

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 285-1998  
December 21, 1998**

**INQUIRY RE: A decision by British Columbia Lottery Corporation to withhold records concerning Lake City Casinos Ltd. from the Kamloops Daily News**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on September 18, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the British Columbia Lottery Corporation (the Lottery Corporation) to withhold records from the applicant.

**2. Documentation of the inquiry process**

This inquiry derives from an April 6, 1998 request by a reporter for the Kamloops Daily News (the applicant) to the Lottery Corporation for information on the gross revenue from 275 slot machines at the Stockmen's Hotel Casino in Kamloops for the period of April 1, 1998 to April 5, 1998. The Stockmen's Hotel Casino is operated by Lake City Casinos Ltd. (Lake City), the third party in this inquiry. In its April 6, 1998 request, the applicant took the position that "because the bulk of the money goes to the province it is public information" and should therefore be released.

On May 6, 1998 the Lottery Corporation refused access to the information on the basis of section 17(1)(d) of the Act:

I regret to inform you that British Columbia Lottery Corporation (BCLC) is unable to provide you with the requested gross revenue figure for the period April 1 through April 5, 1998. We have decided to refuse access to this information under Section 17(1)(d) of the Act. Section 17(1) states, "The head of a public body may refuse to disclose to a applicant information the disclosure of which could reasonably be expected to harm the financial or

economic interests of a public body..., including the following information ... (d) 'information the disclosure of which could reasonably be expected to result in...undue financial loss or gain to a third party....'

The section applies because release of this information could harm Lake City Casinos' negotiating position with current and prospective business clients. Lake City Casinos is a private business and information about Lake City Casinos' gross sales belongs to the business.

You may be interested to know that the province-wide net win per slot machine for the period April 1 through April 5, 1998 was about \$300. During this period there were 1,071 slot machines operating at 7 sites.

On May 7, 1998 the applicant asked that I review the Lottery Corporation's decision. The applicant expressed the view that the Lottery Corporation's position "is specious at best. The casino has no competitor in Kamloops. It is a monopoly. Lake City also operates the two casinos nearest the city, in Vernon and Kelowna." The applicant also stated:

The province announced April 9 new gaming rules which make the lottery corp. the de facto operator of casinos. According to a release from the B.C. Gaming Commission 'under the interim model, casino operators will now work with the B.C. Lottery Corp. to provide services.' The machines are owned by the lottery corp. and maintained by the lottery corp. The operator simply takes a cut of the gross proceeds. There is no competition in B.C. gaming. The province, through the lottery corp., contracts out management of the casino itself, not the machines. The management company brings people through the doors, the province owns and operates the attraction and takes most of the profits.

Gaming is a controversial issue in Kamloops and the rest of the province. Citizens and business people deserve to know how much money the province's slot machines are taking in Kamloops....

Attempts at mediation failed. The applicant asked me to proceed to conduct an inquiry which was scheduled for August 5, 1998. Lake City (the third party) was notified of the inquiry and of its right to participate in it. The Lottery Corporation subsequently informed my office of its intent also to rely on sections 16(1)(a)(ii) and 21(1)(a)(ii) of the Act to justify its refusal to release the requested information. Section 16(1)(a)(ii) of the Act allows a public body to withhold information if its disclosure could reasonably be expected to harm the conduct by the provincial government of relations between that government and the council of a municipality or the board of a regional district (or their agencies). Section 21(1) of the Act requires a public body to refuse to disclose information that would reveal either the trade secrets of, or commercial, financial, labour relations, scientific, or technical information of, a third party, if that information is supplied in confidence and if

its disclosure would be harmful to the third party's business interests in a way described in section 21(1)(c) of the Act.

Both parties wished an extension of the inquiry hearing date. On July 29, 1998 I granted an extension to September 18, 1998. On September 1, 1998 the Lottery Corporation asked for another extension of one month. Because the parties had had ample notification of the inquiry, and because the Lottery Corporation had not advanced a sufficient justification for an additional extension, I declined to extend the inquiry date beyond September 18, 1998.

### **3. Issues under review and the burden of proof**

The issues to be reviewed in this inquiry concern the Lottery Corporation's decision to withhold records on the basis of sections 16(1)(a)(ii), 17(1)(a), (b), and (d), and 21(1) of the Act.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under sections 16, 17, and 21, it is up to the public body, in this case the Lottery Corporation, to prove that the applicant has no right of access to the record or part of the record.

