)(a) to apply, the disclosure must have the potential to serve the public purpose of scrutiny of the activities of the public body. It is the general practice of BCLC to disclose the names of hometowns of jackpot winners for the purpose of transparency. Consequently, disclosure of the information is desirable for the purpose of subjecting BCLC to public scrutiny.

[38] Therefore, I find that s. 22(2)(a) is a relevant circumstance in this case arguing in favour of disclosure.

***Section 22(e) – financial or other harm***

[39] BCLC argues that the considerations with respect to the reasonable prospect of significant harm to third parties with respect to s. 19(1), also applies with respect to s. 22(3)(e). That individuals in the third party's country of origin would be at risk of "other harm" such as kidnapping and extortion, and this is a relevant consideration with respect to whether disclosure would be an unreasonable invasion of privacy. The same applies with the mental anguish that the third party and others would suffer. In addition, there is the financial harm the third party might suffer if they had to pay ransom.



[40] As I have found that it is reasonable to expect that individuals might suffer harm in accordance with s. 19(1), the same conclusions support the proposition that s. 22(e) is a relevant circumstance arguing in favour of the conclusion that disclosure would be an unreasonable invasion of privacy. Therefore, I find that s. 22(2)(e) is a relevant circumstance in this case, arguing against disclosure.

*Conclusion on s. 22(1)*

[41] I find that the information in dispute constitutes personal information. I find that none of the provisions in s. 22(4) apply that would have excluded the application of s. 22(1).

[42] I find that all the personal information reveals the third party's financial information. For that reason, s. 22(3)(f) applies and disclosure is presumed to be an unreasonable invasion of the third party's personal privacy.

[43] I find that s. 22(2)(a) argues in favour of disclosure, while s. 22(2)(e) argues against disclosure. On balance I find that the consideration of accountability, when juxtaposed to the contemplated physical, mental and financial harm, does not rebut the presumption that disclosure would be an unreasonable invasion of the third party's personal privacy.

[44] BCLC generally promotes accountability and transparency by publishing the details of winners of large prizes. That BCLC would depart from this practice in a small percentage of its cases, does not fundamentally undermine transparency and accountability. Previous orders have found that it is prudent to proceed with deliberation and care when the health and safety of individuals are at stake.<sup>12</sup>

[45] In conclusion, I find that s. 22(1) applies to the personal information in dispute and BCLC must withhold it.

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<sup>12</sup> Order 133-1996 1996 BCIPC 749 (CanLII), p. 5; Order 02-17 2002 BCIPC 42442 (CanLII), para. 8.

**CONCLUSION**

[46] For the reasons given above, under s. 58(2)(c) of FIPPA, I require BCLC to refuse the applicant access to the personal information in dispute under s. 22(1). Under s. 58(2)(b), I confirm the decision of BCLC to refuse access under s. 19(1).

October 13, 2021

**ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

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