Order F20-45

BRITISH COLUMBIA LOTTERY CORPORATION

Ian C. Davis
Adjudicator

October 7, 2020

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Summary: The applicant made three requests to the British Columbia Lottery Corporation (BCLC) for access to records relating to named individuals allegedly involved in gaming, organized crime or gaming regulation in BC. BCLC refused to confirm or deny the existence of the requested records, citing s. 8(2)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator concluded that BCLC is authorized under s. 8(2)(b) of FIPPA to refuse to confirm or deny the existence of some, but not all, of the requested records.

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

INTRODUCTION

[1] The applicant made three requests to the British Columbia Lottery Corporation (BCLC) for access to records relating to named individuals allegedly involved in gaming, organized crime or gaming regulation in BC. In response to all three requests, BCLC refused to confirm or deny the existence of the requested records, citing s. 8(2) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review BCLC's decisions. Mediation did not resolve the matter and it proceeded to inquiry. In its initial submissions, BCLC clarified that it is only relying on s. 8(2)(b).[1]

[1] BCLC's initial submissions at para. 7.

ISSUE

[3] The issue is whether BCLC is authorized under s. 8(2)(b) to refuse to confirm or deny the existence of the requested records. The burden of proof is on BCLC.[2]

BACKGROUND

[4] BCLC is a BC Crown corporation continued under s. 2 of the *Gaming Control Act*.[3] It is an operationally independent corporate body governed by a government-appointed Board of Directors that reports to the Attorney General. BCLC is authorized under the *Gaming Control Act* and the *Criminal Code* to conduct and manage gaming in BC on behalf of the BC government.[4]

[5] As part of the BC gaming operations system, BCLC contracts with independent service providers who provide and operate gaming facilities. One of those service providers is the Great Canadian Gaming Corporation (GCGC). GCGC provides operational services to BCLC at 10 locations including River Rock Casino Resort in Richmond.

[6] On May 14, 2018, the applicant made a request to BCLC for access to records created in connection with a reported meeting of a named BCLC executive and a named individual. He also requested any records created or reviewed by BCLC regarding the named individual between May 2014 and December 2014. In the request, the applicant referred to the named individual as a "BCLC patron" associated with a "buy-in of $645, 105 in small bills".

[7] On May 15, 2018, the applicant made a second request to BCLC for access to records related to two named individuals, referred to by the applicant as "patrons" or "banned patrons", including any internal reports about the individuals' alleged connections to organized crime. The reference to being "banned" relates to BCLC's authority under s. 92(1) of the *Gaming Control Act* to request that a person leave, or forbid a person from entering, a gaming facility. In the request, the applicant cited a news article that ties the two named individuals to gangs and organized crime and refers to one as a "loan shark".[5]

[8] As part of the May 15, 2018 request, the applicant also requested access to any documents related to "alleged sexual misconduct allegations", whether substantiated by police or not, involving any River Rock Casino employees and one of the named individuals in the first part of the request. The BC government

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[2] Order F19-30, 2019 BCIPC 32 (CanLII) at paras. 3-5; BCLC's initial submissions at para. 14.
[3] The information in this background section is based on the evidence in Affidavit #1 of the Director, Anti-Money Laundering and Investigations for BCLC, which I accept.
[4] *Gaming Control Act*, S.B.C. 2002, c. 14; *Criminal Code*, R.S.C. 1985, c. C-46.
[5] Exhibit "D" to Affidavit #1 of Director, Anti-Money Laundering and Investigations for BCLC.

published a news release describing two investigation reports relating to these allegations, which are described in the news release as allegations of "sexual harassment and assault".[6]

[9] On August 1, 2018, the applicant made a third request to BCLC for access to any "iTrak" reports naming a particular GCGC employee from January 1, 2014 to December 31, 2017.

