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

ORDER PO-2789

Appeal PA07-210

Ontario Lottery and Gaming Corporation

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BACKGROUND:

This appeal stems from one of a set of requests submitted under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Lottery and Gaming Corporation (the OLGC) by the Canadian Broadcasting Corporation (CBC). Following an independent investigation into lottery wins by individuals affiliated with the OLGC, CBC television broadcast a documentary feature titled *Luck of the Draw* on *the fifth estate* late in 2006.

The day following the airing of *Luck of the Draw* on *the fifth estate*, the Ombudsman of Ontario opened an investigation on his own initiative "into how the [OLGC] protects the public from theft or fraud related to winning lottery tickets – and how it responds to complaints about potential theft or fraud involving lottery winnings." The Ombudsman's report (*A Game of Trust*) was released in March 2007. One of the examples of a suspicious win provided by the Ombudsman in his report was the "insider win" of a $12.5 million Super 7 prize draw held on December 26, 2003.

In early 2004, an individual contacted the OLGC to claim the Super 7 prize for the December 26, 2003 draw. Under OLGC policies in place at the time, this individual was considered a "major winner" because the amount of the prize was more than $50,000, as well as an "insider winner" due to an affiliation she was found to have with the OLGC. This individual's prize claim was investigated by the OLGC to confirm its validity, and the records generated by that OLGC investigation are the subject of this appeal.

NATURE OF THE APPEAL:

Shortly after the release of *A Game of Trust* by the Ombudsman, the CBC submitted a request under the *Act* to the OLGC for access to the following records:

> …all information, documents, emails, handwritten notes and files regarding a 12.5 Million Lotto Super 7. The draw was held on December 26, 2003.
>
> Please include any insider win forms, claim forms, the TMIR [Transaction Master Inquiry Report], insider win checklists, statutory declarations, investigation notes and occurrence reports related to or about this Super 7 claim. Also include the date and time the original ticket was purchased in 2003 at the [named store] in St. Catharines, Ontario. Please also include the original numbers played.

The OLGC issued a decision denying access to the requested records in full, citing sections 14(1)(a) and (b) (law enforcement), 17(1)(a), (b) and (c) (third party information), 18(1)(a), (c) and (d) (valuable government information), 19 (solicitor-client privilege) and 21(1) (personal privacy) of the *Act*. The OLGC also denied access to the date and time the ticket was purchased and the original numbers played under sections 14(1)(a) and (b), and 18(1)(a), (c) and (d).

The requester (now the appellant) appealed the OLGC's decision to this office, and a mediator was appointed to try to resolve the issues. During mediation, the OLGC withdrew its claim of section 17(1) to deny access to the records, and the issue was thereby removed from the scope of the appeal. It was at this point that the appellant raised the existence of the public interest in the

disclosure of the information in these records as an issue. Accordingly, the possible application of section 23 of the *Act* (public interest override) was added as an issue in this appeal.

As it was not possible to resolve this appeal through mediation, it was transferred to the adjudication stage where it was assigned to me to conduct an inquiry.

Initially, I sent a Notice of Inquiry outlining the facts and issues to the OLGC and the individual insider winner, as a person whose interests could be affected by the appeal (the affected party). The affected party did not respond to the Notice of Inquiry. I received representations from the OLGC, in which it OLGC advised that it was no longer relying on section 18(1)(a) to deny access. The OLGC also suggested that because the records had been turned over to the Ontario Provincial Police (OPP) for investigation, this office should notify the Ministry of Community Safety and Correctional Services, who are responsible for the OPP, as an affected party.

I then sent a Notice of Inquiry seeking representations on the law enforcement exemption and the possible application of the public interest override from the Ministry of Community Safety and Correctional Services (the Ministry). Along with a Notice of Inquiry, I provided the Ministry with relevant excerpts from the OLGC's representations. I received representations from the Ministry.

Next, I sent a Notice of Inquiry to the appellant, along with copies of the complete representations of the Ministry and the non-confidential portions of the OLGC's representations, inviting submissions on the issues. The appellant submitted representations for my consideration.

I decided that the OLGC and the Ministry should be given an opportunity to reply to the appellant's representations. I sent a complete copy of those representations to the OLGC and the Ministry, and received representations in reply.

Following the receipt of reply representations from the OLGC and the Ministry, Assistant Commissioner Brian Beamish issued Orders PO-2657 (April 4, 2008) and PO-2664 (April 25, 2008). Both of the appeals leading to the orders involved the same requester (the CBC), the same subject matter generally (insider lottery winners), and the institution (the OLGC) as this appeal. The request in each of those appeals sought similar information relating to OLGC insider wins, and there was considerable overlap in the representations provided by the parties in those two appeals. Orders PO-2657 and PO-2664 also bore similarities to one another in terms of the analysis of the exemptions and the disposition respecting disclosure of the records.

Following the release of the Assistant Commissioner's first order of the two (Order PO-2657), I wrote to all of the parties inviting them to comment on the possible effect of his findings in Order PO-2657 on the present appeal. In describing the outcome of Order PO-2657, I stated:

> …[T]he Assistant Commissioner considered the possible application of the exemptions in sections 14(1)(a), (b) and (f), 18(1)(c) and (d) and 21(1) which were claimed by the OLGC to withhold information in Appeal PA06-389. In the

> end, Assistant Commissioner Beamish upheld the valuable government information (section 18) and personal privacy (section 21(1)) exemption claims only in relation to a very small portion of the information OLGC sought to withhold. The law enforcement exemption was not upheld in relation to any of the information at issue.

In response to my request for submissions, the OLGC sought an extension to the deadline for submission of comments on the grounds that it had not yet had an opportunity to carefully consider the Assistant Commissioner's findings in the second, more recently released, Order PO-2664, particularly as regards the section 18 exemption. Having decided to grant the extension, I extended the deadline for supplementary representations for all of the parties.

Shortly thereafter, I received correspondence from the OLGC indicating that it did not intend to submit supplementary representations regarding the Assistant Commissioner's orders. In addition, the Ministry advised this office at that time that it would be unable to comply with the extended due date, although it anticipated being in a position to provide supplementary representations in the future.

The OLGC subsequently sent correspondence to this office confirming that it would not be submitting supplementary representations in this appeal. However, the OLGC's correspondence suggested that it would consider issuing a revised access decision to the CBC based on the principles enunciated in Orders PO-2657 and PO-2664 "after [the Adjudicator has] addressed any additional representations submitted by the Ministry … on the application of the law enforcement exemption in section 14."

I then received supplementary representations from the Ministry, which included a sworn affidavit. The Ministry's written representations were brief and referred me to the contents of the attached affidavit in support of its continued opposition to the disclosure of the records. The Ministry asserted a claim of confidentiality over the affidavit, which I accepted.

I did not receive submissions on the impact of the decision in Order PO-2657 from either the CBC or the affected party.

The appeal was then moved to the orders stage.