### **4. The record in dispute**

The record in dispute which contains the information sought by the applicant is described by the Lottery Corporation this way:

The record over which the Corporation agrees it has custody and control is comprised of information stored on a computer program which the Corporation utilizes to maintain control, provide security and maintain the integrity of its gaming operations, while at the same time providing critical accounting and maintenance data.

The information in the record to which the applicant seeks access relates to the gross revenue for 275 slot machines for a specified time period.

### **5. The applicant's case**

The applicant's submission is that the government's push to increase revenue by legalization of slot machines is a matter of great public interest, especially in Kamloops, which is the headquarters of the Lottery Corporation and, at the time of his initial application, had about twenty-five percent of the slot machines in the province. He wants to know only the gross revenue produced by these slot machines during a specific time period.

I have discussed below the applicant's submissions on the application of various sections of the Act.

## **6. The British Columbia Lottery Corporation's case**

In its submissions, the Lottery Corporation explained that the provincial government had announced significant changes to the structure of gaming in this province in April 1998. One of the announced changes was that the Corporation would be responsible for conducting and managing casino table games and slot machines as well as electronic and linked bingo. It also explained:

Prior to these changes in government policy, casinos operating only table games were operated by private gaming companies pursuant to the license granted by the Government of British Columbia to charitable organizations to conduct and manage the casino games. Pursuant to this license, the charitable organizations received the revenue from the casino operations. The private gaming companies who were hired to assist in the operation of the casino event earned a contracted fee for service.

Casino service providers under contract to the Corporation continue to receive a fee for service for contracted services provided to the Corporation for assistance in the operation of casino games.

Charitable organizations continue to receive an allocation of casino gaming revenue through an established direct access grant program administered by the British Columbia Gaming Commission.

On June 1, 1998 the Corporation assumed legal responsibility for all casino gaming in the Province. With this responsibility, it became necessary for the Corporation to enter into contracts with casino service providers (private gaming companies) to assist the Corporation in the conduct and management of casino gaming at various casino locations.

The Lottery Corporation entered into a service provider agreement with the third party on May 29, 1998. Under the terms of the agreement, the third party is retained as an independent contractor to provide operational services to the Corporation in connection with the Corporation's conduct, management and operation of the casino at issue in this inquiry, which opened in Kamloops on April 1, 1998.

I have presented below the Lottery Corporation's submissions on the application of specific sections of the Act.

## **7. Lake City Casinos Ltd.'s case as the third party**

My Office did not receive any direct submissions from the third party in this inquiry.

## 8. Discussion

The applicant has asked for access to information on “the gross revenue from 275 slot machines” operated by the third party at the Stockmen’s Hotel Casino. The Lottery Corporation provided the applicant with the province-wide “revenue after prizes” (RAP) per slot machine for the period of his request. The Lottery Corporation says that it uses the RAP as its equivalent of gross revenue and has therefore assumed, reasonably in my view, that what the applicant is seeking is the RAP for the 275 slot machines in question. (Submission of the Lottery Corporation, pp. 2-3) As an aside, it is my view that by disclosing the province-wide RAP for the period in question the Lottery Corporation has gone a considerable way towards meeting the goals of accountability and transparency of public bodies as contemplated by the Act.

### *Section 16: Disclosure harmful to intergovernmental relations or negotiations*

The Lottery Corporation relies in part on section 16(1)(a)(ii) of the Act to justify its refusal to disclose the record in dispute to the applicant. Section 16(1)(a)(ii) provides:

- 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;

The Lottery Corporation maintains that the disclosure of the information sought by the applicant would harm its relations with councils of municipalities and regional district boards for these reasons:

... The seeking of casino sites has in some instances become quite competitive. Native Indian Bands are criticizing other native Indian Bands and municipalities. Municipalities are criticizing other municipalities and Native Indian Bands. The adding of financial information relating to the operation of the casinos will, in the opinion of the Corporation, make much more difficult the dealings with the local municipalities and regional districts. The Gaming Policy Secretariat, also part of the Government of British Columbia, is the body who initially recommends the locations of destination casinos. They also have dealings with municipal councils and regional districts and municipalities and regional district boards and the release of financial information concerning the operations of specific casinos would hinder and harm the relationship which that body has with municipalities and regional districts.