[10] iTrak is a computerized reporting and risk management database system that BCLC requires all BC gaming facilities to use. Gaming facility employees are required to record and report incidents to BCLC through iTrak by inputting all information relevant to the incident, such as the names of all parties involved (including gaming facility employees). The kinds of incidents that are reported through iTrak include, for example, suspicious transactions or any potentially illegal activity such as cheating at play, money laundering or loan sharking.[7]

[11] In this order, I will refer to the records requested in the first request as the "Meeting Records", in the second request as the "Alleged Organized Crime Records", and in the third request as the "iTrak Records".

[12] As noted above, in response to all three access requests, BCLC refused to confirm or deny the existence of the requested records.

SECTION 8(2)(b)

[13] Section 8(1) of FIPPA describes what a public body must tell an applicant in response to an access request. Section 8(1)(c)(i) states that, if the public body is refusing access, it must tell the applicant the reasons for the refusal and the provision of FIPPA on which the refusal is based. However, s. 8(2)(b) provides:

> 8(2) Despite subsection (1) (c) (i), the head of a public body may refuse in a response to confirm or deny the existence of …
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> (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.

[14] For s. 8(2)(b) to apply, BCLC must establish that:

a) disclosure of the mere existence or non-existence of the requested records would convey third-party personal information to the applicant; and

[6] Exhibit "E" to Affidavit #1 of Director, Anti-Money Laundering and Investigations for BCLC.
[7] Order F19-30, *supra* note 2 at paras. 7-8. See also Order F08-03, 2008 CanLII 13321 (BC IPC) at paras. 18-19.

b) the disclosure of the existence of that information would itself be an unreasonable invasion of that third party's personal privacy.[8]

[15] Section 22 of FIPPA is relevant to the s. 8(2)(b) analysis, even though that section deals with a different question. The privacy analysis under s. 22(2) focusses on the impact of disclosure of the personal information, not the fact that it exists. By contrast, s. 8(2)(b) focusses on the impact of disclosure of the existence of personal information.[9]

What, if any, third-party personal information would disclosure of the mere existence or non-existence of the requested records convey?

[16] Under FIPPA, personal information means recorded information about an identifiable individual other than contact information.[10] Information is about an identifiable individual when it is "reasonably capable of identifying an individual, either alone or when combined with other available sources of information."[11] FIPPA defines contact information 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.

[17] BCLC submits that disclosure of the mere existence or non-existence of the requested records would convey personal information about the third parties named in the requests. Specifically, BCLC argues that:

- disclosing the mere existence or non-existence of the Meeting Records would reveal whether the named individual and the BCLC executive met, which in turn would reveal information about the nature of the individual's involvement with BCLC;
- disclosing the mere existence or non-existence of the Alleged Organized Crime Records would reveal whether the named individuals were gaming patrons and/or whether they were involved with organized crime, or the sexual harassment and assault allegations, as alleged in the access request; and
- disclosing the mere existence or non-existence of the iTrak Records would reveal whether the named GCGC employee was involved in any incidents that warranted reporting to BCLC through iTrak.[12]

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[8] Order 02-35, 2002 CanLII 42469 (BC IPC) at para. 33.
[9] Order 02-35, *ibid*; Order F19-30, *supra* note 2 at para. 10; Order F15-01, 2015 BCIPC 1 (CanLII) at para. 16.
[10] See definitions for "personal information" and "contact information" in Schedule 1 of FIPPA.
[11] Order F19-13, 2019 BCIPC 15 (CanLII) at para. 16, citing Order F18-11, 2018 BCIPC 14 (CanLII) at para. 32.
[12] BCLC's initial submissions at paras. 18-22, 37-38 and 62-63.

[18] The applicant did not address the specifics of the legal tests under s. 8(2)(b) or s. 22. However, he says that, "even if some identities should be redacted … non-personal information" should be disclosed.[13]

[19] I am satisfied that disclosing the mere existence or non-existence of the requested records would convey personal information about the third parties named in the records.

