



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2576

Appeal PA06-333

Alcohol and Gaming Commission



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NATURE OF THE APPEAL:

The Alcohol and Gaming Commission (the AGC) received a request for records under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester identified that he was a former casino employee with a named charity casino, and stated:

I am requesting a copy of the letter(s) sent to the [AGC] from [the named casino] or the Ontario Lottery Corporation regarding my termination with the casino, and any letter cancelling my gaming license with [the named casino].

The AGC responded to the request by providing the requester with three pages of records, which consisted of a copy of an email (1 page) and a tracking sheet (2 pages). The AGC granted full access to the tracking sheet, and partial access to the email. Certain portions of the email were not disclosed on the basis that they were exempt under the mandatory exemption in section 21(1) (invasion of privacy) of the *Act*.

The requester, now the appellant, appealed the AGC's decision.

During the mediation stage of this appeal, the appellant confirmed that he did not wish to pursue access to the severed information in the email, and issues regarding access to the records were removed from the scope of this appeal. The appellant maintained, however, that additional records relating to his termination must exist within the record-holdings of the AGC. Accordingly, the issue of the adequacy of the AGC's search for records was raised as an issue in this appeal.

In support of his position that additional records exist and that the AGC's search was inadequate, the appellant stated his view that a letter from the General Manager at the named casino to an identified vice-president at the Ontario Lottery Corporation relating to his termination, ought to have been sent to the AGC. In addition, the appellant referred to his experience as an employee at the named casino, and stated that it is the practice of the casino to send information to the AGC outlining the reasons for an employee's termination.

During mediation, the AGC conducted an additional search for responsive records, and provided the appellant with a letter from its Freedom of Information Coordinator, which stated:

Following discussions with [the mediator], I requested a second search be conducted by the [AGC] to ensure that "no accompanying information" had been sent by the casino when they reported your termination. The [AGC's] second search confirmed that the two records that were provided to you ... are, in fact, the only records that the AGC has in their files related to your termination.

In that letter, the AGC also explained why there existed an apparent discrepancy in the dates shown on one of the records provided to the appellant.

Despite receiving that letter, the appellant continued to maintain his position that the AGC's search was not complete, and that additional records relating to his termination exist at the AGC.

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the AGC initially, inviting it to provide representations on the facts and issues in this appeal. The AGC provided representations in response, along with an accompanying affidavit. I then sent the Notice of Inquiry, along with a copy of the AGC's representations and the affidavit, to the appellant. The appellant provided brief representations in response to the Notice of Inquiry. I proceeded to provide the AGC with a copy of the appellant's submissions, along with an invitation to the AGC to provide reply representations, which it did.

DISCUSSION:

REASONABLE SEARCH

Introduction

In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the issue to be decided is whether the AGC has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the AGC will be upheld. If I am not satisfied, further searches may be ordered.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, acting-Adjudicator Mumtaz Jiwan made the following statements with respect to the requirements of reasonable search appeals:

... the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, 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 (Order M-909).

I agree with acting-Adjudicator Jiwan's statements.

Where a requester provides sufficient detail about the records that he is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure 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 or further 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 records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations

The AGC's initial representations

In its initial representations in support of its position that the searches conducted for responsive records were reasonable, the AGC began by describing the two records which were located in response to the request. It set out the specific information contained in those records, including the employee information and the information relating to the appellant's termination. The AGC then reviewed the searches which were conducted in the course of this appeal, and stated that, when the request was first received, searches for responsive records were made, and the two records were located. The AGC also identifies that additional searches were conducted when the appeal was filed. In response to the appellants' position, raised in this appeal, that a specific letter ought to exist, the AGC states:

The appellant is seeking a specific letter which he contends was sent to the [AGC] by an official of the Ontario Lottery and Gaming Corporation. However, the [AGC] does not generally receive information about the specifics of the termination of employees by the Ontario Lottery and Gaming Corporation, as set out in [the attached affidavit]. Furthermore, the [AGC] is able to say that it did not receive the letter sought by the applicant based on the extensive searches it conducted, as set out in [the affidavit].

The AGC also provided an affidavit, sworn by the Manager of Special Projects in the Licensing and Registration Branch of the AGC (the Manager) who conducted the search for responsive records. In her affidavit, the Manager identifies her experience with the AGC and identifies that she is very familiar with the location and organization of files respecting the registration of individuals and corporations under the *Gaming Control Act, 1992*, as well as with the computer system used by the AGC to keep track of registration information under that Act. She then reviews the nature of the searches conducted for responsive records, and the relevant portion of her affidavit states:

I conducted the search for responsive records in this matter.

After determining that [the appellant's] registration file was located in the [an identified AGC Regional Office], I requested that the file be sent to Head Office in Toronto.

I reviewed [the appellant's] file and made a copy of the first responsive record, an electronic mail message from the Ontario Lottery and Gaming Corporation's Human Resources Coordinator at the [named casino] setting out information with

respect to the termination of employment of five individuals. I carefully severed the personal information of the other four individuals referred to in that electronic mail message in preparation for releasing the record to [the appellant].

I then searched the [AGC's] computer system and printed a copy of the information on [the appellant's] registration history. That record was released to [the appellant] without any severances.

I spoke with staff members in [the AGC's Regional Office] to determine whether there were any other records in respect of [the appellant's] termination. I was advised and verily believe that all records in respect of [the appellant's] history of registration under [the *Gaming Control Act, 1992*] and his termination are contained in the file forwarded ... by the staff at the ... Regional Office.