The applicant submits that there is no reason to believe that disclosure of the gross revenue information in dispute will damage relations between the government and any municipality. For this purpose, it enclosed a letter to this effect from the mayor of Kamloops. In fact, Mayor Cliff Branchflower believes that such information should be released to the public on an ongoing basis. Furthermore, the applicant submits that, now that the province runs casinos without the need for municipal approval, there is no reasonable expectation that disclosure of the information in dispute would harm the conduct of relations between the government of British Columbia and the council of a municipality or the board of a regional district.

I do not find the Lottery Corporation's arguments on the application of section 16(1)(a)(ii) to be persuasive. Accordingly, I find that the Corporation has not met its burden of proving that the applicant has no right of access to the record based on section 16 of the Act.

***Section 17: Disclosure harmful to the financial or economic interests of a public body***

The Lottery Corporation also relies on section 17(1) of the Act to justify its refusal to disclose the requested information to the applicant. Section 17 provides in part that a public body "may refuse to disclose to an applicant information which could reasonably be expected to harm the financial or economic interests of a public body." This section specifies that this type of information includes:

- 17(1)(a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- ...
- (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;
- ....

I will consider each of these types of information separately.

***Section 17(1)(a): trade secrets of a public body...***

The Lottery Corporation argues that the financial results of its casino operations are trade secrets as that term is defined by the Act. The Lottery Corporation and Lake City treat this information very confidentially. (Submission of the Lottery Corporation, p. 4) Schedule 1 of the Act defines "trade secret" as follows:

... information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

- (a) is used, or may be used, in business or for any commercial advantage,
- (b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,
- (c) is the subject of reasonable efforts to prevent it from becoming generally known, and
- (d) the disclosure of which would result in harm or improper benefit.

The Corporation submits that:

... [t]he financial results of the operation of the Corporation's slot machines is highly sensitive information which is used or may be used in the Corporation's business. The Corporation derives economic value from the financial information not being known to the public. The disclosure of that financial information would result in harm to the Corporation and could result in improper benefit to some recipients of that information. The Corporation goes to extreme measures to maintain the confidentiality of the information. Under its agreement with Lake City, only a limited number of Lake City employees are permitted access to the information. Similarly, only a very limited number of the Corporation's employees have access to the information. All of the Corporation's employees have signed confidentiality agreements with the Corporation. The reason for the extreme secretiveness by the Corporation is that the disclosure of the financial information relating to the operation of the slot machines would cause extreme harm to the Corporation and to the third party, Lake City, who are operating the slot machines for the Corporation. If the Corporation is correct in its submission that the financial information is a trade secret of the Corporation then the head of the Corporation has the option to refuse to disclose that information to an applicant under the Act if the disclosure could reasonably be expected to harm the financial or economic interests of the Corporation and as stated that is exactly what the result would be.

Based on the definition of a trade secret in Schedule 1 of the Act, I accept that the information in dispute is a trade secret under the Act.

***Section 17(1)(b): financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value***

I agree with the Lottery Corporation that the information in dispute (which belongs to it) falls under the description of financial information that should be withheld because it has, or is reasonably likely to have, monetary value to it, since it helps to establish the profitability, or lack thereof, of a casino. I am not persuaded by the applicant's submission

that since the Corporation is a monopoly, and has no competition, disclosure cannot cause it financial harm.

***Section 17(1)(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***

The Lottery Corporation submits that disclosure of the information in dispute could reasonably be expected to result in undue financial loss to Lake City, the third party, and submitted a letter to that general effect from the president of the company (whose concern is its competitive position in the industry). The Corporation further points out that Lake City also operates in Kelowna and Vernon. The choice of operators for casinos in the province is obviously competitive and, as the Corporation submits, Lake City does not wish the records in dispute to be available to competitors. (Reply Submission of the Lottery Corporation, p. 2)

The applicant emphasizes that it has not asked the Lottery Corporation for any of its future plans with respect to slot machines: “The request is restricted to historical information on income already generated.” He also emphasizes that the government has turned down an application for a destination casino by the Kamloops Indian Band, and the city has stated its intention to limit casino activities within city boundaries to the Lake City operation at the Stockmen’s Hotel (which thus can have no competition).

