



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

ORDER M-708

Appeal M_9500680

City of Sault Ste. Marie



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NATURE OF THE APPEAL:

The City of Sault Ste. Marie (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for all information from 1990 to the present regarding lottery reports, ticket sales, revenues and expenses of a named group (the affected party) who had been issued Break Open Ticket Lottery Licences (Nevada Ticket Licences) by the City.

After soliciting the views of the affected party, the City denied access to all responsive records based on the mandatory exemption provided by sections 10(1)(a), (b) and (c) of the Act (third party information).

The requester appealed the City's decision.

The affected party has applied for a number of licences since 1990. All responsive records relating to one of these applications were provided to this office by the City. With the agreement of the appellant, this order will proceed by way of the representative sample of records relating to this one application. My decisions with respect to these records will apply equally to the comparable records relating to all other applications for Nevada Ticket Licences made by the affected party between 1990 and the date of this request.

The responsive records can be divided into three categories:

1. Nevada Ticket Licence application form and licence;
2. Nevada Ticket Lottery Report, with supporting bank transaction records;
3. copies of cheques, ledgers, bank statements and lottery ticket order forms dealing with transactions covered by the licence.

A Notice of Inquiry was sent to the appellant, the City and the affected party. All parties submitted representations.

DISCUSSION:

THIRD PARTY INFORMATION

Sections 10(1)(a), (b) and (c) of the Act read as follows:

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.

In order to qualify for exemption under any of these sections, the City and/or the affected party must provide evidence to 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) will occur.

[Orders 36 and M-663]

Part One

Having reviewed the records, I find that they all contain financial information of some kind, and the requirements of part one of the test have been established.

Part Two

To satisfy part two of the test, the City and/or the affected party must establish that the information in the records was **supplied** to the City, and secondly that this information was supplied **in confidence**, either implicitly or explicitly.

Neither the City nor the affected party deals specifically with the “supplied” aspect of part two of the test.

Having reviewed the records, I find that the information contained on the Application Form was supplied by the affected party as part of the application process. I find that the information contained on the Lottery Licence itself was not supplied by the affected party. As far as the category 2 and category 3 records are concerned, the affected party’s representations do not explain the circumstances under which the City came to have custody of the records. However, I have reviewed the terms and conditions of the Break Open Ticket Lottery licencing process established by the Ontario Gaming Control Commission, and note that this type of information must be provided to the licencing authority as a condition of the licence. The City is a licencing

authority, and I presume that this information was supplied to the City as required by the terms of the licence.

Turning to the “confidentiality” aspect of part two of the test, again the City does not address this in their representations. The submissions provided by the affected party’s lawyer refer to “confidential information relating to my clients”, but provide no evidence as to the circumstances under which the records were provided to the City.

The terms and conditions of licence do not indicate that information provided to a licencing authority is done in confidence, and the representations provided by the affected party are insufficient to establish an expectation of confidentiality at the time the information was provided to the City. In the absence of evidence to establish confidentiality, I cannot conclude that the records were provided to the City in confidence, either explicitly or implicitly, and the requirements for part two of the test have not been satisfied.

Because all three parts of the section 10(1) exemption test must be established, it is not necessary for me to deal with part three. However, the affected party and the appellant have addressed part three in their representations, so I will deal with it as part of this order.

Part Three

To satisfy this part of the test, the City and/or the affected party must establish that one or more of the harms described in sections 10(1)(a), (b) or (c) could reasonably be expected to occur if the information is disclosed.

Under the terms and conditions for Break Open Ticket Lottery Licences, licensees must make periodic reports listing the location that tickets are sold, the supplier of tickets, the number of tickets ordered and distributed and the number of tickets sold. The licensee is also required to open a dedicated trust account, and to provide details of transactions, expenses and a list of how the proceeds were dispersed

The appellant submits that because the affected party is a charitable organization with an obligation to distribute money from the sale of lottery tickets to various community organizations, the community has a right to determine whether the money is actually being distributed properly.

The City’s representations do not deal with part three.

The representations of the affected party outline details of an investigation relating to the affected party’s Nevada Ticket Licence, the results of which are currently under appeal. The affected party’s representations raise concerns that disclosure of certain financial information would interfere with ongoing negotiations and contractual obligations relating to this other appeal.

Having reviewed the various records provided to me by the City, I find that they are all of the type required under the reporting requirements referred to above. None of them appear to relate specifically to the financial affairs referred to by the affected party. Based on the limited

evidence provided to me by the City and the affected party, I find that disclosure of the information contained in the records could not reasonably be expected to give rise to the harms identified in any of sections 10(1)(a), (b) or (c) of the Act.

I find that all of the records fail to satisfy parts two and three of the test. Because all three parts of the test must be established in order for a record to satisfy the requirements for exemption, therefore none of the records qualify for exemption under section 10(1) of the Act.

INVASION OF PRIVACY

Page two of the Application Form and page two of the Nevada Ticket Lottery Report form contain sections where officers of the affected party organization certify the accuracy of information contained in the forms. In each case, two principal officers are required to provide their addresses and telephone numbers.

The affected party is a charitable organization, and it is unclear to me whether these individuals are volunteers and whether the address and telephone numbers are personal as opposed to professional. Because the personal information exemption included in the Act is mandatory, I have decided to err on the side of caution and to assess this information against the various provisions contained in sections 2 and 14 of the Act. I find that, in the circumstances of this appeal, disclosure of the addresses and telephone numbers contained on these forms would constitute an unjustified invasion of the personal privacy of these individuals and should not be disclosed.

ORDER:

1. I order the City to disclose to the appellant all category 1, 2 and 3 records which relate to this and all other Nevada Lottery Licence applications made by the affected party from 1990 to the date of the request, subject to the severance of the addresses and telephone numbers included on page two of the Application Form and page two of the Nevada Lottery Ticket Report. I order the City to make these disclosures by **March 19, 1996** and not before **March 14, 1996**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require that the City provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

February 13, 1996