



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1799

Appeal PA-990420-1

Ontario Lottery and Gaming Corporation

(formerly the Ontario Lottery Corporation)



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NATURE OF THE APPEAL:

The Ontario Lottery Corporation (the OLC) (now the Ontario Lottery and Gaming Corporation) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a computer printout listing a specified ALOTTO 6/49@ ticket purchased from a named variety store between February 28, 1999 and March 3, 1999. The requester stated that he had purchased the jackpot winning A\$2 quick pick with no Encore@ ticket, but had accidentally lost it or had it stolen from him.

The OLC identified a five-page ATransaction Report,@ as the only responsive record. This record lists all \$2 ALOTTO 6/49@ purchases made at the variety store during the specified time period. The OLC denied access to the record in its entirety pursuant to sections 18(1)(c) and (d) of the Act. In its decision letter, the OLC advised the requester that no major prize winning tickets for the March 3, 1999 draw had been purchased at the variety store.

The requester, now the appellant, appealed the OLC=s decision.

During mediation, the appellant was again advised that the record does not contain the winning numbers, and that the major prize winners for the March 3, 1999 draw were not from Ontario.

Further mediation efforts were not successful, so I sent a Notice of Inquiry to the Ontario Lottery and Gaming Corporation (the OLGC), asking for representations on the two exemption claims. Following my review of the representations submitted by the OLGC, I sent the Notice to the appellant together with the representations of the OLGC in their entirety. The appellant did not submit representations.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

The OLGC claims that sections 18(1)(c) and (d) apply to the record.

Section 18(1)(c) and (d) states:

A head may refuse to disclose a record that contains,

- (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;

Section 18(1)(c) provides institutions with a discretionary exemption which can be claimed where disclosure of information could reasonably be expected to prejudice the economic interests of an institution or the position of an institution in the competitive marketplace (See Order P-441).

To establish a valid exemption claim under section 18(1)(d), the institution must demonstrate a reasonable expectation of injury to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario (See Orders P-219, P-641 and P-1114).

In Order PO-1747, Senior Adjudicator David Goodis stated:

The words "could reasonably be expected to" appear in the preamble of section 14(1), as well as in several other exemptions under the Act dealing with a wide variety of anticipated harms. In the case of most of these exemptions, in order to establish that the particular harm in question could reasonably be expected to result from disclosure of a record, the party with the burden of proof must provide detailed and convincing evidence to establish a reasonable expectation of probable harm [see Order P-373, two court decisions on judicial review of that order in Ontario (Workers= Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and Ontario (Minister of Labour) v. Big Canoe, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

I concur with the above findings. In order to establish the requirements of the section 18(1)(c) or (d) exemption claims, the OLGC must provide detailed and convincing evidence sufficient to establish a reasonable expectation of probable harm as described in these two sections.

With respect to the application of section 18(1)(c), the OLGC submits:

OLGC operates in a competitive marketplace. The OLGC has vigilantly reinforced public confidence in its operations by continually enhancing its processes and procedures to ensure the highest level of integrity in its gaming operations. The corporation has made a significant investment to ensure the security of its operations. OLGC maintains the integrity of its lottery products and processes by ensuring rigid standards in game security. Disclosure of the record could prejudice the economic interests of the OLGC and harm its competitive position in the entertainment industry since other organizations could use this information to better their position within the entertainment industry.

The requested record contains commercial information about specific lottery transactions made at a retail location and OLGC considers this information to be confidential and highly sensitive material. As the OLGC has no way of verifying the appellant's claim that his ticket was stolen, and since the winning numbers do not appear on the report, OLGC would be required to explain each transaction. The OLGC would then run the risk of disclosing security procedures.

In my view, the OLG has not established the requirements for exemption under section 18(1)(c). The information contained in the record consists of the identity of the lottery terminal by number, the dates and times of the various transactions, the amount of the wager (in this case \$2), the numbers played, the corresponding Aencore@ number and whether or not it was chosen for each wager, whether the wager was a Aquick pick@, and specific Aserial@ and Aoffset@ numbers assigned to each transaction. I am not convinced, based on the representations provided by the OLG, that disclosure of any of this information could reasonably be expected to prejudice the economic interests of the OLG or harm its competitive position in the entertainment industry. The OLG has a monopoly on lottery sales in the province and does not operate on a competitive basis in the narrow sense of the term. As far as the broader entertainment industry is concerned, the OLG's position that disclosure of details regarding lottery numbers purchased at a particular location could in any way impact on a person's decision on how and where to spend money on entertainment is speculative at best and not a reasonable or supportable position in the circumstances. Accordingly, I find that the OLG has failed to provide the level of detailed and convincing evidence required to establish a reasonable expectation of probable harm to the economic interests of the OLG or its competitive position, and the record does not qualify for exemption under section 18(1)(c).

Regarding section 18(1)(d), the OLG submits:

...it is reasonable to expect that if security processes and procedures were disclosed to one individual, OLG runs the risk of having this information made available to the general public. If this information were made public, the OLG would be required to develop new security measures to maintain the integrity of the games and the confidence of its players. The development and implementation of new security processes would require a significant financial investment on the part of the OLG and the Government of Ontario.

I accept the OLG's position that the integrity of the provincial lottery system is of paramount importance to its successful operation, and that any changes required to remedy a security-related breach would require a significant financial investment on the part of the OLG and the government of Ontario. For this reason, I find that disclosure of the Aserial@ and Aoffset@ numbers identified in the record, which have a direct bearing on the OLG's security system, could reasonably be expected to be injurious to the financial interests of the Government of Ontario, and qualify for exemption under section 18(1)(d). However, for the same reasons outlined with respect to section 18(1)(c), I do not accept that disclosure of the remaining parts of the records, which deal with the actual lottery numbers and purchases made at a particular variety store on a particular weekend in March 1999, could reasonably be expected to result in probable harm of this nature.

ORDER:

1. I uphold the OLG's decision not to disclose the Aserial@ and Aoffset@ numbers listed in the record.
2. I order the OLG to disclose the remainder of the record to the appellant by **July 27, 2000**.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the OLG C to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Tom Mitchinson

Assistant Commissioner

July 6, 2000