During the preparation of this order, it proved necessary for me seek clarification from the OLGC regarding several matters, including its position on the section 18 and 21(1) exemptions. Staff from this office contacted the OLGC on my behalf to resolve an apparent ambiguity contained in the brief correspondence sent in response to my request for supplementary representations on Order PO-2657. In response, the OLGC wrote a short letter of clarification, confirming its acceptance of the Assistant Commissioner's findings in Orders PO-2657 and PO-2664. The OLGC requested that I rely on the OLGC's previously submitted representations to the extent necessary to reach findings in accordance with those orders.

In addition, there was communication between the Ministry and this office on my behalf, which resulted in the Ministry submitting a request to place this appeal on hold. I declined the Ministry's request, and provided written reasons for this decision.

Both the OLGC and the CBC were represented by counsel during my inquiry into this appeal. Accordingly, any reference in this order to the actions of the OLGC or the appellant should be interpreted to include actions taken on their behalf by counsel.

RECORDS:

The records at issue in this appeal consist of documentation generated by the OLGC in its prize claim investigation of the December 26, 2003 Super 7 lottery win, which amounts to approximately 296 pages of emails, memoranda, reports and other types of documents.

The records are described in greater detail in the index attached as an appendix to this order. I have adopted the OLGC's page numbering system from the index, which assigns a record number to each page, even though many of the documents are more than one page in length. As a result, a 2-page record may, for example, be referred to interchangeably in this order as "Records 4-5" or "pages 4-5." The attached Appendix provides a detailed listing of my findings respecting the application of the exemptions at issue, as well as the issues of duplication and responsiveness, which are discussed below.

DISCUSSION:

PRELIMINARY MATTER

Duplicate copies

In the revised index, the OLGC identified a number of records that are duplicate copies of other records at issue in this appeal. My own review of the records identified additional instances of duplicate records. I note that some of the duplicates also include a brief cover e-mail or notation. In most of these cases, these brief e-mails or notations are not sufficiently significant to affect my findings as to whether the copies are duplicates. In my view, it is not necessary for me to review the possible application of the exemptions to each of these duplicates.

It is also apparent that the same exemptions are not uniformly noted on the index for every version and/or copy of each duplicate record. For the sake of completeness, where there are such idiosyncrasies in notation, I will consider the application of all of the exemptions claimed for each duplicated record.

My findings regarding the duplication of any of the records are outlined in the attached Appendix.

SCOPE OF REQUEST/RESPONSIVENESS OF RECORDS

Although the issue of responsiveness was not argued by the parties in this appeal, I have decided to address it as a preliminary matter before proceeding with my review of the OLGC's exemption claims. On the index provided by the OLGC, pages 178, 232, 260, 261, and 290-293 are identified as non-responsive to the request, as well as being exempt under various exemptions.

General Principles

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

It is a well-settled principle that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. Furthermore, previous orders of this office have established that to be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

I find that, in order to be responsive to the request, the information in the records must be reasonably related to the OLGC's investigation into the $12.5 million December 26, 2003 Super 7 draw.

I have carefully reviewed the records alleged to be non-responsive and I agree with the OLGC that portions of pages 178, 232, 260, 261, 291-293 are non-responsive to the request. However, page 290 is responsive, in its entirety. Furthermore, my own review of the records revealed that portions of pages 18 and 256 also contain information that is not reasonably related to this request.

In addition, during the preparation of this order, I sought clarification from the OLGC regarding photocopies of lottery tickets appearing at pages 15 and 16 (duplicated at pages 31 and 32) as well as pages 223 and 224. These records appeared to be unrelated to the win at issue in this appeal, and, hence, non-responsive to the request. The OLGC advised that pages 15 and 16, and their duplicates, had been included inadvertently while pages 223 and 224 were intentionally included as they formed part of the OLGC's review of this insider win.

In summary, I find that pages 15 and 16 (and their duplicates at 31 and 32), as well as portions of pages 18 (and its duplicate at 78), 178, 232, 256, 260, 261, and 291-293 are non-responsive. Accordingly, these pages, or portions thereof, are removed from the scope of this appeal and will not be reviewed further in this order.

LAW ENFORCEMENT

As the OLGC has claimed the application of the discretionary law enforcement exemption in sections 14(1)(a), (b) or (f) to all of the records at issue in this appeal, I will consider this exemption first. The OLGC claimed the following exemptions in its decision letter:

> 14(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter;
>
> (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result; …
>
> (f) deprive a person of the right to a fair trial or impartial adjudication;

The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that 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)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.) ("*Fineberg"*)].

Where section 14(1) (except section 14(1)(e), which is not at issue here) uses the words "could reasonably be expected to," the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is also not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Fineberg*, cited above].

Representations

As acknowledged previously in this order, the representations submitted by the OLGC, the Ministry and the CBC in this appeal bear great similarity to those submitted by the parties in the related appeals leading to Orders PO-2657 and PO-2664. Some repetition is, therefore, unavoidable.

The OLGC notes that after the release of the Ombudsman's report, *A Game of Trust*, the OPP's Criminal Investigation Branch commenced an investigation into insider lottery wins. The OLGC submits that in order to cooperate with the OPP investigation, it turned over records of its own investigations into retail store owner wins to the OPP. With its reply representations, the OLGC drew my attention to pages 4, 5, 84-87, 218, 223-228, 232-235, 250, 251, 254-256, 258-266, 268-277, 279, 280, 282, 283, 285, and 297-293, noting that because there was no record of the OLGC providing these records to the OPP initially, it had forwarded copies of these pages during the inquiry stage of the appeal. Accordingly, the OLGC confirmed that all of its records related to this particular insider win have been provided to the OPP.

The OLGC submits that:

> … the release of these facts will likely lead to the tainting of potential witnesses by allowing them to prepare by studying the records under appeal and allowing them to collude with each other in developing a consistent position on [the] facts … Also, should [the affected party] or her family members actually be prosecuted, disclosing the records under appeal and allowing them to be made subject to public scrutiny and discussion will likely influence prospective jury members and deprive them of a right to a fair trial.

The OLGC states that it "cannot be held to the same standard" as the Ministry, and contends that the more appropriate approach is to question whether the OLGC exercised its discretion properly in claiming the law enforcement exemption, given its position as a third-party to the OPP's investigation into insider lottery wins. In the OLGC's submission, having considered the potential risks associated with disclosure of the records, the decision to claim section 14 was reasonable in the circumstances.

The Ministry advises that the Criminal Investigation Branch of the OPP commenced an investigation focusing on OLGC insider wins occurring between 1999 and 2007 following the release of the Ombudsman's report in March 2007.

The Ministry notes that when this office notified it as an affected party in Appeals PA06-389 and PA06-394 (the appeals ultimately resulting in Orders PO-2657 and PO-2664), the OPP Detective Inspector responsible for the investigation prepared an affidavit outlining the OPP's concerns with the disclosure of the OLGC insider win records. The Ministry provided this same affidavit as evidence in the current appeal.