[20] Specifically, I find that disclosure of the existence or non-existence of the Meeting Records would reveal whether the named individual and the BCLC executive met. Also, since BCLC's business is gaming, I am satisfied that BCLC would only have records relating to the named individual if he or she was involved in gaming-related activities in some way connected to BCLC's mandate. I find that disclosure of the existence or non-existence of the Meeting Records would reveal whether the named individual was engaged in gaming-related activities.

[21] I also accept that disclosure of the Alleged Organized Crime Records would reveal whether the named individuals were gaming patrons and/or whether they were suspected of being involved with organized crime in relation to gaming, or the sexual harassment and assault allegations, as alleged in the access request.

[22] Finally, I find that disclosing the mere existence or non-existence of the iTrak Records would reveal whether the named GCGC employee was involved in any incidents that warranted reporting to BCLC in iTrak. On the evidence before me, I am satisfied that a casino employee would not be named in an iTrak report unless they had at least some level of involvement in the incident reported.

[23] In my view, all of this information is the personal information of the named third parties because it is about them and is clearly not contact information.

Would disclosure of the existence of the third-party personal information itself be an unreasonable invasion of the third parties' personal privacy?

[24] The next step in the analysis is to determine, based on s. 22 of FIPPA, whether disclosure of the existence of the third-parties' personal information would itself be an unreasonable invasion of their personal privacy. The proper approach to the s. 22 analysis is well-established.[14] I will apply that approach here to each set of records.

[13] Email from the applicant to the OIPC and BCLC dated March 5, 2020. Hereafter, all quotes from the applicant's submissions are from this email.
[14] See e.g. Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58.

Meeting Records

[25] The first step is to analyze s. 22(4). That section sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

[26] BCLC submits that none of the circumstances in s. 22(4) apply.[15] The applicant does not raise s. 22(4). In my view, none of the circumstances in s. 22(4) apply.

[27] The next step is to determine if any of the presumptions in s. 22(3) apply. That section sets out various circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[28] BCLC submits that ss. 22(3)(d) and (f) apply.[16] Section 22(3)(d) creates a presumption that the disclosure of information relating to employment, occupational or educational history is an unreasonable invasion of third-party personal privacy. Section 22(3)(f) states that disclosure of personal information that describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness is presumed to be an unreasonable invasion of privacy.

[29] Regarding s. 22(3)(d), BCLC argues that disclosing the existence or non-existence of the Meeting Records would disclose part of the BCLC executive's employment history, i.e. whether the executive attended a meeting with the named individual.

[30] With respect to s. 22(3)(f), BCLC argues that disclosing the existence or non-existence of the Meeting Records would reveal the named individual's financial history or activities. BCLC says disclosure "would reveal whether the named individual at some point engaged in a transaction with BCLC or engaged in activity involving BCLC's business operations – which are necessarily financial".[17]

[31] BCLC relies on Orders F18-16 and F17-39.[18] In these orders the adjudicators found that s. 22(3)(f) applied to a list of charitable donors to a university that included the amounts the donors donated. The adjudicators found that the information described the donor's financial activities. BCLC says disclosing that someone gambled is the same, for the purposes of s. 22(3)(f), as disclosing that someone made a charitable donation.

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[15] BCLC's initial submissions at para. 23.
[16] BCLC's initial submissions at paras. 24-30.
[17] BCLC's initial submissions at para. 28.
[18] Order F18-16, 2018 BCIPC 19 (CanLII); Order F17-39, 2017 BCIPC 43 (CanLII).

[32] In my view, s. 22(3)(f) applies and it is not necessary to also consider s. 22(3)(d). I recognize there are obvious differences between gambling and making a charitable donation. However, in my view, they are similar in that they both describe an individual's expenditures. BCLC's business is gaming, which I find is clearly a financial activity. I accept that BCLC would only have records relating to the named individual if he or she was involved in gaming in some way connected to BCLC. I find that disclosing whether the Meeting Records exist would reveal whether the individual named in the request was involved in gaming. I am satisfied that disclosure would describe the named individual's financial history or activities in the same way that disclosure of a charitable donation would.

