



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

FINAL ORDER PO-1892-F

Appeals PA_000314_1 and PA_000315_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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Alcohol and Gaming Commission of Ontario (the AGCO) received two requests from a member of the media under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of two 1999 audit reports.

The AGCO located the two reports, entitled: "Report on Alcohol and Gaming Commission of Ontario Investigations Branch" (report #1) and "Internal Audit Final Report on Alcohol and Gaming Commission of Ontario Electronic Gaming Department" (report #2). Partial access was provided to both reports. The undisclosed portions were withheld on the basis of the exemption contained in section 14(1)(c) of the *Act* (law enforcement investigative techniques). Sections 14(1)(g) (law enforcement intelligence information) and 14(1)(i) (endanger building security) were claimed as additional exemptions for report #1.

The requester, now the appellant, appealed the AGCO's decisions.

Additional information was disclosed during mediation, but this did not satisfy the appellant, and the appeals proceeded to the adjudication stage. I sent a Notice of Inquiry initially to the AGCO, and received representations in response. After issuing Interim Order PO-1865-I, AGCO's representations were shared with the appellant, along with the Notice. The appellant also submitted representations.

DISCUSSION:

LAW ENFORCEMENT

Sections 14(1)(c), (g) and (i) of the *Act* read as follows:

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

- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

In Order PO-1747, Senior Adjudicator David Goodis stated the following with respect to the words "could reasonably be expected to" contained in the introductory wording of the law enforcement exemption:

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.)].

In order for the AGCO to rely on sections 14(1)(c) and (g) of the *Act*, the record must relate to a “law enforcement” matter, which is defined in section 2(1) of the *Act* as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections which 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).

In this regard, the AGCO submits:

The AGCO IB [Investigations Branch] is staffed by seconded OPP officers and civilian support clerks. The IB is responsible for carrying out due diligence investigations on every applicant for registration under [the *Gaming Control Act* (the *GCA*)]. The IB also carries out investigations where the AGCO becomes aware of allegations of criminal or other unlawful activity on the part of those already registered under the *GCA*.

IB officers receive special training to learn how games of chance are to be played and common forms of cheating. The IB is responsible for monitoring activity on the gaming floor of each casino and slot machine facility in Ontario to identify criminal activity. If an offence is observed, the matter is investigated by IB officers and, where appropriate, will result in charges being laid.

...

IB officers monitor gaming activity in casinos and racetrack slot machine facilities to enforce the *Criminal Code*. It is submitted that this activity falls within the meaning of policing.

With respect to the Electronic Gaming Department (the EGD), which is the subject of report #2, the AGCO states:

If the EGD detects problems with electronic gaming machines as a result of deliberate programming decisions of a registered supplier that would affect the randomness or the payout percentage, the supplier may become the subject of a Notice of Proposal to revoke its registration. In such cases, the work of the EGD is similar to that of the IB. ...

Given that the work of the EGD may lead to action against a registrant that could result in proceedings in a court or tribunal where a penalty or sanction may be imposed, it is submitted that the EGD has the function of enforcing the law in accordance with the definition of "law enforcement" in s. 2(1) of FIPPA.

The appellant submits:

I do not argue that casino staff are law enforcement officers. Nor do I dispute that they conduct investigations and are responsible for security. ...

I accept the AGCO's submissions on this issue. The AGCO has the authority to conduct investigations for compliance with the *Criminal Code* and the *Gaming Control Act*. The results of these investigations could lead to proceedings in a court where sanctions can be imposed. This brings the activities of the Investigations Branch and the Electronic Gaming Department within the scope of paragraph (b) of the definition of "law enforcement" in section 2(1) of the *Act* (see also Order P-1399).

Section 14(1)(c)

In order to fall within the scope of section 14(1)(c), disclosure of the "investigative technique or procedure" must hinder or compromise its effective utilization. If a particular technique or procedure is generally known to the public, that would normally be sufficient to bring its disclosure outside the scope of this section (Orders P-170, P-1487, P-1637, PO-1653 and MO-1262).

The AGCO's representations on the harms component of section 14(1)(c) consist of the following:

If the severed portions of the report were available to the public it would not take much for a person to figure out how the IB is structured, how many staff members carry out various functions, how work is distributed, the level of supervision that exists and the expertise of the staff members. All of this information would assist persons with a criminal intent to decide how and when to perpetrate a crime, thus it is protected by s. 14(1)(c) of [the *Act*].