The Ministry's representations on the application of sections 14(1)(a), (b) and (f) provided to me are identical to those provided to the Assistant Commissioner in the aforementioned appeals. As the Assistant Commissioner set these representations out in their entirety at pages 38 to 40 of Order PO-2657, I will not, for the most part, repeat them in this order. Briefly put, however, the Ministry seeks to emphasize that the courts have affirmed that it is a reasonable, and not probable, expectation of harm which is required to be established under section 14. In this context, the Ministry asserts, the records at issue must not be disclosed lest "detailed evidence" be introduced into the public domain. In addition, the Ministry submits that:

> The individual lottery ticket insider win cases that compromise the matters under investigation cannot be considered in isolation from the investigation as a whole. The investigation will continue until all investigative avenues have been exhausted.
>
> Release of the OLG[C] records at issue … would indirectly reveal specific strategies and methodologies employed by the OPP during the course of the investigation.

Having been provided the opportunity to review the OLGC's and the Ministry's representations, the appellant contends that the OLGC has failed "to establish its claim that the presumptive right of access set out in [section 10 of the *Act*] ought not to apply." Relying on *Fineberg* (cited above), the appellant submits that the OLGC is required to provide sufficient information and reasoning "to the adjudicator to permit him or her to make an informed assessment of the reasonableness of the expectations required by section 14." Specifically, the appellant submits that:

> … the potential harms outlined by the OLG[C] and the Ministry are wholly speculative … untenable and completely unproven.
>
> The Ministry also claims that releasing the requested records would indirectly reveal specific strategies and methodologies employed by the OPP … The OLG[C] has never claimed the s. 14(1)(c) exemption and should not be permitted to do so by making arguments regarding investigative techniques under the guise of another exemption at this very late stage. In any event, the records requested detail the investigation conducted by the OLG[C], not the OPP. The OLG[C] simply handed these records over to the OPP along with their other records related to insider wins. There is no information in these records that relates to OPP investigative methods and the Appellant has not requested any such records from the OPP in relation to this specific insider win.

On the claimed application of section 14(1)(f) to the records, the appellant argues that neither the OLGC nor the Ministry have satisfactorily demonstrated that release of the information could reasonably be expected to taint potential witnesses or influence prospective jury members. The appellant seeks to impugn the OLGC's claim of section 14(1)(f) by observing that the Ministry itself has not provided submissions on this exemption "because no charges have been laid."

After Order PO-2657

In seeking supplementary representations on the potential implications of Order PO-2657, I advised the OLGC, the Ministry and the CBC that I would be reviewing the law enforcement exemption through the lens of Assistant Commissioner Beamish's reasons in Order PO-2657. I drew the parties' attention to the discussion of the exemption on pages 35 to 44 of Order PO-2657. I specifically sought submissions on the Assistant Commissioner's statement that it was "not reasonable to conclude that section 14 applies to the OLG[C] records of every insider win between 1999 and 2007 simply because the records have been handed over to the OPP and some of those wins may result in criminal charges…" The Assistant Commissioner expressed the view that it is more appropriate "to examine the circumstances in each case to determine whether section 14 is applicable, particularly where charges have not been laid."

As noted previously, neither the OLGC nor the appellant submitted supplementary representations respecting section 14.

However, the Ministry responded by asserting that the circumstances of the present appeal are distinguishable from those before the Assistant Commissioner in Order PO-2657. The Ministry provided a supporting affidavit from an OPP Detective Sergeant over which it asserted a claim of confidentiality. I agreed to maintain the confidentiality of this affidavit and, accordingly, I am not at liberty to reproduce its contents in this order. It may be said, however, that the affidavit reflects the previous representations of the Ministry, including the assertions of harm that it claims could reasonably be expected to occur with disclosure. The affidavit also appears to refer to the harm contemplated by section 14(1)(l) (facilitate the commission of an unlawful act),

which was not relied on by the OLGC to deny access to the records in this appeal. Similarly, there are submissions that relate to the section 18 (valuable government information) exemption, rather than section 14.

Analysis and Findings

The burden of proof rests with the OLGC and the Ministry as the parties resisting disclosure of the records [see section 53 of the *Act* and *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.)].

The OLGC has suggested that it should be held to a different standard in claiming the law enforcement exemption because of deference due to the Ministry in carrying out its law enforcement mandate. As stated above, I accept that the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Fineberg*]. At the same time, however, based on *Fineberg*, it is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [see also Order PO-2040].

Ultimately, with respect to the quality and cogency of evidence, the OLGC and/or the Ministry must provide "detailed and convincing evidence" to establish a reasonable expectation of harm resulting from disclosure of the records, under the section 14 law enforcement exemption [see *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.)].

To provide context for my findings in this section, I turn to Order PO-2657. In framing his analysis of the claim of sections 14(1)(a), (b) and (f), the Assistant Commissioner observed that the OLGC sought to apply the law enforcement exemption to all of the records at issue. A similar claim over all the records is made in this appeal. In seeking supplementary representations, I provided the parties with a selected excerpt from Assistant Commissioner Beamish's reasons. For the purposes of this order, I will reproduce the entire segment of the Assistant Commissioner's reasons from which that excerpt was drawn. At page 41, he stated:

> Before I turn to consider the application of section 14(1) to these records, it is worth repeating that the records at issue were generated by the OLG[C], not the OPP, as a consequence of the claim by affected party 1 to the LOTTO 6/49 jackpot.
>
> In my opinion, the circumstances of, and the records relating to, any particular insider win claim and investigation are unique. Different claims involve different winners, different games played, different purchase and validation information and different prizes. As well, the circumstances of all insider winners are not the same. Some may be store owners, others store employees and still others employees of OLG[C]. Without some evidence of a connection between any

> particular individual insider winners' claims and investigations, the question of whether or not there has been a violation of law will turn on the unique facts and circumstances of each case.
>
> In my view, the position taken by the Ministry in this appeal that "the individual lottery ticket insider win cases that comprise the matters under investigation cannot be considered in isolation from the investigation as a whole" is overly broad. Without some detailed and convincing evidence connecting all the various insider winners, I find that the information in these records relates to the specific circumstances of the claim made by the affected parties and that they *can be* considered on their own particular facts and not in connection with the investigation of all other insider winners.
>
> In my view, it is not reasonable to conclude that section 14 applies to the OLG[C] records of every insider win between 1999 and 2007 simply because the records have been handed over to the OPP and some of those wins may result in criminal charges. It is clear that not all insider wins will result in the laying of charges. Indeed, at this moment in time, charges have been laid in a fraction of the insider wins. By adopting the approach taken by the OLG[C], I would be concluding that OLG[C] generated documents relating to any of these insider wins are exempt from disclosure for an indeterminate amount of time simply because insider wins are subject to ongoing police investigations. In my view, the better approach is to examine the circumstances in each case to determine whether section 14 is applicable, particularly where charges have not been laid.

I agree with Assistant Commissioner Beamish. The quality and cogency of the evidence must be reviewed on a case-by-case basis against the individual circumstances and context of an appeal, and the actual content of the records for which the exemption is claimed.

