



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

ORDER P-1181

Appeal P-9600049

Ministry of Consumer and Commercial Relations



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a letter of complaint. The letter concerns a named Indian association and was sent to a named individual in the Investigations section of the Gaming Control Commission (the Commission). The requester represents the Indian association named in the record.

The Ministry identified a letter with a two-page attachment as the responsive record and denied access to it in its entirety. The requester appealed the denial of access.

The Ministry denied access to the record on the basis of the following exemptions contained in the Act:

- law enforcement - sections 14(1)(a), (b), (d), (g) and (l) and section 14(2)(c)
- endanger life or safety - section 14(1)(e)
- invasion of privacy - section 21(1)

During mediation, the appellant indicated that he was not seeking access to the name and address of the complainant. Rather, he is seeking information about the allegations made against his client (the Indian association) as this is interfering with the association's ability to obtain a lottery license. Therefore, the name and address of the complainant are no longer at issue in this appeal.

A Notice of Inquiry was provided by this office to the appellant, the complainant and the Ministry. Representations were received from all parties.

The Commission is listed as a separate institution under the Act whose head is the Minister of Consumer and Commercial Relations. The Ministry has acted on the Commission's behalf in the processing of the request and the appeal and in making submissions to this office.

DISCUSSION:

I will first examine the application of section 14(1)(d) of the Act to the record.

LAW ENFORCEMENT

Section 14(1)(d) of the Act states as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of the term “law enforcement” found in section 2(1) of the Act.

This definition states:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The Ministry explains that the record qualifies as a law enforcement record under both the Criminal Code of Canada and the Gaming Control Act (the GCA). The Ministry submits that charitable gambling is regulated in two ways - charitable organizations which conduct and manage lottery schemes are licensed and regulated under the Criminal Code while gaming suppliers and gaming assistants are registered and regulated pursuant to the GCA. The Director, appointed under the GCA, and the municipal councils are the licensing authorities charged with enforcing the terms and conditions to a licence. A breach of the terms and conditions may result in charges under the Criminal Code. Investigations may be conducted under the Criminal Code and could result in charges of breach of the terms and conditions of a license, theft, fraud and breach of trust. Investigations may also be carried out under the GCA and result in suspensions or cancellations of existing licenses or registrations under the GCA.

The Ministry submits that the record was created as part of an ongoing investigation which could lead to prosecutions under the Criminal Code or under the GCA. The investigation could also lead to a proceeding before the Commercial Registration Appeal Tribunal relating to a suspension, immediate suspension or revocation of the registrations of gaming suppliers involved in the matter.

Based on the representations of the Ministry, I am satisfied that investigations conducted under the GCA lead or could lead to proceedings in a court or tribunal where a penalty or sanction could be imposed in the proceedings. I find that the record relates to a law enforcement matter for the purpose of the definition in section 2(1) of the Act.

I will now look at the requirements of the exemption itself which applies where disclosure could reasonably be expected to:

- disclose the identity of a confidential source of information in respect of a law enforcement matter, **or**
- disclose information furnished only by the confidential source.

The Ministry submits that the Commission's investigation department is dependent upon individuals coming forward with information necessary to initiate and continue an investigation. In such circumstances, it is imperative that the assurances of confidentiality given by the Commission to the complainant be upheld. The Ministry states that even with the name and address of the complainant removed from the record, the nature and content of the record would be sufficient for a knowledgeable individual to be able to identify the complainant.

The complainant states that he had been assured, at the time that he provided the information to the Ministry, that the information would be held in confidence and that, had he known that there was a likelihood of disclosure, he would never have agreed to provide it.

The appellant states that his client is seeking access to the actual nature of the allegations made by the complainant for the purpose of preparing a defence in its pursuit of a lottery license.

I have reviewed the record together with the representations of the parties. I agree with the Ministry that even with the name and address of the complainant removed, disclosure of the record to a knowledgeable individual would reveal the identity of the complainant. Therefore, while I can appreciate the appellant's position and his reasons for seeking access to the allegations, in my opinion, disclosure of that part of the record would also reveal the identity of the complainant. I find, therefore, that disclosure of the record could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter. I find that the exemption in section 14(1)(d) applies to the record. Because of my finding under section 14(1)(d), I do not need to consider the application of the other exemptions raised by the Ministry.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

_____ May 17, 1996