



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1679

Appeal PA-980333-1

Ontario Lottery Corporation



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NATURE OF THE APPEAL:

The Ontario Court of Appeal upheld a decision of the Ontario Court of Justice (General Division) that a certain lottery ticket was held in 50/50 partnership between the person who claimed the lottery prize and another individual. This other individual made a request to the Ontario Lottery Corporation (the OLC) under the Freedom of Information and Protection of Privacy Act (the Act) to view the original winning ticket. The requester included a copy of the Court of Appeal decision as well as a photocopy of the front and back of winning ticket. The name, address, telephone number and signature of the person who claimed the prize appear on the back of the ticket.

The OLC denied the request, claiming that it would not be reasonably practicable to allow the requester to view the original ticket (section 30(2) of the Act), taking into account “the preservation and integrity” of the record as an important factor. The OLC also claimed that disclosure would constitute an unjustified invasion of the personal privacy of the person who claimed the prize (the affected person), pursuant to section 21(1) of the Act.

The requester, now the appellant, appealed this decision.

During mediation, the appellant agreed to the following process in order to address the security concerns raised by the OLC: (1) the viewing would take place at a meeting attended by the appellant, his lawyer, the Mediator and any required staff of the OLC; (2) the meeting would take place wherever the OLC deemed appropriate and most secure; (3) the appellant would not touch or handle the ticket in any way; and (4) the ticket would be placed behind glass, as long as the appellant was given the opportunity to view both sides of the ticket.

Also during mediation, the Mediator notified the affected person to determine if she would consent to the appellant viewing the record. The affected person did not consent.

I sent a Notice of Inquiry to the OLC, the appellant and the affected person. Representations were received from the OLC and the appellant.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

“Personal information” is defined in section 2(1) of the Act, in part, as follows:

“personal information” means records information about an identifiable individual, including

...

- (d) the address, telephone number, fingerprints or blood type of the individual.

...

- (h) 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 appellant and the OLC both agree that the name, address and telephone number constitute the personal information of the affected person. I concur. I also find that the fact that this information is contained on a winning lottery ticket reveals personal information about the affected person.

The appellant explains that the original ticket may include markings which could have assisted in establishing his interest in the ticket. The appellant also points out that he "was found by the Courts to have been an owner of a 50% interest in the ticket, with the affected person." The Courts have determined that the appellant has a personal property interest in the original ticket and, in the particular and unique circumstances of this appeal, I find that the original ticket contains or would reveal personal information about the appellant.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and another individual, and an institution determines that disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, the institution has the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information would not constitute an unjustified invasion of another individual. Since the appellant has a right of access to his own personal information, the only situation under section 49(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information would constitute an unjustified invasion of the affected person's privacy.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure would result in an unjustified invasion of the personal privacy of the affected person. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The Ontario Court of Justice (Divisional Court) determined in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767, that the only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

If none of the presumptions in section 21(3) apply, the OLC must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The OLC states that the presumption in section 21(3)(f) applies. This section reads as follows:

[IPC Order PO-1679/May 14, 1999]

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The OLC submits:

It is the OLC's concern that disclosure in this instance, despite the related Court proceedings, remains disclosure of confidential prize winner information into the public domain. ... While the related Court proceedings in this case may appear to complicate this matter, OLC has seen nothing in this case that would allow it to disclose information belonging to a legitimate prize winner.

The OLC adds that, "[w]hile it may be the case that a copy of the record is in the possession of the appellant, that fact, in and of itself, does not negate whether section 21(3)(f) applies to this information."

As stated earlier, the affected person submitted no representations on this or any other issue identified in the Notice of Inquiry.

The appellant submits that because he is in possession of a copy of the record, its contents are known to him, and he would not be obtaining any new information about the affected person by viewing the original record.

Several previous orders of this Office have considered whether information that an appellant was previously aware of, or which was provided to or received from an appellant by an institution, should be subject to a presumption against non-disclosure (eg. Orders M-444, M-613, M-1077 and P-1263). These orders found that non-disclosure of personal information which was originally provided to an institution by an appellant would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. They determined that applying the presumption to deny access in these circumstances would, according to the rules of statutory interpretation, lead to an "absurd result". This reasoning was found to be equally applicable, in certain circumstances, to information which was provided by others, or was obtained by an institution in the presence of the appellant (eg. Order P-1414).

In my view, denying the appellant the right to view the original lottery ticket which he co-owns with the affected person, would similarly lead to an "absurd result" in the present circumstances. The appellant has a photocopy of the record, and is clearly aware of its contents. Any personal information of the affected party that is contained in the record is known to the appellant, and any information concerning the affected person's "finances", "income" or "financial activities" associated with her share of the ownership of the ticket have been communicated to the appellant, and to the public, through the Court process that determined the ownership issue.