It is important to reiterate at this point that the Ministry has asserted a claim of confidentiality over portions of its submissions, and I have agreed that certain information should remain confidential, such as the affidavit provided in response to the request for supplementary representations following Order PO-2657. For this reason, there are necessary constraints on the manner and extent to which I may refer to these submissions, and the expansiveness with which I may explain my findings.

Section 14(1)(a) — interference with a law enforcement matter

The purpose of the exemption in section 14(1)(a) is to provide an institution with the discretion to deny access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing or existing law enforcement matter [Orders MO-1945, PO-2563 and PO-2657]. Under section 14(1)(a), the term "matter" may extend beyond a specific investigation or proceeding [*Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above]. In addition, the institution

holding the records need not be the institution managing the law enforcement matter for the exemption to apply [Order PO-2085].

For the section 14(1)(a) exemption to apply, the OLGC or the Ministry must establish the following elements:

(i) the activity of the OPP in the circumstances of this appeal constitutes "law enforcement";

(ii) there is a "matter" in existence to which these records relate; and

(iii) the disclosure of the records at issue in this appeal could reasonably be expected to interfere with the law enforcement matter.

First, I find that the activities of the OPP in the circumstances of this appeal pertain to "law enforcement" for the purposes of the definition of that term in section 2(1) of the *Act* [Orders PO-2657 and PO-2664].

Respecting part two of the test for exemption under section 14(1)(a), I am mindful of the findings of the Assistant Commissioner in Order PO-2657, outlined above, as well as the Divisional Court's ruling in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above. Accordingly, and having carefully considered the OLGC's and the Ministry's representations, I am satisfied that the information in the records about the insider win of the December 26, 2003, $12.5 million Super 7 draw relates to an existing law enforcement matter.

As stated, to meet the third part of the test for exemption under section 14(1)(a), I must be satisfied by the evidence that there is a reasonable expectation that disclosure of the specific information in the records would interfere with the identified law enforcement matter. In this appeal, the Ministry has tendered qualitatively different, and more persuasive, evidence respecting the harms anticipated as a result of disclosure than the evidence before the Assistant Commissioner in Orders PO-2657 and PO-2664. Although I may not elaborate at length for reasons of confidentiality, I find that the Ministry's evidence with respect to part three of the test is sufficiently "detailed and convincing" to establish that the exemption in section 14(1)(a) should apply to *some* of the records at issue.

Specifically, I find that there is a reasonable expectation of harm to the identified law enforcement matter for the purposes of section 14(1)(a) with respect to disclosure of the records identified in the index attached to this order that contain: facts about the win and about the affected party winner, her observations and recollections, discussions and interviews between her (or her family members) and OLGC officials, and the perspectives and reporting of OLGC staff.

However, as suggested above, there are exceptions to my finding that section 14(1)(a) applies to records at issue in this appeal. Specifically, I find that neither the Ministry nor the OLGC has provided me with sufficiently detailed and convincing evidence to establish a reasonable expectation of harm under section 14(1)(a) resulting from disclosure of records falling into the following categories:

- first, records related to, or detailing, peripheral or purely administrative or clerical issues that do not touch upon the substance of the OLGC insider win investigation [see Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.)]; and,

- second, information that has already been introduced into the public domain as a consequence of previous disclosure through the Ombudsman's report (*A Game of Trust*), *the fifth estate*, or other forms of publication [see *Fineberg*, cited above, and Orders PO-2657 and PO-2664].

I am not persuaded that there is a reasonable basis on which to conclude that disclosure of administrative or clerical information, or information that has been in the public domain for years, would interfere with the identified law enforcement matter.

Notably, I find that many of the records that the OLGC confirmed had been forwarded to the OPP only during the course of this inquiry do not qualify for exemption under section 14(1)(a). Generally speaking, these records consist of internal OLGC e-mail communications relating to administrative details about the OLGC's own investigative processes and do not contain information specific to the facts surrounding this insider win. In the circumstances, I find that these particular records fit within the first category of records outlined above.

In summary, I find that the claim for exemption under section 14(1)(a) is established, in part. My findings with respect to the specific records to which section 14(1)(a) applies are outlined in the attached index.

I will now review the possible application of the other law enforcement exemptions to the records for which I have found that section 14(1)(a) does not apply.

Sections 14(1)(b) and (f) – law enforcement investigation / deprive a person of the right to a fair trial

For the remaining records to be found exempt under section 14(1)(b), I would have to be satisfied that their disclosure could reasonably be expected to interfere with a specific, ongoing law enforcement investigation [PO-2657]. In order for these same records to qualify for exemption under section 14(1)(f), I must be satisfied that there is a "real and substantial risk" of interference with the right to a fair trial or impartial adjudication with its disclosure. The exemption is not available as a protection against remote and speculative dangers [Order P-948; *Dagenais v. Canadian Broadcasting Corp*. (1994), 120 D.L.R. (4th) (S.C.C.); Order PO-2037,

upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, cited above].

It is worth emphasizing that in this section, I am dealing only with those records of an administrative or otherwise peripheral nature or those containing information clearly already in the public domain. For reasons similar to those provided in the preceding analysis, I find that the available evidence is not sufficiently detailed and convincing to establish the reasonableness of the expectation of harm under either of sections 14(1)(b) or (f).

Sections 14(1)(c) and/or (l) - unclaimed exemptions

In addition, during my review of the confidential affidavit evidence received from the Ministry, I noted that allusions were made to the possible application of two other law enforcement exemptions. Although not specifically identified by their section numbers, the phrasing of the affidavit evidence suggests that section 14(1)(c) (reveal investigative techniques and procedures currently in use) and 14(1)(l) (facilitate commission of unlawful act or hamper the control of crime) apply to exempt the records from disclosure.

These exemptions were not claimed by the OLGC, nor were the other parties to this appeal given an opportunity to argue them fully. It is not, therefore, strictly necessary for me to address them in this order. However, were I obliged to do so, I would similarly have found the evidence tendered to be inadequate to meet the burden of proof. I am not satisfied that disclosure of the records remaining at issue gives rise to a reasonable expectation of it facilitating the commission of an unlawful act or hampering the control of crime for the purposes of section 14(1)(l). Moreover, in my view, the peripheral, administrative or already public information remaining at issue could not reasonably be expected to hinder or compromise the effective utilization of an "investigative technique or procedure" [Order PO-2751]. As Assistant Commissioner Beamish noted in Order PO-2657:

> … I reject the argument made by the Ministry that disclosure of the records would reveal specific strategies and methodologies employed by the OPP during the course of the investigation. As I have repeatedly noted, these records were all prepared by the OLG[C] and relate to the investigation *conducted by the OLG[C]* at a time when the potential of an OPP investigation was not under consideration. I am therefore satisfied that the disclosure of the records would not reveal any information about the strategies and methodologies subsequently employed by the OPP [emphasis in original].

I agree. As I have found above that the OLGC and Ministry have failed to provided the requisite "detailed and convincing evidence" to demonstrate a reasonable expectation of the harms contemplated by sections 14(1)(a), (b) and (f) as a result of disclosure of the two types of records described previously, my analysis and findings on that part of the test for exemption are equally applicable to the implied claims of section 14(1)(c) or (l).