[33] The final step in the analysis is to consider, given all the relevant circumstances, including those in s. 22(2), whether disclosure of the personal information would be an unreasonable invasion of the third party's personal privacy.

[34] BCLC submits that the relevant circumstances do not rebut the presumption under s. 22(3).[19] BCLC only addressed s. 22(2)(a). That section states that a relevant circumstance is whether disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.

[35] In the context of s. 8(2)(b), the question under s. 22(2)(a) is whether "disclosing the personal information that would be conveyed by disclosing the existence or non-existence of records is desirable for subjecting activities of a public body to public scrutiny."[20]

[36] BCLC says that disclosure of the existence or non-existence of the Meeting Records would only subject the named individual to public scrutiny, not BCLC.

[37] The applicant does not specifically mention s. 22(2)(a); however, part of his submissions are relevant to that subsection. He says the records "are of crucial public interest, in order to provide transparency on regulatory matters in BC casinos". He says the requested records "can shed light on whether BCLC employees, BC officials, or BC gaming workers, potentially have connections or contact with organized crime, worthy of public scrutiny and examination." He also says that BCLC refusing to disclose the requested records "amounts to a potential cover-up on the part of BCLC."

[38] I see how the contents of records relating to the meeting, if it occurred, might shed light on the propriety of BCLC's activities. However, the contents of

[19] BCLC's initial submissions at paras. 31-34.
[20] Order F15-01, 2015 BCIPC 1 (CanLII) at para. 36. See also Order 02-35, 2002 CanLII 42469 (BC IPC) at para. 39.

the records are not at issue here. The issue is whether revealing the mere fact that the BCLC executive met with the named individual would be desirable for subjecting BCLC to public scrutiny. I find the mere fact that the named individual and the BCLC executive met does not, without knowing what was discussed, assist in scrutinizing whether BCLC's activities reveal the things that the applicant alleges. For these reasons, in my view, s. 22(2)(a) is not a significant factor here.

[39] Finally, I am not satisfied that any other circumstances are relevant or weigh in favour of disclosure. The applicant did not argue that any others were. I find that the presumption under s. 22(3)(f) has not been rebutted. Accordingly, I conclude that disclosure of the existence or non-existence of the Meeting Records would be an unreasonable invasion of the named individual's personal privacy.

Alleged Organized Crime Records

[40] Turning to the Alleged Organized Crime Records, BCLC submits that none of the circumstances in s. 22(4) apply.[21] I agree.

[41] Regarding s. 22(3), BCLC submits that ss. 22(3)(b) and (f) apply.[22] Section 22(3)(b) says that a disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if 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.

[42] For similar reasoning as set out above in relation to the Meeting Records, I find s. 22(3)(f) applies to disclosure of the existence or non-existence of the Alleged Organized Crime Records. I find that disclosing whether the Alleged Organized Crime Records exist would reveal whether the individuals named in the request were involved in gaming and/or loansharking. In my view, these are financial activities. Since BCLC's business is gaming, which is a financial activity, I find that BCLC would not have records relating to the named individuals unless they were involved in these financial activities in some way connected to BCLC.

[43] I also find that s. 22(3)(b) applies to whether one of the named individuals was involved in the sexual harassment and assault allegations referred to in the applicant's request. If BCLC were to disclose the existence or non-existence of records relating to this allegation, it would reveal whether the named individual was involved. I accept that this fact would be information compiled and identifiable as part of an investigation into a possible violation of law. Assault, sexual assault and criminal harassment are all offences punishable under the

[21] BCLC's initial submissions at para. 39.
[22] BCLC's initial submissions at paras. 40-43.

Criminal Code.[23] There is no evidence before me that disclosure is necessary to prosecute the violation or to continue the investigation.

[44] I conclude that disclosure of the existence or non-existence of the Alleged Organized Crime Records is presumed to be an unreasonable invasion of the named third parties' personal privacy under s. 22(3)(f) and, for the specific records relating to the sexual harassment and assault allegations, s. 22(3)(b).