The only portion of report #1 that touches on investigations is section "D. Investigations Process" on pages 15-19. Having carefully reviewed the contents of this section, in my view, it does not, on its face, contain or reveal any specific technique or procedure not commonly known

to the public. The section describes how work is assigned and managed by staff in the Investigations Branch, and includes a general description of the various types of investigations undertaken with respect to different categories of employees and suppliers. I also find that the representations provided by the AGCO do not provide the necessary detailed and convincing evidence required to establish a reasonable expectation of probable harm under section 14(1)(c) should report #1 be disclosed.

As far as report #2 is concerned, with the exception of the second paragraph under the heading "C. Operations - Inspections" on page 12, it also does not contain or reveal any specific technique or procedure not commonly known to the public, and fails to satisfy the harm requirement of section 14(1)(c) for the same reasons as report #1. The one paragraph on page 12 describes the specific application of one investigative technique that would not likely be known to the public, and I find that this paragraph qualifies for exemption under section 14(1)(c).

Because no other exemptions were claimed by the AGCO for report #2, I find that it should be disclosed to the appellant, subject to the severance of the one paragraph discussed above.

The discussion of sections 14(1)(g) and (i) relates only to report #1.

Section 14(1)(g)

The purpose of section 14(1)(g) is to provide the AGCO with the discretion to preclude access to records in circumstances where disclosure would interfere with the gathering of or reveal law enforcement intelligence information. Previous orders have defined intelligence information as:

information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violation of law, and is distinct from information which is compiled and identifiable as part of the investigation or a specific occurrence (Orders M-202, MO-1261 and P-650).

The AGCO submits:

Knowledge of IB information management systems would reveal investigative techniques, where and how sensitive information is stored, how the information is secured and whether the sensitive information is shared with other police and enforcement organizations. As a result this information is protected by s. 14(1)(g).

In my view, the AGCO has failed to provide the necessary detailed and convincing evidence to establish the harm requirement of section 14(1)(g). The "information management systems" referred to in the representations are contained in three paragraphs on page 14 of report #1. No specific intelligence information is included in these paragraphs. Rather, they provide a general description of the type of information gathered by the Investigations Branch during the course of its work, and how this information is maintained. The level of detail is consistent with the nature of an audit report, and I find that its disclosure would not reasonably be expected to interfere with any law enforcement intelligence gathering functions undertaken by the AGCO.

Therefore, I find that report #1 does not qualify for exemption under section 14(1)(g).

Section 14(1)(i)

The AGCO makes the following submissions regarding the application of section 14(1)(i):

Release of information with respect to staffing of the IB's surveillance function in the various casinos and racetrack and slot machine facilities would endanger the security of those facilities. In the same way, release of specific information respecting the location, times of access and security features used to safeguard various types of sensitive information would endanger the security of the facilities where that information is stored. Thus, this information is protected by s. 14(1)(i) of [the *Act*].

The discussion of staffing is contained on pages 8-11 of report #1. It consists of a brief description of the reporting relationships of various senior officials, along with a general description of their roles and responsibilities. Based on my independent review of report #1 and the representations provided by the AGCO, I am not persuaded that disclosure of this information could reasonably be expected to endanger the security of any building or vehicle, as required by section 14(1)(i). The organizational design of the Investigations Branch is available from other sources, including the Government of Ontario telephone directory, and the description of duties and responsibilities is general in nature and self-evident from the job titles of the various individuals.

I also note that report #1 does not contain "the location, times of access and security features used to safeguard various types of sensitive information" as suggested by the AGCO.

Therefore, I find that report #1 does not qualify for exemption under section 14(1)(i).

FINAL ORDER:

1. I uphold the AGCO's decision to deny access to the second paragraph under the heading "C. Operations - Inspections" on page 12 of report #2.
2. I order the AGCO to disclose report #1 in its entirety, and all portions of report #2 other than the one paragraph referred to in Provision 1. Disclosure must be made to the appellant by **April 26, 2001**.
3. In order to verify compliance with the provisions of this Final order, I reserve the right to require the AGCO to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____ April 3, 2001
Tom Mitchinson
Assistant Commissioner