Conclusion

In my view, it is necessary to address the principle of severance before concluding this discussion and analysis of the law enforcement exemption. Section 10(2) of the *Act* requires the head of an institution to disclose as much of a responsive record as can reasonably be severed without disclosing information that falls under one of the exemptions. The key question raised by section 10(2) is therefore one of reasonableness. Previous orders of this office have established that it is not reasonable to require a head to sever information from a record if the result leaves merely a series of disconnected words or phrases "with no coherent meaning or value" (Order P-1107). A valid section 10(2) severance must provide the requester with information which is responsive to the request, while at the same time protecting the confidentiality of the portions of the record covered by the exemption (Orders 24 and P-1107).

I have considered the exempt information together with the principles of severance set out above. Having done so, I find that it is not reasonably possible to sever the information that is exempt under section 14(1)(a) in order to disclose the remaining portions of the records in which the withheld information appears. There is one exception to this finding as regards certain information excerpted from page 3 of the records, which appears in *A Game of Trust* [at paragraph 78].

In conclusion, I find the records identified in the attached index to be exempt pursuant to the discretionary exemption in section 14(1)(a) subject to my consideration, later in this order, of whether the OLGC properly exercised its discretion in denying access to the records.

Given my findings above, it is not necessary for me to consider whether the records exempt under section 14(1)(a) also qualify for exemption under sections 18 or 19, or 21(1) of the *Act*. Moreover, since the OLGC claimed the solicitor-client privilege exemption only in relation to pages 4 to 8 and 229 and I have found these records to be exempt under section 14(1)(a), it is unnecessary to review the discretionary solicitor-client privilege exemption in section 19 at all.

However, I must now consider whether the information I have categorized as peripheral, administrative or already public remaining at issue qualifies for exemption under the mandatory personal privacy exemption in section 21(1) or the discretionary valuable government information exemption in section 18.

PERSONAL INFORMATION

General principles

The OLGC has withheld information in this appeal under section 21(1) of the *Act*, which exists as a mandatory exemption designed to protect individuals against unjustified invasions of their personal privacy. In deciding whether or not disclosure would constitute an unjustified invasion of personal privacy under section 21(1), it must first be determined if the records contain

"personal information" and, if so, to whom it relates. Only personal information can be exempt under the personal privacy exemption at section 21(1).

The definition of personal information is found in section 2(1) of the *Act* and reads, in its entirety, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if 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 list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Representations

None of the parties submitted representations on the issues of personal information or the application of the personal privacy exemption in section 21(1) in response to my request for comment on Order PO-2657. Although the OLGC did not submit supplementary representations, it conveyed its acceptance of the Assistant Commissioner's findings on section 21(1) in Order PO-2657.

In view of my findings under section 14, above, only a small fraction of the records for which section 21(1) was claimed by OLGC remain at issue. Moreover, it is for the most part unnecessary to set out the representations provided by the OLGC and the appellant prior to the issuance of Order PO-2657, as they essentially follow those submitted in Appeals PA06-389 and PA06-394.

According to the OLGC, Orders P-180 and P-181 stand for the principle that a person's identity as a lottery winner is his or her personal information. The OLGC submits that this principle extends to information in the records about the affected party, as well as her brother and father since the records tell "a story about who they are and how they claimed a large lottery prize."

The OLGC submits that personal information about the individual affected party appears throughout the records, including biographical information, contact information, her employment history, identifying numbers, and opinions about her expressed throughout the prize claim process. The OLGC also asserts that there is personal information about the affected party's father and brother and other named individuals, such as their home addresses.

In response, the CBC refers to Order 16 and submits:

> First, personal information must relate to an individual, rather than a business, for it to be afforded protection. …The OLG[C] has not satisfied the onus upon it to demonstrate that disclosure of the records would reveal information about individuals rather than businesses.
>
> Second, the IPCO has required that personal information be about an individual in a personal capacity. Information associated with an individual in a professional, official or business capacity is not "about" the individual

Analysis and Findings

In reaching my conclusions about the existence of personal information in the records at issue in this appeal, I have considered Assistant Commissioner Beamish's exhortation in Order PO-2435 to ask if there is something about the specific information that, "if disclosed, would reveal something of a personal nature about the individual?"

I find that the records remaining at issue contain the personal information of the affected party, including her name, home address, her likeness, opinions about her demeanour, and other personal information about her that is not specifically listed in the paragraphs of the definition of personal information in section 2(1) of the *Act*. This information falls within the ambit of paragraphs (d), (g) and (h) of the definition.

Some of the records also contain the personal information of other individuals who were not notified of this appeal, namely the affected party's brother and father. I find that the records contain the names, likenesses, and other details about them that qualify as personal information, although not enumerated in the definition of the term. I will address whether the exemption in section 21(1) applies to this personal information after considering its application to the personal information of the affected party in the next section of this order.

As was the case in Orders PO-2657 and PO-2664, a good deal of information about the other identifiable individuals appears in relation to their professional capacity as owners or operators of retail stores. In particular, there is information relating to the name, address, phone number, and operation of the store. I find that this is professional or business information and that it does not fall within the definition of personal information in section 2(1) of the *Act* [Orders PO-2225, PO-2657 and PO-2664].

There is also information relating to several other individuals identified in the OLGC retailer contract at pages 195-199. I find that the information in the retailer contracts appearing at pages 196 to 199, with a faxed cover sheet to the OLGC investigator at page 195, does not contain personal information. The information about the individual retailer that appears there – his name, the corporate name and address of the stores and his signature - is about him in a business capacity and I find that it does not constitute personal information. I make the same finding that the names and signatures of two other individuals that appear on page 199 appears in their business capacity. Although this information cannot qualify for exemption under section 21(1), it will be reviewed for exemption under section 18, below.

In view of my finding that certain information contained in the records remaining at issue falls within the definition of personal information in section 2(1) of the *Act*, I must now consider whether that personal information is exempt under the personal privacy exemption in section 21(1).

PERSONAL PRIVACY

The OLGC takes the position that the records contain personal information that must be withheld under the mandatory exemption in section 21(1).

A mandatory exemption is one an institution is obliged to apply to information that fits within the parameters of the exemption. Accordingly, where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In the circumstances of this appeal, the only exception that could apply is paragraph (f).

A review of the possible application of section 21(1)(f) requires consideration of the other parts of section 21 since the factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 21(3) applies, the institution must consider the possible disclosure of the information by weighing and balancing out the factors in section 21(2), as well as other considerations that are relevant in the context [Order 99]. Section 21(2) lists various factors that may be relevant in determining whether disclosure of the personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The parties did not raise section 21(4), and in the circumstances of this appeal, I find that it does not apply.

On my review of the records, I find that none of the presumptions against disclosure in section 21(3) applies to the information remaining at issue. Accordingly, I will now review the section 21(2) factors, which assist in determining whether or not the disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy.