At my request, additional searches were carried out in the ... Regional Office to ensure that records respecting [the appellant's] termination had not been misplaced in adjoining files. I am advised and verily believe that responsive records were not misfiled in the files adjoining [the appellant's] file.

During the mediation of this matter, I reviewed [the appellant's] file once again to see if there were any additional records responsive to his request. At this point, [the appellant] had clarified that he was looking for a specific letter that he contends was sent to the [AGC] by an official with the Ontario Lottery and Gaming Corporation in respect of his termination. The [AGC's] files do not contain the specific letter from the Ontario Lottery and Gaming Corporation sought by [the appellant] with respect to the termination of his employment at the charity casino.

If the [AGC] had received a copy of the letter being sought by [the appellant], it would have been kept in his file in accordance with the [AGC's] records retention schedule. Under that schedule, if the [AGC] had the letter, it would have been kept for two years plus current at the ... Regional Office and a further eleven years at the records retention centre.

I reviewed the file ... again and determined that there are no responsive records other than those that have already been disclosed.

[The *Gaming Control Act, 1992*] requires that individuals meet the requirements for registration under [that Act] before they are permitted to work in certain positions in gaming facilities, including charity casinos.

It is not unusual for gaming facilities in Ontario to have a significant turnover in staff. There is a limited obligation on the Ontario Lottery and Gaming Corporation, which employs the staff members in charity casinos, to provide

details to the [AGC] with respect to the termination of their staff. In fact, the Ontario Lottery and Gaming Corporation generally provides the [AGC] only with lists of terminated employees in the form seen in the first responsive record.

The registration scheme created by [the *Gaming Control Act, 1992*] is intended to ensure that persons who work in gaming facilities meet standards of honesty, integrity and financial responsibility. As long as individuals live up to these obligations in their work, the [AGC] does not require the employer to provide the reasons for the termination of their employment.

Based on its representations and the affidavit, the AGC submits that it has met its obligations to conduct a reasonable search in response to the requester's request.

The appellant's representations

In response to the AGC's representations, the appellant provided brief representations, in which he takes the position that certain details have been "left out" by someone the appellant identifies as "the [AGC] representative from the [named casino]". The appellant then states:

A former Vice President of Ontario Lottery Gaming Corporation has informed me that any termination that occurs at any of the sites, the General Manager informs the [AGC] representative of the site on the details of the termination. I am also aware that [two named individuals] have contacted the [AGC] regarding this matter at the time, along with [another identified employee at the named casino]. The [AGC] representative at the [named casino] was informed of this termination, and I am sure there are records pertaining to this from the [representative].

The AGC's reply representations

In response to the appellant's representations, which I shared with the AGC, the AGC provided reply representations. In its reply, the AGC notes that, although the appellant names a number of individuals, he does not name the individual who he claims advised him of a particular reporting practice. The AGC reiterates its actual practice with respect to terminations, and confirms that no further information is provided to it unless the termination of employment involves failure to meet standards of honesty, integrity or financial responsibility.

The reply representations review the searches that were conducted, and then state as follows regarding the appellant's position that an AGC representative ought to have records:

Contrary to the appellant's assertion, the [AGC] does not have a permanent representative stationed at [the named casino] on a full-time basis.

The AGC identifies that there are staff members responsible for overseeing casino compliance who go to the named casino periodically, but states that without additional information about

who this individual might be, additional searches cannot be conducted. The AGC concludes by stating that its representations and the detailed affidavit clearly set out the evidence with respect to the searches conducted in response to the appellant's request, and that the appellant's representations are based on conjecture.

Analysis

As set out above, in appeals involving a claim that additional responsive records exist, the issue to be decided is whether the AGC has conducted a reasonable search for the records as required by section 24 of the *Act*. In this appeal, if I am satisfied that the AGC's searches for responsive records were reasonable in the circumstances, the decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

In the circumstances, I am satisfied that the searches by the AGC for records responsive to the request were reasonable. I make this finding based on a number of reasons.

In the first place, the material provided by the AGC in its representations, including the affidavit, describe in detail the searches which were conducted for responsive records and the results of those searches. It also clearly identifies the types of records maintained by the AGC which are responsive to the request. Furthermore, the affidavit specifies that additional records are only maintained in certain circumstances relating to an individual's failure to meet standards of honesty, integrity or financial responsibility. The appellant, in response to the AGC's representations and affidavit, does not suggest that these circumstances exist in this case.

Furthermore, although the appellant's representations refer to a number of named individuals who may also have responsive records, these individuals do not appear to be employees of the AGC. Accordingly, I find that the appellant's reference to them does not support his position that additional responsive records exist with the AGC.

Finally, the appellant refers to an unnamed AGC representative on the site of the named casino who the appellant claims was informed of his termination. He also claims that he is certain that this representative would have responsive records. Although he does not state exactly why he is sure of this, his representations suggest that he bases this on the information he received from an unnamed former Vice President of the Ontario Lottery Gaming Corporation regarding the information that is shared in circumstances where a termination takes place. The AGC specifically responded to this by stating that the AGC does not have a permanent representative at the named casino on a full-time basis. It also referred to the specific, detailed information about its records-keeping policies with respect to terminations, as set out in the affidavit, which contradicts the information provided by the appellant.

In the circumstances, and based on the material set out above, I am satisfied that the searches conducted by the AGC for records responsive to the request were reasonable, and I dismiss this appeal.

ORDER:

I find that the searches conducted by the AGC for responsive records were reasonable, and I dismiss the appeal.

Original signed by: _____
Frank DeVries
Adjudicator

_____ May 11, 2007