



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1752

Appeal PA-990119-1

Alcohol and Gaming Commission of Ontario



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

BACKGROUND:

The Alcohol and Gaming Commission of Ontario (the AGCO) received a request pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for certain records relating to a particular establishment (the establishment). The request read as follows:

... Please provide information on [the establishment's] initial application to the L.L.B.O. [Liquor Licence Board of Ontario] to become a licensed restaurant which I surmise would have occurred sometime after September 1982. I am specifically interested in a copy of their application along with their floor plans and questionnaire and supporting documentation as well as what was the licensed capacity approved by the L.L.B.O. In addition, I am seeking similar data for their next application to increase capacity between then and 1993.

The AGCO responded by advising the requester that it was only able to locate records from 1995 to the present, and that it could not locate any records specific to the request. The requester (now the appellant) appealed this decision to this office.

Subsequently, the AGCO conducted an additional search and located a number of records responsive to the appellant's request. The AGCO granted partial access to these records. The appellant did not appeal the AGCO's decision to withhold portions of the records. She maintained, however, that additional records responsive to her request should exist.

This office provided the appellant and the AGCO with a Notice of Inquiry informing them that an oral inquiry would be held to determine whether the AGCO conducted a reasonable search for records which respond to the request.

The inquiry was held at this office. Both the appellant and the AGCO provided oral representations. In addition to the appellant, one other individual provided evidence on her behalf. For ease of reference, I will refer to both of these individuals as the appellant for the purposes of this order. The AGCO was represented by counsel. The AGCO's Supervisor of Records and Forms, as well as its Freedom of Information Co-ordinator, also provided evidence on behalf of the AGCO.

In addition to making oral representations, the AGCO submitted an affidavit, sworn by the Supervisor of Records and Forms for the AGCO. This affidavit was also made available to the appellant during the inquiry.

DISCUSSION:

REASONABLENESS OF SEARCH

In cases where a requester provides sufficient details about the records which he or she is seeking and the institution indicates that records do not exist, it is my responsibility to insure that the institution has made a reasonable search to identify any records that are responsive to the request. The Act does not require the institution to prove with absolute certainty that records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request.

As indicated above, the appellant believes that additional records responsive to her request should exist. During the inquiry, the appellant referred to a number of records which were previously disclosed to her by the AGCO. One of these records was record A1, which is entitled "The Liquor Licence Act Dining Lounge Licence" and is dated December 30, 1982. This record relates to the establishment and details the location of four rooms licensed for the sale and service of liquor. The capacity of the licensed area totals 360.

The appellant then referred to record B2, which is entitled "Application for Additional Licensed Areas and/or Building Alternations", dated January 20, 1994. This record also relates to the establishment and lists the existing, as well as the proposed locations of the licensed areas, as well as the maximum capacity of the licensed areas. According to this record, the maximum capacity of the existing licensed areas totals 530.

The appellant explained that these two records show that between 1982 and 1994 the liquor capacity for the establishment in question increased by 170. The appellant therefore submitted that there should exist at least one application reflecting the increase in liquor capacity between 1982 and 1994.

The appellant also referred to record A3, which is entitled "Liquor Licence Board of Ontario", dated December 30, 1982. This record also shows a licensed capacity of 360 for the establishment. This record stipulates that the licence expires on December 30, 1984. The appellant submitted that the next liquor license which she received from AGCO is dated December 1, 1994. The appellant further submitted that liquor licenses are renewed every two to three years, and therefore contends that additional licenses should exist with respect to the establishment.

The appellant then referred to record A2 entitled "Liquor Licence Board of Ontario Establishment Report", dated October 22, 1982. A handwritten notation exists on the top right hand corner of the first page of this document which reads "Revised June 6, 1985". The appellant therefore contends that a revised report should exist.

Finally, the appellant submitted that in 1980, the front part of the establishment in question "was a dry area where the use of liquor was prohibited". The appellant referred to the third page of record A2, where a reference is made to an "unlicensed coffee shop", as well as an "unlicensed banquet room". The appellant explained that the establishment is currently serving liquor in the front of the building. The appellant

therefore submitted that documentation must exist in support of this change in designation from a "dry area" to a "wet area".

At the inquiry, the appellant also sought information from the AGCO as to how many applications were received by the AGCO with respect to the establishment for the time period in question. She also questioned whether there exists a cross-referencing system which would show when applications are received and approved by the AGCO, to assist it in locating the missing records.