Section 21(2) – relevant circumstances

Section 21(2) states, in part:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> …
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> …
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> …
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The factors in paragraphs (a) through (d) generally weigh in favour of disclosure, while those in paragraphs (e) through (i) weigh in favour of privacy protection [see Order PO-2265]. Under section 21(2), I must also consider other "relevant circumstances" in arriving at my decision as to whether disclosure of personal information would constitute an unjustified invasion of the affected parties' personal privacy.

Representations

As previously noted, I sought representations from the parties on the possible implications of the decision in Order PO-2657 for the present appeal. On the personal privacy issue, I directed the parties' attention to pages 18 to 23 of Order PO-2657 where Assistant Commissioner Beamish reviewed the application of the factors in section 21(2). Only the OLGC submitted comments in response to the Assistant Commissioner's findings on the personal privacy exemption and these are very brief:

> … the OLG[C] claims all the types of information that Mr. Beamish held were exempt from public access in Orders PO-2657 and PO-2664 should be held to be exempt in this Appeal and … [OLGC requests that the Adjudicator] rely on the OLG[C]'s representations to the extent necessary to reach this conclusion.

As previously submitted, the OLGC's opposition to disclosure rests primarily on the factors favouring privacy protection in sections 21(2)(e), (f) and (i), and its representations allude to the "threat of pecuniary and physical harm" as well as the "threat of unfair public scrutiny and harm to reputation." Regarding section 21(2)(e), the OLGC refers to an incident in which a Montreal couple who had won the lottery was the target of a kidnapping plot. The OLGC submits that in this context, it "is particularly sensitive to the potential harm that would flow from the disclosure of the identity of lottery winners."

On the relevance of section 21(2)(i), the OLGC submits that the likelihood that disclosure of personal information about the affected party, and her brother and father, would lead to unfair public speculation about their honesty and integrity is underscored by the appellant having featured the affected party in one of the three episodes of *Luck of the Draw* on *the fifth estate*. The OLGC states:

> Although it had no proof that [she] committed a fraud, in its March 2007 program, the Appellant aired a program in which it clearly implied that [she] committed a fraud. Here is the script from that program:
>
> > As we filmed surreptitiously, she told us that it was her father that validated the win. He was working behind the till that day. Now, from those OLG[C] documents we knew the original ticket was purchased in St. Catherines, but when we asked her where she bought hers, she had no idea and no recollection of any of the numbers she played that day that made her so rich. …
>
> The Appellant has invited the public to draw harmful inferences about [her] and her father's integrity from circumstantial evidence but, in doing so, at least offered them the dignity of anonymity. Should their identities be disclosed as part of this process the CBC would have a license to resume its coverage of [her] and her family without any form of protection.
>
> In this context, we submit that the factors in section 21(2)(e), (f) and (i) weigh strongly against disclosure.

Stating that "there are no significant factors weighing in favour of disclosure," the OLGC argues that the Ombudsman's investigation and report, *A Game of Trust*, and its own response to the Ombudsman's recommendations has satisfied any public need for scrutiny which renders disclosure of the records at issue in this appeal both unnecessary and undesirable. The OLGC submits:

> The Ombudsman reviewed every record under appeal in conducting his investigation and specifically referred to the investigation into the $12.5 million claim in questioning whether the OLG[C]'s security processes were adequate. His investigation has led to real change and, at this point, the only possible justification for the release of the personal information the OLG[C] has claimed exempt from public access is to move the focus of the Appellant's journalistic exercise from the OLG[C] to individual lottery winners.
>
> This is not the type of scrutiny that is contemplated by section 21(2)(a)…

> The Appellant does not have the power to properly police lottery fraud. [The affected party] and her family's investigation should be left to the OPP. The OPP has also been provided with all the records under appeal and has the power to conduct a fair and effective investigation in a manner fully respectful of [her] and her family's privacy rights.

The appellant relies on the factors favouring disclosure in sections 21(2)(a) and (c), but the key theme of the appellant's representations is that continued public scrutiny of the OLGC is necessary. Regarding the relevance of the factor in section 21(2)(a), the appellant submits that the two elements that must be established are both present in the circumstances of this appeal: 1) the activities of the institution must have been publicly called into question; and 2) the disclosure of the personal information must be desirable in order to subject the activities of the institution to public scrutiny [P-663]. Regarding the first element, the appellant notes that:

> The story of this particular "insider win" contributed, in a significant way, to the public controversy which followed these documentaries. This case became a central focus of the Ombudsman's Report, in which he discussed this case in detail:
>
> > But the most shocking story involved the sister of a convenience store manager in Burlington, whose parents also worked in the store, who presented a winning Super 7 free play ticket for $12,500,000. At first, the woman called the Prize Office and claimed she was calling on behalf of her brother who "owned" the ticket. At the Prize Office she said she was not affiliated with a retailer. She denied that the ticket belonged to her brother, and explained that she had previously said this to protect her privacy. She could not provide information to confirm when the winning free play ticket was generated, nor could she even prove she was in the city where the original ticket was purchased. A Statutory Declaration was prepared in which she stated she did not have a brother and was not connected to any retailer in any manner. The Corporation then discovered that she had the same last name as the retailer who had generated the free play ticket, and he confirmed she was his sister. Confronted with this, she again stated she was trying to protect her family's privacy. Incredibly, despite all this, the Corporation paid her the $12.5 million after the ticket expired.
> >
> > Ontario Ombudsman's Report, [*A Game of Trust*] at para.74.

The appellant maintains that the need to subject the OLGC to ongoing public scrutiny remains urgent notwithstanding the Ombudsman's investigation and resulting report. The appellant refers

to the public's right to learn what procedures were followed in OLGC's investigation of this "insider win."

Further, the appellant submits that the OLGC:

> Seems to be suggesting that where the OPP may be conducting an investigation, investigative journalism has no place. This is not the case. Indeed, the Ontario Court of Appeal's decision in the *Criminal Lawyers' Association* case, discussed in detail below, [under the Public Interest Override] confirms that the crucial public role of access to information legislation continues even when a law enforcement investigation is ongoing. Similarly, the Supreme Court of Canada's freedom of expression jurisprudence in cases such as *R. v. Mentuck* [[2001] 3 S.C.R. 442] confirms that public scrutiny of government institutions by the media is a fundamental democratic right. *The fifth estate* is fulfilling a public function that cannot be undertaken by the OPP when conducting investigations.
>
> In any event, the focus of CBC's investigation remains the OLG[C], which the OPP does not appear to be investigating. …

Referring to Order P-1014, the appellant asserts that the circumstances of this appeal merit the consideration of the unlisted section 21(2) factor related to institutional integrity. In that order, Inquiry Officer [now Senior Adjudicator] John Higgins considered whether the disclosure of information related to a workplace harassment complaint investigation would create or improve public confidence in the integrity of the Ministry of the Attorney General. The appellant notes that Inquiry Officer Higgins concluded that the information should be disclosed because "public confidence would be eroded if the investigations appeared to be 'secret trials which prejudice the rights of those accused…'."