[45] Finally, I turn to all relevant circumstances, including those listed in s. 22(2).

[46] With respect to s. 22(2)(a), disclosure of the existence or non-existence of the Alleged Organized Crime Records would reveal whether the named individuals were gaming patrons and/or whether they were involved with organized crime. The applicant cited a news article that ties the two named individuals to gangs and organized crime. I can see that it would reveal something of significance about BCLC's activities if the media was publicly reporting that named individuals were involved in organized crime at BCLC locations but BCLC had no records showing they looked into that. In the applicant's submissions he refers to a police report that I accept provides a reasonable basis for the public to want to scrutinize BCLC's activities.

[47] Therefore, I conclude that revealing whether the records exist would be to some extent desirable for subjecting BCLC's activities to public scrutiny because it could assist the public in assessing whether BCLC is regulating properly.

[48] As for records relating to the sexual harassment and assault allegations, I can see how whether such records exist could be desirable in scrutinizing whether the government investigated the allegations. However, the news release clearly shows that the government investigated the allegations and prepared reports. The personal information that would be revealed by disclosure of the existence or non-existence of the records is whether the named individuals were involved in the allegations. In my view, that fact would subject the named individuals to public scrutiny, not BCLC.

[49] The applicant also made submissions related to s. 22(2)(i). That subsection provides that it is a relevant circumstance whether the information is about a deceased person and, if so, the length of time the person has been deceased. In the applicant's request for the Alleged Organized Crime Records, he said that the named individuals "are either dead, or convicted and extradited", so any "privacy exclusions" applicable to them should be "waived". He cited a 2009 news article that reports that one of the two named individuals died in 2009.

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[23] *Criminal Code*, R.S.C. 1985, c. C-46 at ss. 264, 265-266 and 271. See also Order F19-30, *supra* note 2 at paras. 23-27; Order 01-12, 2001 CanLII 21566 (BC IPC) at para. 17.

[50] In response, BCLC cites Order F18-08 for the proposition that "personal privacy rights are likely to continue for at least 20 years."[24] In that case, the adjudicator stated that, where a s. 22(3) presumption applies, the question is "whether the length of time is so significant as to override the presumption of a breach of the reasonable expectation of privacy."[25] BCLC argues that the presumption is not rebutted because the named individual has only been deceased for 11 years.[26] BCLC also notes that the 2009 article mentions that the named individual has family. BCLC says disclosure of personal information about the named individual would have a negative impact on the family members.

[51] Since there is no evidence before me that one of the two named individuals is deceased, I find that s. 22(2)(i) does not apply to any records relating to that individual.

[52] As for the other individual, I have considered s. 22(2)(i). I am not satisfied that the amount of time that has elapsed since the individual's death is sufficient to rebut the s. 22(3)(b) and (f) presumptions. In Order F18-08, the disputed information was about a person who had been deceased for 16 years and the adjudicator found that this amount of time was not enough to favour disclosure.[27] I make a similar finding here. The named individual has been deceased for 11 years. I am not satisfied that this is enough time to diminish the named individual's privacy rights in this case.

[53] With respect to the impact of disclosure on the named individual's family members, Order F12-08 considered the impact of disclosure of an autopsy report and forensic laboratory report on a murder victim's family members.[28] The adjudicator found that disclosure would cause mental distress to the family members and that this weighed against disclosure in that case.

[54] I find that the impact on the named individual's family members is not a significant consideration in this case. In my view, the information that would be revealed about the named individual's gaming-related activities and suspected ties to organized crime, if the existence of the records is known, is not nearly as harmful to the individual's family members as the information was to the family members in Order F12-08. Public allegations about the named individual's activities and connections are already known through the news article cited by the applicant. Also, the issue here is about disclosure of the existence of records, not the details contained in records, as was the case in Order F12-08. Further, the news article establishes that the named individual's children are now at least

[24] Order F18-08, 2018 BCIPC 10 (CanLII) at para. 32.
[25] Order F18-08, *ibid* at para. 30, citing Order F12-08, 2012 BCIPC 12 (CanLII) at para. 42.
[26] BCLC's initial submissions at paras. 50-55.
[27] Order F18-08, 2018 BCIPC 10 (CanLII) at para. 32.
[28] Order F12-08, 2012 BCIPC 12 (CanLII) at paras. 44-47.