The applicant submits that disclosure of earning information on specific slot machines at specific locations could not possibly harm the interests of the casino or the Lottery Corporation. I find that there is insufficient evidence to demonstrate that disclosure could reasonably be expected to result in undue financial loss or gain to the third party.

However, I find that the Lottery Corporation may withhold the information in dispute from the applicant on the basis of sections 17(1)(a) and (b) of the Act.

***Section 21: Disclosure harmful to business interests of a third party***

The Lottery Corporation has also relied on section 21 of the Act as the basis for non-disclosure of the requested information. Section 21 of the Act deals with information, the disclosure of which would be harmful to the business interests of a third party and which requires, among other things, that the Lottery Corporation demonstrate that the information is supplied, implicitly or explicitly, in confidence and that disclosure of the information could reasonably be expected to:

- 21(1)(c)(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

- (iii) result in undue financial loss or gain to any person or organization,  
or

....

The applicant submits that the Lottery Corporation has not met the second or third parts of the test established under this section, since there is no evidence that Lake City submits the gross revenue data to the Lottery Corporation in confidence, and disclosure of the requested information would not “significantly” harm the financial interests of the Casino.

The Lottery Corporation submitted a copy of its casino operating policies and standard procedures manual (sections 7.5 to 7.7) to indicate “that great care is taken to insure the confidentiality of the financial operations of the slot machines and to ensure that as few people as possible have access to that financial information. It is submitted that the financial information which flows back and forth between Lake City and the Corporation is supplied implicitly in confidence if not explicitly in confidence.” (See Order No. 26-1994, October 3, 1994) I read these sections in the manual in question as illustrating the considerable concern for confidentiality of money counting operations for security reasons. They do not, however, address the statutory issue of whether the information is “supplied in confidence” to the Lottery Corporation within the meaning of section 21(1)(b) of the Act: see Order 26-1994. There is insufficient evidence before me to support the Corporation’s contention that the RAP information “is clearly information that is supplied in confidence” by the third party to the Lottery Corporation for purposes of section 21 of the Act. (Reply Submission of the Lottery Corporation, p. 3).

The Lottery Corporation invokes the first three subclauses of section 21(1)(c) to prevent disclosure of the information in dispute. While there is some evidence before me that the disclosure of the information might harm the third party’s competitive position, that evidence does not support a conclusion that any such harm would be significant. Subsection (ii) has no application, since the Lottery Corporation admits that there is a contractual obligation for Lake City to supply the information in dispute to it. (Submission of the Lottery Corporation, p. 6) With respect to (iii) the evidence before me does not support a finding that the disclosure of the information in dispute could reasonably be expected to result in undue financial loss to the third party or undue financial gain to any other person. Also, I fail to see how disclosure could reasonably be expected to result in undue financial loss or gain to any person or organization, because of the regulated nature of gaming operations as they are now supervised by the province. I also fail to see how disclosure of the records of specific slot machines during their first five days of operation could be projected to “determine the income of Lake City Casino from the casino operations in the City of Kamloops.” (Reply Submission of the Lottery Corporation, p. 3)

I find that section 21 has no application in this inquiry.

***Section 25: Information must be disclosed if in the public interest***

The applicant urges me in the last analysis to rely on this section to overcome sections 16, 17, and 21 of the Act:

Since the decision on slot machines will ultimately be decided at a political level, it is fundamental that the public know how much money these machines are taking out of the local economy and how much of that is going to the provincial government. Without such information, the public is not in a position to judge whether the economic and social costs associated with slot machines are justified.

The Corporation submits that section 25 has no application to this particular request. I agree fully that this request does not rise to the standard of public interest necessary to invoke section 25 of the Act. See Order No. 162, May 9, 1997.

## **9. Order**

I have found that the British Columbia Lottery Corporation is authorized to withhold the information in dispute under sections 17(1)(a) and (b) of the Act.

Pursuant to section 58(2)(b) of the Act, I therefore confirm the decision of the head of the British Columbia Lottery Corporation to withhold the information in dispute under sections 17(1)(a) and (b) of the Act.

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David H. Flaherty  
Commissioner

December 21, 1998