According to the appellant, given the Ombudsman's comments about the OLGC "paying out millions of dollars to claimants in ridiculously suspicious circumstances" because its security measures for verifying insider wins were inadequate [*A Game of Trust*, at paragraph 224], opening up this process to public scrutiny is important if public confidence in the OLGC's practices is to be regained.

The appellant submits that the section 21(2) factors favouring non-disclosure are weak. On the possible relevance of the factor in section 21(2)(e), the appellant submits that OLGC has not met the requisite evidentiary threshold by demonstrating that the affected party will suffer pecuniary or other harm. The appellant states:

> The first harm to [the affected party] and her family suggested by the OLG[C] is physical harm. The OLG[C] cites the example of a Montreal couple who were the subject of a kidnapping plot after their identities were published From this example, the OLG[C] concludes that lottery winners can be targeted when their identity as winners is revealed. However, this is a *very* remote harm given that the

> OLG[C] can only cite one example in Canada. Moreover, one can assume that this example resulted from the typical publication of winners by provincial lottery corporations, rather than a request for access to the lottery corporation's records. This remote potential for harm is created by the lottery Regulations' requirement of consent to publication. In its Regulations, the Government has clearly decided that public scrutiny of lottery wins outweighs the speculative possibility that lottery winners could be targeted by criminals. Furthermore, [the affected party's] identity is already publicly known as a result of her consent to her identity and photo being published as a legal precondition to claiming her lottery prize.

The appellant disputes the OLGC's claim that the personal information is highly sensitive for the purposes of the factor in section 21(2)(f).

Regarding the relevance of section 21(2)(i), the appellant submits that:

> [the] speculative concerns that the release of information would "*likely* lead to the unfair public speculation about their honesty and integrity" is not sufficient to defeat the presumption of disclosure. The CBC is a public body dedicated to responsible, ethical journalism. There is no evidence that CBC has made any false allegations with respect to this win - to the contrary, the Ombudsman was shocked that the OLG[C] permitted [the affected party] to claim the lottery prize [*A Game of Trust*, para. 74]

The reply representations provided by the OLGC describe the concept of "informational privacy" and the entitlement of individuals to control the dissemination of their personal information. The OLGC also refers to the threat to personal privacy posed by modern technology, and asserts that there is a corresponding need to be more cautious about the retention and control of personal information. In response to the appellant's argument regarding the factor in section 21(2)(a), the OLGC acknowledges that ongoing scrutiny of its operations is required, but asserts that this does not justify disclosure in the circumstances because the responsive records "have already been scrutinized, as we have argued, to a positive effect."

Analysis and Findings

Factors favouring privacy protection

Section 21(2)(e) – unfair exposure to pecuniary or other harm

In my view, it is important to consider the complete wording of section 21(2)(e) since its relevance is determined by whether "the individual to whom the information relates *will* be *exposed unfairly* to pecuniary or other harm" with disclosure. Previous orders of this office have established that although the disclosure of personal information may be uncomfortable for those involved in acrimonious or contentious matters, this does not mean that harm would result, or that any resulting harm would be unfair [Order PO-2230].

In this appeal, the appellant relied on Order PO-2465, in which Senior Adjudicator John Higgins canvassed the treatment of this factor in previous lottery appeals and found that the factor was relevant, but merited little weight. In my view, the following excerpt from the Senior Adjudicator's reasons is particularly relevant:

> On the subject of what weight should be given to this factor, I note that the representations I received on section 21(2)(e) (which I have reproduced in full above) do not mention any factual underpinning for finding the factor applies in this case; rather, the OLGC cites Order P-181, apparently on the assumption that this factor will apply because it has been applied in other orders relating to lottery winnings. Section 21(2)(e) contemplates a high onus, i.e. it must be established that "the individual to whom the information relates will be exposed unfairly to pecuniary or other harm." Although it was not possible to notify the affected party in this case, in my view the OLGC was, itself, in a position to provide at least some evidence of unfair harm to lottery winners, given its position in the lottery and gaming industry and its experience with people who win lottery prizes. Accordingly, although I am prepared to find that section 21(2)(e) applies, I accord it relatively low weight.

I agree with the Senior Adjudicator's reasons in PO-2465 and adopt them for the purpose of this appeal. I accept the appellant's submissions regarding the speculative quality of the OLGC's evidence regarding the prospect that unfair harm will result in the manner contemplated by the factor in section 21(2)(e). In stating this, I acknowledge that I have not received representations from the affected party.

I have also considered, and decided to adopt, the following finding on section 21(2)(e) by Assistant Commissioner Beamish in Order PO-2657:

> I accept the evidence of the appellant that there has already been significant media coverage of the circumstances surrounding the lottery win of the affected parties. In fact, some of this coverage has included interviews with counsel for affected party 2. As a result, portions of the information that will be disclosed as a result of this order is already within the public's knowledge, a fact which mitigates against the argument that harm will result from this disclosure [at page 20].

In this appeal, the circumstances of the affected party's insider win has already been covered by *the fifth estate*, as noted, and in a number of newspaper articles from the same time period (see, for example, two articles in the on-line version of the *Hamilton Spectator* appearing on November 15, 2007). Based on my own informal review of the on-line press, exposure of the circumstances of this insider win has already occurred separate and apart from the appellant's investigation. I note that the Assistant Commissioner stated the following about this type of exposure:

> The Ombudsman has identified a very real problem with the frequency of insider wins and the manner in which the OLG[C] has verified their legitimacy. The Ombudsman's report refers to numerous incidents where insider winners were improperly treated as legitimate winners. Based on the Ombudsman's investigation, I am of the view that insider winners should, in fact, expect a lesser degree of privacy than ordinary members of the public. Insider winners should anticipate that their claims will be subject to a higher standard of scrutiny, including potential scrutiny by the public [Order PO-2657 at page 21].

I agree with the reasons of the Assistant Commissioner as regards the lesser expectation of privacy accorded to inside winners. Moreover, even if I were to accept, from a subjective standpoint, that a measure of harm upon disclosure of the personal information in the records is possible, I have not been persuaded by the OLGC's evidence that such harm *will* occur, or that it would be *unfair* in the circumstances. Accordingly, I find that this factor cannot be given weight in the circumstances of this appeal and with specific regard to the personal information remaining at issue.

Section 21(2)(f) – highly sensitive

For personal information to be considered highly sensitive for the purposes of section 21(2)(f), I must be satisfied that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518]. It is not sufficient that release of the information might cause some level of embarrassment to those affected [Order P-1117].

I have considered the representations provided to me by the OLGC and by the appellant. I have also taken into consideration that I did not receive representations from the affected party. As was the case in Orders PO-2657 and PO-2664, I find that there is not sufficient evidence to support a finding that the disclosure of *most* of the personal information remaining at issue could reasonably be expected to cause significant personal distress to the affected party or other identifiable individuals.

I find that the factor in section 21(2)(f) is relevant only with regard to address information and photographs contained on pages 30, 83, 225 and 226, and I place moderate weight on it as a relevant privacy protective factor. As suggested above, however, I find that the other information does not merit the attraction of section 21(2)(f).

