



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

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Order F14-53

BRITISH COLUMBIA LOTTERY CORPORATION

Tim Mots
Adjudicator

December 18, 2014

Quicklaw Cite: [2014] B.C.I.P.C.D. No. 57
CanLII Cite: 2014 BCIPC 57

Summary: The respondent asked the British Columbia Lottery Corporation for copies of BCLC staff invoices and receipts for client promotions and hospitality. BCLC refused to disclose players' names and ID numbers under s. 22(1) of FIPPA. The respondent was not satisfied with this response and asked that this matter proceed to inquiry. BCLC requested the Commissioner exercise her discretion under s. 56 to not hold an inquiry. The adjudicator found that it was not plain and obvious that disclosure of the players' personal information would be an invasion of their personal privacy under s. 22; therefore, BCLC's request that an inquiry not be held is denied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22 and 56.

Authorities Considered: B.C.: Decision F10-14, 2010 BCIPC 57 (CanLII); Decision F10-07, 2010 BCIPC 37 (CanLII); Order No. 322-1999, 1999 CanLII 2441 (BC IPC); Order 00-53, 2000 CanLII 14418 (BC IPC); Order F07-19, 2007 CanLII 42408 (BC IPC); Order F11-22, Order F11-22, 2011 BCIPC 28 (CanLII); Order 01-40, 2001 CanLII 21594 (BC IPC); Order F14-39, 2014 BCIPC 42 (CanLII); Decision F10-13, 2010 BCIPC 56 (CanLII); Order F08-11, 2008 CanLII 30213 (BC IPC).

INTRODUCTION

[1] The British Columbia Lottery Corporation ("BCLC") asks that the Commissioner exercise her discretion under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to not hold an inquiry under Part 5 of

FIPPA regarding the respondent's request for review of the decision to withhold information from the records.

ISSUE

[2] Should the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry to review BCLC's decision to withhold information because it is plain and obvious that s. 22 of FIPPA applies?

RECORDS AT ISSUE

[3] The records consist of itemized expenses for the hotel, entertainment and meals (1 page) and hotel receipts (5 pages). The only information that BCLC withheld from these pages are the players' names and ID numbers.

DISCUSSION

Background

[4] The respondent requested:

All of [the Director of EGaming and Marketing's] expense reports, showing costs and including copies of invoices and receipts, regarding her expenses and those of BCLC executive, staff, client and customer groups involved in promotions and hospitality for the following concert events: KD Lang, (on or about) Sept. 9, 2012; Sarah McLachlan and Friends Voices in the Park, (on or about) Sept. 15, 2012; and Paul McCartney, (on or about) Nov. 25, 2012. Please include the names of those BCLC staff, clients and customers who attended the events.

[5] BCLC responded by informing the respondent that it was withholding the responsive records in their entirety under ss. 17(1)(b) and (d), 19(1) and 22(1) of FIPPA.

[6] The respondent requested that the Office of the Information and Privacy Commissioner ("OIPC") review BCLC's decision. Mediation resulted in disclosure of some information in the records. However, BCLC continued to withhold the players' names and ID numbers under ss. 17(1) and 22(1) of FIPPA. The respondent was not satisfied with this response and asked that this matter proceed to an inquiry.

[7] BCLC asked that the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry under Part 5 of FIPPA regarding the respondent's request for review of the decision to withhold information from the records because it submits that it was plain and obvious that disclosure of the players'

names and ID numbers would be an unreasonable invasion of the player's personal privacy under s. 22(1) of FIPPA.

[8] In his submissions for the s. 56 matter, the respondent revised the scope of his request and says that he no longer wants the players' ID numbers. Therefore, I will not consider the players' ID numbers in this decision.

Analysis

[9] Section 56(1) of FIPPA reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[10] A number of previous orders have set out the principles for the exercise of discretion under s. 56 of FIPPA. BCLC refers to Order F08-11¹ where Senior Adjudicator Francis provided a list of principles to follow when exercising discretion under s. 56 of FIPPA. She states:

- the public body must show why an inquiry should not be held
- the respondent (the applicant for records) does not have a burden of showing why the inquiry should proceed; however, where it appears obvious from previous orders and decisions that the outcome of an inquiry will be to confirm that the public body properly applied FIPPA, the respondent must provide "some cogent basis for arguing the contrary"
- the reasons for exercising discretion under s. 56 in favour of not holding an inquiry are open-ended and include mootness, situations where it is plain and obvious that the records fall under a particular exception or outside the scope of FIPPA, and the principles of abuse of process, *res judicata* and issue estoppel
- it must in each case be clear that there is no arguable case that merits an inquiry

[11] I have followed this approach in this case.

Parties' submissions

[12] BCLC submits that it is plain and obvious that s. 22 applies to the withheld portions of the records and that an inquiry should, therefore, not be held. BCLC claims disclosure of the players' names and ID would describe the players'

¹ Order F08-11, 2008 CanLII 30213 (BC IPC).

“...financial history or activities...”, which would be a presumed unreasonable invasion of their personal privacy under s. 22(3)(f) of FIPPA. Section 22(3)(f) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third-party's personal privacy if the personal information describes the third-party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. BCLC contends that there are no compelling circumstances under s. 22(2) favoring disclosure of the personal information. BCLC also submits that disclosure of its players' names would harm their reputation; therefore s. 22(2)(h) is a circumstance that weighs against disclosure. It submits that there is a potential for financial harm to the players if it were to disclose the players' ID number, therefore s. 22(2)(e) is another circumstance that weighs against disclosure.

[13] The respondent submits that s. 22(1) does not apply to the players' names. He argues that there are circumstances that rebut the presumption of an unreasonable invasion of privacy. He submits that the public body paid for the individual's expenses; therefore, s. 22(4)(h) of FIPPA authorizes disclosure of the names since it will provide information about expenses incurred by a third-party while traveling at the expense of a public body. He claims that the public body paid for the excursion thereby providing the players with a discretionary benefit described in ss. 22(4)(i) and (j). The respondent argues that disclosure of the names of the players would subject the activities of the public body to public scrutiny and therefore s. 22(2)(a) of FIPPA is a circumstance that weighs in favour of disclosure.

Findings

[14] While it is clear that BCLC makes a case for the application of s. 22, this is not sufficient for the purposes of demonstrating it is plain and obvious that a public body has applied the section appropriately. As noted above it must be plain and obvious that the s. 22 exception applies to the records. In my view, and without reaching any determination on the final merits of this case, it is at least arguable that any one of ss. 22(4)(h)(i) and or (j) might apply in this case.

[15] For this reason, BCLC has not established that it is plain and obvious that s. 22(1) of FIPPA applies to the players' names. An inquiry is the proper forum to decide this matter.

CONCLUSION

[16] BCLC has the burden of demonstrating why its application for s. 56 should be granted. In my opinion, it is not plain and obvious that BCLC is required to withhold the players' names under s. 22(1) of FIPPA, so BCLC's request is denied. An inquiry will therefore be held.

[17] Nothing in this decision reflects any opinion or decision as to the merits of the BCLC's case. The merits remain to be decided in the Part 5 inquiry, on the basis of the evidence and argument the parties submit.

December 18, 2014

ORIGINAL SIGNED BY

Tim Mots, Adjudicator

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