18 years old. Given the age of the children, I find the risk that disclosure of the personal information would cause harm to them is fairly minimal.

[55] I also reject the applicant's suggestion that the named individuals' privacy rights should be waived because they have been either criminally convicted or extradited. The applicant did not cite, and I am not aware of, any authority establishing that privacy rights are forfeited upon criminal conviction or extradition.

[56] BCLC also raised an additional consideration. This is whether it is publicly known that the named individuals were involved in gaming, or the sexual harassment or assault allegations, or associated with organized crime. The applicant's access request suggests that he knows these things based on news reports. However, BCLC says that it would be an unreasonable invasion of the named individuals' personal privacy to confirm or deny what the applicant claims to know.[29]

[57] This issue was addressed in Orders F14-48 and F15-01.[30] The question is whether the applicant knows the third-party personal information for certain, as a matter of fact, based on personal experience or authoritative sources rather than speculation or evidence that points to more than one conclusion. In this case, the applicant's knowledge is based on a government news release and a news article citing other sources, for example, police or investigation reports.

[58] I find that the applicant's purported knowledge does not weigh in favour of disclosure here. On the evidence before me, I am not satisfied that what the applicant claims to know is proven fact. Revealing whether the records exist would disclose the individuals' personal information by lending credence to, or discrediting, the claims about them.

[59] Finally, BCLC also argues that s. 22(2)(h) weighs against disclosure of the existence or non-existence of the Alleged Organized Crime Records.[31] That subsection states that it is relevant whether the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[60] BCLC submits that revealing whether the named individuals were suspected of being involved in organized crime, or the sexual harassment and assault allegations, would damage the individuals' reputations. BCLC says this damage would be unfair because it would only amount to unproven allegations and would not actually prove that the named individuals did anything criminal.

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[29] BCLC's initial submissions at para. 49.
[30] Order F15-01, *supra* note 20 at paras. 52-57; Order 14-48, 2014 BCIPC 52 (CanLII) at paras. 45-49.
[31] BCLC's initial submissions at paras. 45-47.

[61] In Order F19-30, the adjudicator considered whether disclosing the existence of iTrak and various other reports that a casino corporation allegedly submitted to BCLC would unfairly damage the reputation of a third party.[32] The adjudicator found that the disclosure could unfairly damage the third party's reputation because it would suggest, but not prove, that the third party was engaged in potentially criminal conduct.

[62] I do not accept that disclosing the mere fact that the named individuals were involved in gaming would unfairly damage their reputations because gaming is legal. However, I find that revealing whether one of the named individuals was suspected of being involved with the sexual harassment and assault allegations would cause unfair damage to his or her reputation because this would portray the individual in a negative light without actually proving that the individual engaged in criminal activity. On the evidence before me, I am satisfied that the individual's alleged involvement is purely an allegation.

[63] As for the named individuals' alleged involvement in organized crime, I accept that disclosing that type of information could negatively impact the individuals' reputations. However, I do not consider that to be unfair harm to their reputations. That is because the references in the news article to the named individuals' connections to gangs and organized crime are based on police intelligence. Thus, the information is already in the public record in the criminal law context based on authoritative sources and, even though the allegations are not proven fact, the individuals have legal means by which to address them. Given that context, I find in this case that any harm to the individual's reputation that might arise if BCLC were to confirm the existence of records about those matters would not be unfair.