For these reasons, I find that section 21(3)(f) is not applicable in the circumstances of this appeal.

Three previous orders have dealt with requests for access to personal information regarding lottery winners. In each case, the question of whether disclosure would represent an unjustified invasion of privacy has been determined on the

basis of a balancing of considerations for and against disclosure under section 21(2). Order P-180 involved a request for access to the names and communities of lottery winners of \$10,000 or more, and Order P-181 dealt with access to a press release relating to these same individuals. In the third order, P-1355, the request involved access to the names of individuals who won a particular lottery draw by an individual who claimed to be entitled to a share of the winnings. In each of these cases, section 21(2)(e) (exposed unfairly to pecuniary or other harm) was determined to be a relevant factor favouring privacy protection and, after considering all other relevant circumstances and factors, access was denied.

In my view, the facts and circumstances of the present case support a different outcome. The appellant knows the identity of the affected person, and already has a photocopy of the record containing the affected person's name, address and telephone number. As far as section 21(2)(e) is concerned, the appellant's lawsuit against the affected person is completed, and the OLC has provided no evidence to suggest that granting access to this same information under the Act could reasonably be expected to result in unfair exposure to pecuniary or other harm to the affected person or any other individual.

The appellant identifies the relevance of two factors under section 21(2), both of which favour disclosure: sections 21(2)(a) (public scrutiny) and (d) (fair determination of rights). The appellant states his belief that the original ticket may include markings which should have caused the OLC to investigate the affected person's claim before paying her the lottery winnings. The appellant also points out that his right to pursue a possible negligence claim against the OLC could be affected by disclosure of the record, with no impact on the affected person's privacy interest.

In the particular and rather unique circumstances of this appeal, in my view, the factors and considerations favouring disclosure outweigh any considerations favouring the protection of the affected person's privacy. Consequently, I find that disclosure would not constitute an unjustified invasion of personal privacy, and the record does not qualify for exemption under section 49(b) of the Act.

METHOD OF ACCESS

Section 30(2) of the Act states:

Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

Section 3 of O. Reg. 460 provides, in part:

- (1) A head who provides access to an original record must ensure the security of the record.
- (2) A head may require that a person who is granted access to an original record examine it at premises operated by the institution.

Section 30(2) is a mandatory provision, subject only to the requirement of reasonable practicability. In other words, unless an institution has determined that it is not reasonably practicable to give a requester the opportunity to examine

an original record, the head **must** do so, upon request. In these circumstances, the regulations require the head to ensure security of the record, and to consider whether the examination should take place at premises operated by the institution. If a requester disputes the head's determination on the question of reasonable practicability, that decision can be appealed to the Commissioner, and the onus is on the institution to justify its determination.

The OLC acknowledges the importance of preserving the security of the record. The OLC points out this record "may have been used as evidence in past litigation and it is reasonable to assume that it may be used as evidence in other litigation."

The OLC submits:

... it is OLC's position that providing access to the original ticket would put the integrity of the record at risk. Further, despite efforts by the mediator to design a set of circumstances that would minimize this risk, there is no alternative that allows the appellant access to the ticket that would not put the record at some level of risk. Accordingly, OLC has not voluntarily disclosed the record to date.

The appellant states that:

The ticket is simply one very small document which can be easily viewed and read at the offices of the Ontario Lottery Corporation in Toronto, Ontario. In that regard, the Appellant relies on section 30(2). The Appellant has no intention of taking the ticket or of damaging it in any way.

I agree with the OLC that the preservation of the integrity of the record is a critically important consideration in the present circumstances. However, I disagree with the OLC's position that these legitimate concerns cannot be adequately addressed. The appellant has an independent interest in maintaining the integrity and security of the original ticket, and has expressed considerable flexibility in how and when the viewing will take place. Although it would not be appropriate to involve a Mediator from this Office once the appeal is completed, in my view, arrangements similar to those accepted by the appellant during mediation are "reasonably practicable", and would adequately protect the integrity and security of the record, as required by regulation. Consequently, section 30(2) requires the OLC to permit the appellant to examine the original record, and I will order it do so.

ORDER:

1. I order the OLC to provide the appellant with access to the original record through on-site examination of the record by **June 21, 1999** but not earlier than **June 14, 1999** at a time and place mutually agreed upon by the parties.
2. I order the OLC to contact the appellant to make the necessary arrangements to comply with Provision 1.
3. I order the parties to advise this office once the above provisions are complete.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ May 14, 1999