



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

# **ORDER PO-1639**

Appeal PA-980171-1

Ontario Casino Corporation



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## **NATURE OF THE APPEAL:**

The Ontario Casino Corporation (the Corporation) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to all records relating to how a named raceway was compensated, financially or otherwise, for the fact that the planned teletheatre was not included in the final plans for the Windsor Casino. The Corporation identified the record responsive to the request and denied access to it, pursuant to sections 17(1) (third party information) and 18(1)(a), (c) and (d) (economic and other interests) of the Act. The appellant, who is a member of the media, appealed the denial of access and submitted that a public interest exists in the disclosure of the record.

The record at issue in this appeal consists of a two-page letter agreement dated December 31, 1997 with a two-page Schedule attached thereto and forming part of the agreement.

This office provided a Notice of Inquiry to the named raceway (the affected party), the appellant and the Corporation. Representations were received from the affected party and the Corporation.

## **DISCUSSION:**

### **ECONOMIC AND OTHER INTERESTS**

The Corporation has claimed the application of sections 18(1)(a), (c) and (d) of the Act. These sections read as follows:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario.

I will first consider the application of section 18(1)(c).

By way of background, the Corporation states that its mandate was established by the Ontario Casino Corporation Act, 1993 and that it presently conducts and manages three casino complexes, one of them

being Casino Windsor. The Corporation carries on its business as a commercial enterprise and is required to enter into numerous agreements with third parties.

The Corporation states that the record was created as a result of a dispute that arose between the Corporation and the affected party. The affected party claimed that it was entitled to operate a teletheatre operation based on a Request for Proposal (the RFP) published by the Ministry of Consumer and Commercial Relations in connection with the development and operation of the Windsor Casino. Subsequently, the Corporation decided that the space allocated for the teletheatre would be better utilized within the casino complex and that it could significantly increase its revenues. The affected party objected to this change.

The Corporation submits that in order to settle the dispute and avoid litigation, it reached a settlement with the affected party which resulted in the creation of the record at issue. The Corporation submits that the agreement is highly confidential and contains confidentiality clauses that bind the Corporation, the affected party and its senior officers. The Corporation states that had the matter not been settled, it would have resulted in significant delays in construction and the opening of the casino complex. Such a delay would have had a serious impact on planning, hiring, job creation and revenues, in connection with the casino.

The Corporation submits that disclosure of the information in the record could reasonably be expected to prejudice its competitive position and its economic interests. The Corporation explains that it is presently in the process of negotiating agreements with the selected proponent for the development and operation of its third casino complex. These agreements contemplate numerous third party commitments for gaming and non-gaming amenities. The Corporation states that, as with other business developments, changes are necessarily made to the project from that originally contemplated in the request for proposal and the proposal submitted by the selected proponent. The Corporation points out that this process of negotiation with third parties is part of its business of developing and running a casino complex. However, should the record be disclosed, the Corporation believes that it would lead third parties who may be affected by these changes to use this settlement as leverage in seeking to obtain compensation where it is not justified.

The Corporation submits that disclosure of the record would limit its ability to use the casino and complex space in the best way to maximize its revenues. It states that it would no longer be able to make changes to its facilities and operations and the Corporation's ability to negotiate and resolve those claims will be prejudiced as third parties may use the record as a benchmark against which they will claim compensation. Accordingly, it is the Corporation's position that disclosure of the record could reasonably be expected to prejudice its economic interests and its competitive position.

I have carefully reviewed the record together with the representations of the parties. The Corporation has provided me with sufficient background information to put this appeal and the record in context. Section 18(1)(c) requires the Corporation to demonstrate a reasonable expectation of harm as opposed to certainty. I accept that the Corporation must act in a manner which does not compromise its best business interests and that the confidentiality of agreements can be critical to its competitive position. In the

circumstances of this appeal, I find that the Corporation has established that disclosure of the record could reasonably be expected to prejudice its economic interests and its competitive position.

### **COMPELLING PUBLIC INTEREST**

The appellant has not provided representations in response to the Notice of Inquiry. However, in the letter of appeal, the appellant stated that “[p]eople have a right to know what the Raceway received because the funds in question are public. Members of [a named association] also have a right to know.” In my view, the appellant has indirectly raised the application of section 23 of the Act, the so-called public interest override.

Section 23 of the Act states:

An exemption from disclosure of a record under sections 13, 15, 17, **18**, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

In order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the government economic and other interests exemption.

In her letter of appeal, the appellant refers to the interests of a named association. In my view, that interest is a private interest in the information at issue and cannot be characterized as a “public interest” within the meaning of section 23.

In the same letter of appeal, the appellant states that plans for the teletheatre and the subsequent cancellation were prominently covered in the local newspaper. I do not doubt that there is an interest in the amount of settlement; however, whether that interest is far-reaching has not been established. In my view, the fact that an issue is covered by the media does not necessarily mean that a **compelling** public interest exists.

I find that the appellant has failed to establish that there is a compelling public interest in the disclosure of the information in the record. Accordingly, I find that section 23 does not apply in the circumstances of this appeal.

### **ORDER:**

I uphold the Corporation's decision.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Adjudicator

\_\_\_\_\_ November 24, 1998