[64] To summarize, I find that disclosure of the existence or non-existence of the Alleged Organized Crime Records would result in the disclosure of personal information that is presumed to be an unreasonable invasion of the named individuals' personal privacy under ss. 22(3)(b) and/or (f). I accept that disclosure of this information is to some extent desirable for subjecting BCLC to public scrutiny under s. 22(2)(a). However, I find that disclosing whether some of the requested records exist would unfairly damage the individuals' reputations under s. 22(2)(h). I also found that the time that has passed since one of the individuals' death does not weigh in favour of disclosure under s. 22(2)(i).

[65] Ultimately, considering all these factors together, I find they are not sufficient to rebut the presumptions under ss. 22(3)(b) and (f). I conclude that disclosure of the third-party personal information conveyed by disclosure of the existence or non-existence of the Alleged Organized Crime Records would be an unreasonable invasion of the third parties' personal privacy.

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[32] Order F19-30, *supra* note 2 at paras. 34-35.

iTrak Records

[66] The final question is whether disclosure of the third-party personal information conveyed by disclosure of the existence or non-existence of the iTrak Records would be an unreasonable invasion of the named GCGC employee's personal privacy.

[67] Neither party argued that any of the circumstances in s. 22(4) apply. However, I find s. 22(4)(e) relevant to consider. According to that subsection, a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff.

[68] Past orders have found that s. 22(4)(e) covers personal information that relates to the third party's job duties in the normal course of work-related activities, such as objective, factual statements about what the individual did or said in the normal course of discharging their job duties, but not qualitative assessments or evaluations of such actions.[33]

[69] BCLC argues that s. 22(3)(d), not s. 22(4)(e), applies here because whether the named GCGC employee was involved in any incidents reported in iTrak is part of his or her employment history.[34] Specifically, BCLC argues that:

> The OIPC has held that s. 22(3)(d) applies to information about students' past activities, concerns and interactions related to their education. Based on the language of s. 22(3)(d), it must similarly apply to employees' past activities, concerns and interactions related to employment or occupation. Involvement in incidents reported in iTrak is clearly an employment-related activity or interaction for the employee. To the extent that the fact of being named in one or more iTrak reports would be interpreted (by the Applicant or other members of the public) as a positive or negative occurrence for a casino employee, this, too, engages s. 22(3)(d); "how well [an employee] performs their duties" is personal information under that provision.[35]

[70] For the following reasons, I find that s. 22(4)(e) applies, and s. 22(3)(d) does not apply, to the fact that the named GCGC employee was involved in one or more incidents reported in iTrak.

[71] In my view, BCLC's proposed interpretation of s. 22(3)(d) is too broad. Past orders establish that s. 22(3)(d) applies to information and allegations of wrongdoing in the workplace and an investigator's observations or findings about

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[33] Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 40; Order F14-45, 2014 BCIPC 48 (CanLII) at para. 45.
[34] BCLC's initial submissions at paras. 65-67.
[35] BCLC's initial submissions at para. 66 (footnotes omitted).

an individual's workplace behaviour or actions.[36] Past orders also establish that s. 22(3)(d) applies to information that relates to how well an employee performs their duties.[37] These orders limit the scope of "employment history" under s. 22(3)(d) to information relating to the investigation, assessment or evaluation of an individual's work-related conduct or performance. Given this scope, I am not persuaded by BCLC's argument that s. 22(3)(d) should apply to all of an individual's past work-related activities and interactions, including those that have no evaluative aspect to them.

[72] The question is whether disclosing whether the GCGC employee was involved in any incidents reported in iTrak carries any negative connotations for the employee or in some way evaluates how the employed behaved at work.

[73] BCLC's evidence, which I accept, is that the "likelihood of a gaming facility employee's name being included in iTrak reports depends in part on the employee's job function, which will impact the likelihood of their involvement in incidents that are recorded in iTrak."[38] BCLC says that some employees, such as security employees, will "regularly appear in iTrak reports", while other employees may never appear in such reports.[39]

[74] BCLC did not provide any evidence about the named GCGC employee's job function, why the employee might appear in an iTrak report and how regularly that would happen.

