



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-663

Appeal M_9500482

City of Belleville



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NATURE OF THE APPEAL:

The appellant submitted a request to the City of Belleville (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for a copy of all reports submitted by two charitable organizations (Charities A and B) to the City related to their sale of Nevada lottery tickets. The tickets were being sold by the Charities in locations in the City. The request covered the time period of the two previous years.

Pursuant to section 21 of the Act, the City contacted the Charities which declined to consent to the disclosure of the requested information.

The City then issued a decision in which it denied access to the records in their entirety on the basis of the following exemptions in the Act:

- third party information - section 10(1)
- invasion of privacy - section 14.

The appellant filed an appeal of the City's decision.

A Notice of Inquiry was sent to the City, the appellant and the two Charities. Representations were received from the appellant and an individual who represents both Charities. The City advised the Commissioner's office that it would not be providing any submissions.

The records at issue in this appeal consist of the following:

- a lottery licence issued to Charity A (1 page)
- Charity A's application to manage and conduct a Nevada Ticket Lottery (2 pages)
- Charity A's Nevada Ticket Lottery Report (2 pages plus 3 supplemental pages of banking documents)
- Charity B's application to manage and conduct a Nevada Ticket Lottery (2 pages).

PRELIMINARY ISSUE

The City forwarded the records described above to this office, apparently with the view that the appeal could proceed by way of this representative sample. In this regard, it stated that "... there may be other licences issued within the twenty-four month time frame which we can search out..." The City noted that the information contained in these additional documents would be the same as that contained in the records, but would simply apply to other license numbers and dates. The appellant did not agree that this appeal proceed by way of a representative sample. Accordingly, in the Notice of Inquiry, the City was requested to "... supply this office with any further records which are responsive to the request?". It has not done so.

In his submissions, the appellant notes that more records should exist and explains why.

So as not to delay the processing of this appeal, I will make an order disposing of the records which are currently before me. I will then order the City to conduct a further search for the remainder of the responsive records and issue a decision with respect to them, considering my findings in this order.

DISCUSSION:

THIRD PARTY INFORMATION

Section 10(1) of the Act states, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

For a record to qualify for exemption under section 10(1)(a), (b) or (c) the City and/or the Charities must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 10(1) will occur.

[Order 36. See also Order M-29 and Order M-37]

The Charities have submitted no representations on the application of parts one or two of the test. However, having reviewed the records, I find that they contain financial information about the operation of Charity A as well as commercial information related to some of the services provided by both Charities. Therefore, part one of the test has been met.

In order to satisfy part two of the test, the information must have been supplied to the City, either implicitly or explicitly in confidence. The Charities have provided no information as to the circumstances under which the City came to have custody of the records. I note, however, that pursuant to the Terms and Conditions of the Break Open Ticket Lottery, established by the Entertainment Standards Branch of the Ministry of Consumer and Commercial Relations, such information must be provided to the "licencing authority(ies)". "Licencing Authority" is defined as the Director under the Gaming Services Act, 1992, or a municipal council. Thus it appears that the Charities provided the records to the City in this manner.

There is nothing in these provisions to indicate whether such information is to be provided in confidence. Nor have the Charities submitted that they held a reasonable expectation of confidentiality when they supplied the information. As I have no evidence on this issue, I cannot conclude that the records were provided to the City in confidence, either implicitly or explicitly. Thus, part two of the section 10(1) test has not been met.

As all three parts of the section 10(1) test must be satisfied in order for the exemption to be applied, I find that the records do not qualify for exemption under section 10(1).

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The Charities submit that the records contain the personal information of the officers of their organizations, who are volunteers. Specifically, they note that the names, home addresses and telephone numbers of these individuals appear in the requested documents.

I agree with this submission and find that the references to the names, home addresses and telephone numbers constitute the personal information of the officers of the Charities.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The appellant has provided no submissions as to why the personal information of these individuals should be disclosed. In these circumstances, I find that disclosure of this information would constitute an unjustified invasion of the personal privacy of the officers of the Charities under section 14 of the Act. This information should not be disclosed to the appellant.

ORDER:

1. Subject to Provision 2, I order the City to disclose the records to the appellant within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. I order the City to remove all references to the names, telephone numbers and addresses of the two officers of the Charities where they appear anywhere in the records prior to disclosing them to the appellant.
3. I order the City to undertake a search for the balance of the responsive records as identified in its letter of September 12, 1995 to this office and to advise the appellant of the results of the search within twenty (20) days of the date of this order.
4. If, as a result of this further search, the City locates the balance of the records, I order the City to provide a decision letter regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
5. I order the City to consider the findings in this order when issuing the access decision referred to in Provision 4.
6. In order to verify compliance with this order, I order the City to provide me with a copy of the letter referred to in Provision 3, and a copy of the decision referred to in Provision 4 (if applicable), within thirty-five (35) days of the date of this order. These copies should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
7. I also reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 1 and 2.

Original signed by: _____ December 8, 1995
Anita Fineberg
Inquiry Officer