The AGCO began its submissions at the inquiry by stating that the AGCO does not dispute that certain records sought by the appellant should exist. The AGCO submitted, however, that it has been unable to locate these records.

As indicated above, the AGCO submitted an affidavit sworn by the Supervisor of Records and Forms for the AGCO (the Supervisor). This affidavit outlines the steps taken by the AGCO to search for the responsive records.

In this affidavit, the Supervisor explained that the AGCO was created by the amalgamation of the Liquor Licence Board of Ontario (LLBO) and the Gaming Control Commission on February 23, 1998.

The Supervisor further explained that prior to the amalgamation, he was employed with the LLBO for over five years and before that in various ministries of the Ontario government for a total of 18 years experience in the field of records management. The supervisor stated that he is very familiar with the record keeping system at the AGCO, as well as at the Ontario government's central storage facility in Cooksville (Cooksville), Ontario.

The Supervisor explained that in response to the appellant's request, he caused searches to be made in the Licensing and Registration Branch of the AGCO for the relevant files. He indicated that given the age of the records sought, he also caused a request to be made to Cooksville for any relevant records to be sent to the AGCO head office.

The Supervisor stated that diligent searches at the head office of the AGCO did not yield any records responsive to the request. He also received notification from Cooksville that the records requested did not exist. On this basis, the appellant was notified that records requested did not exist.

The Supervisor further explained that after receiving notification that the appellant had filed an appeal, he carried out a search of the AGCO's computer database with respect to the establishment. This search revealed that on November 25, 1996, a staff member of the LLBO had updated the computer system with respect to the establishment file and noted that the file had gone missing prior to 1996. A copy of the computer system printout showing this notation was attached to the affidavit. This document indicates that "this file has gone missing and another file has been made up with what documents are available".

The Supervisor explained that the file which was made up is the current file which is maintained by the AGCO with respect to the establishment. This file contains records from 1995 to the present, as well as some records from 1994. The Supervisor explained that this file was searched for any possible responsive records.

The Supervisor further submitted that he discussed this matter with an employee of the AGCO and former LLBO who has worked in the file room for over 10 years. This employee advised the Supervisor that she recalled that the establishment file was noted as missing some time in the mid-1990s.

The Supervisor further submitted that in response to the appeal, he also caused a further search to be made at Cooksville. Subsequently, Cooksville was able to locate records relating to the establishment for the time period of 1979 to 1982. Cooksville was unable, however, to locate the remainder of records for the time period of 1982 to 1994.

The Supervisor stated that he requested an explanation from Cooksville as to why certain files were located in response to the second request but not the first. He explained that he was advised that staff at Cooksville had not properly read the codes provided as part of the initial request. A memo from Cooksville explaining the mistake was attached to the affidavit.

The Supervisor explained that Cooksville is the central records storage facility for the Ontario government. The facility consists of four warehouses with close to 800,000 liner feet of records, which represents millions of pages of records. The Supervisor explained that if there is any misunderstanding or miscommunication with respect to the expected location of a file, it would be almost impossible to retrieve the information sought.

The Supervisor submitted that he had numerous discussions with Cooksville in an attempt to locate the missing records, however, the records could not be located.

The Supervisor also explained that a number of program areas of the AGCO, "that could possibly have had any input into the establishment", were also contacted in an attempt to find the missing records. None of these program areas had any responsive records.

With respect to the appellant's question as to whether there exists a cross-referencing system which would show when applications are received and approved, the AGCO submitted that other than the computer database mentioned above, which dates back to 1990, it does not maintain a secondary system in order to keep track of the receipt and processing of applications. The AGCO also explained that prior to 1990, there did not exist any other system of keeping track of the applications. All documentation regarding the establishment was maintained in the establishment file.

During the inquiry, the AGCO provided the appellant with five pages of the Activity Log from the computer database which relate to the establishment, covering the time period of 1990 to 1994. At the inquiry, it was noted that the last page of this record refers to an application received by the AGCO which may be

responsive to the request. The AGCO explained, however, that the actual application would be contained in the missing establishment file.

I have carefully considered all the representations submitted by both parties. Based on the AGCO's representations, I am satisfied that the searches which were conducted by the AGCO were done by experienced and knowledgeable individuals and that all reasonable steps have been taken to locate the missing records. Therefore, I am satisfied that the search conducted by the AGCO was reasonable in the circumstances.

ORDER:

I find that the AGCO's search for records responsive to the appellant's request was reasonable, and I dismiss the appeal.

Original signed by: _____
Irena Pascoe
Acting Adjudicator

February 1, 2000