[75] I find that s. 22(3)(d) does not apply here. Based on BCLC's evidence, I find that whether an individual's name appears in an iTrak report is largely a function of the individual's job duties. The evidence before me does not establish that the mere fact of appearing in an iTrak report, without knowing the content of the report, reflects in any way on the employee's performance or conduct. According to BCLC's evidence, for some gaming facility employees, appearing in iTrak reports is simply part of doing their jobs.

[76] Ultimately, I find that s. 22(4)(e) applies here. I am satisfied that whether the GCGC employee was involved in an incident reported in iTrak is information that relates to the employee's job duties in the normal course of work-related activities. According to BCLC's evidence, being involved in incidents reported in iTrak is simply a consequence of certain gaming facility employees discharging their job duties.

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[36] Order F19-19, 2019 BCIPC 21 (CanLII) at para. 43; Order 01-53, 2001 CanLII 21607 (BC IPC) paras. 32-36.
[37] See, for example, Order F19-41, 2019 BCIPC 46 (CanLII) at para. 61.
[38] Affidavit #1 of Director, Anti-Money Laundering and Investigations for BCLC at para. 16.
[39] *Ibid*.

[77] I am also satisfied that the named GCGC employee is an employee of a public body for the purposes of s. 22(4)(e). BCLC concedes, and I agree, that GCGC is BCLC's "service provider", which is defined in FIPPA as a "person retained under a contract to perform services for a public body".[40] Since the FIPPA definition of "employee" includes a "service provider", I find that the named GCGC employee is a BCLC employee under FIPPA.[41]

[78] I conclude that disclosing whether the named GCGC employee was involved in any incidents reported in iTrak is not an unreasonable invasion of the employee's personal privacy under s. 22(4)(e). Whether disclosure of the *contents* of any iTrak reports naming the GCGC employee, if they exist, is an unreasonable invasion of third-party personal privacy is a separate question.

Summary

[79] To summarize, I found that disclosing the existence or non-existence of the requested records would reveal personal information about the individuals named in the access requests.

[80] I then found that none of the circumstances in s. 22(4) applied in relation to the requests for the Meeting Records or the Alleged Organized Crime Records. With respect to those requests, I also found that ss. 22(3)(b) and/or (f) apply. As such, disclosure of the existence or non-existence of those requested records is presumed to be an unreasonable invasion of the personal privacy of the individuals named in the access requests. Further, in my view, the factors weighing in favour of disclosure of the existence or non-existence of the Meeting Records or the Alleged Organized Crime Records are not sufficient to rebut the s. 22(3) presumptions.

[81] As for the request for the iTrak Records, I found that disclosing whether the named GCGC employee was involved in any incidents reported in any iTrak reports is not an unreasonable invasion of the employee's personal privacy under s. 22(4)(e). This is because that information is about the employee's position and functions as an employee of a public body.

[82] As a result, having regard to all relevant circumstances, I conclude that it would be an unreasonable invasion of third-party personal privacy for BCLC to confirm or deny the existence of the Meeting Records and the Alleged Organized Crime Records.[42] However, I conclude it would not be an unreasonable invasion

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[40] Affidavit #1 of Director, Anti-Money Laundering and Investigations for BCLC at para. 5; Schedule 1 of FIPPA.
[41] Schedule 1 of FIPPA; Order F18-38, 2018 BCIPC 41 (CanLII) at para. 71; Order F10-33, 2010 BCIPC 46 (CanLII) at para. 14.
[42] For similar overall findings, see e.g. Order F19-30, *supra* note 2.

of third-party personal privacy to confirm or deny the existence of the requested iTrak Records.

CONCLUSION

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

- BCLC is authorized under s. 8(2)(b) of FIPPA to refuse to confirm or deny the existence of the Meeting Records and the Alleged Organized Crime Records; and

- BCLC is not authorized under s. 8(2)(b) of FIPPA to refuse to confirm or deny the existence of the iTrak Records. If such records exist, BCLC must process the applicant's request with respect to those records by November 20, 2020.

October 7, 2020

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

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