Section 21(2)(i) - unfairly damage reputation

Previous orders of this office have established that the relevance of the consideration in section 21(2)(i) is determined based on the existence or foreseeability of the contemplated harm, but also by it being demonstrated that this damage would be "unfair" to the individual affected by the disclosure [see Orders P-256, M-347, P-1014, MO-2019].

Even in the absence of submissions from the affected party, I am satisfied that damage to her reputation could reasonably be expected to occur with disclosure. The extensive previous reportage of this OLGC "insider win," and the featuring of it in *A Game of Trust* and *the fifth estate*, together with the likelihood of further dissemination of the information in the records upon disclosure, renders it reasonably likely that the ensuing public discussion and commentary around the subject will result in the harm contemplated by this factor.

It should be emphasized that the possibility of public discussion of the information does not necessarily lead to the conclusion that its disclosure could *unfairly* damage the reputation of the affected party. On this point, however, I agree with the following finding of the Assistant Commissioner in Order PO-2664:

> In view of the inferences that were drawn by the media as a result of the recent stories relating to lottery winners, I find that there is a possibility that those same inferences will be drawn with respect to these affected parties. However, I only accord this factor moderate weight at best, since it is not conclusively demonstrated that any damage to reputation that may occur would be "unfair".

In light of the overall circumstances of this appeal, I find that the reputational damage would be "unfair" for the affected party and another identified individual, and I find that section 21(2)(i) carries moderate weight for the remainder of the personal information at issue.

Factors favouring disclosure

Section 21(2)(a) - public scrutiny

In order to support a finding that section 21(2)(a) applies to the disclosure of the personal information at issue, two points must be established by the evidence: first, that the activities of the institution have been called into question publicly; and second, that the information sought will contribute materially to the scrutiny of those specific activities.

In the present appeal, I find that the evidence of the activities of the OLGC being publicly called into question is more than adequate to meet the first requirement of section 21(2)(a). The appellant's representations, the documentaries aired on *the fifth estate*, and the Ombudsman's investigation into the OLGC's "protection of the public from fraud and theft," along with the subsequent release of his report, all support this finding.

I must next determine whether disclosure of the personal information in the records would meaningfully assist in the scrutiny of the OLGC by the public. While the OLGC concedes that ongoing scrutiny of its activities is appropriate, the OLGC has argued that the public's need for scrutiny will not be satisfied by disclosure of these particular records because they have already been "scrutinized by the Ombudsman." Moreover, the OLGC submits that the CBC should leave the investigation of lottery fraud to the OPP, which is properly charged with enforcing the law.

As the OLGC's submissions on these points were comprehensively addressed in Order PO-2657, I will simply excerpt from a relevant segment of the Assistant Commissioner's reasons:

> I have decided that the factor set out in this section applies and the disclosure of the personal information in the records is desirable for the purpose of subjecting the activities of the OLG[C] to public scrutiny, particularly as those activities relate to the verification of insider wins. I also conclude that this factor should be accorded significant weight.
>
> With respect, I do not agree with the position taken by the OLG[C] that the alleged investigation by the OPP into the insider winners is sufficient to ensure that the activities of the OLG[C] are exposed to public scrutiny. Any investigation carried out by the OPP will focus on the activities of the potential insider winners and not on the activities of the OLG[C]. While the information in the records may relate to possible fraud by an insider winner, the information is also related to the OLG[C] process for evaluating and authorizing payments to insider winners.
>
> The activities of the OLG[C] that have been the subject of public discussion raise issues not only about the number and circumstances of insider wins but also about the means and process pursuant to which the OLG[C] investigated and authorized such claims. The information at issue is relevant to these matters and it is from this perspective that the information requires further public scrutiny. The OPP will not be scrutinizing these records from this perspective and, therefore, the investigation by the OPP will not "subject the activities of the institution to public scrutiny."
>
> The OLG[C] also argues that the investigation conducted by the Ombudsman was sufficient to satisfy the public's need for scrutiny of the institution's activities. I agree with the position taken by the appellant on this issue and find that, despite the Ombudsman's investigation, the disclosure of the information is nevertheless desirable to subject the activities of the institution to scrutiny by the public. In fact, it is ironic that the OLG[C] is relying on the Ombudsman's report to resist disclosure when, in fact, that report makes it clear that ongoing public scrutiny of the OLG[C] is necessary. This was reflected in the following comments made by the Ombudsman at page 5 [of *A Game of Trust*]:
>
> > While the Corporation has certainly been proactive in seeking solutions, however, there *are disturbing signs that the culture that led to the difficulties in the first place is not gone.* It was not conscience or self criticism that smartened the OLG[C] up – it was a public relations nightmare, played out on the public airwaves despite its best efforts at suppression. *A profound cultural shift has yet to occur*, as the Corporation demonstrated in its all-out defensive reaction against *the fifth estate's* statistics. This is not

> some private company responding to a potential profit-draining scandal. This is a Crown corporation created to protect and serve the public, which knew it had a problem. (emphasis added)

The Ombudsman further recognizes that public scrutiny of the insider win investigation process is required well after the release of his report. At page 50, he states:

> While the OLG[C] deserves some credit for finally taking some decisive action to address the fallout from *the fifth estate*, there is a very real danger that some initiatives will result in mere window dressing. It continues to exhibit a reluctance to get tough when it comes to retailer compliance issues – as its own research shows, most retailers still (as of January 2007) seem to resist even asking people to sign their tickets. The OLG[C] still appears not to recognize that controls need to be designed and enforced to protect the public and the integrity of the system. Compliance cannot be treated as an option merely to be negotiated with retailers.

The OLG[C] also argues that the need for public scrutiny has been satisfied by the disclosure of de-identified records. With all due respect, I do not agree with this position. The disclosure of de-indentified records would not satisfy the need for public scrutiny as significant amounts of relevant personal information would be severed from the records. For example, personal information, such as any pattern of previous lottery wins by the affected parties, is directly relevant to the scrutiny of the OLG[C] process in validating this particular claim. Similarly, the activities of the affected parties leading up to their claim is also relevant to determining whether the OLG[C] process was sufficient for the purposes of determining whether the claim was legitimate. Further, as noted by the appellant, the insider win claimed by the affected party in this case has already been the subject of public comment in the media. Disclosure of personal information in this particular case will assist in subjecting the insider win process, as applied to the affected party's claim, to public scrutiny.

To conclude, I find that disclosure of the information at issue is desirable to subject the activities of the OLG[C] to public scrutiny and I accord this factor significant weight [pages 18 to 20].

I concur with, and adopt, this reasoning in the present appeal. There is current and ongoing public debate over the effectiveness of the OLGC's measures to prevent fraud and theft. One of the means of facilitating public scrutiny is the provision of the greatest amount of information about the OLGC's activities possible in the circumstances. In this context, I find that the factor in section 21(2)(a) is worth significant weight.

Section 21(2)(c) – informed choice

To make a finding that the factor in section 21(2)(c) is relevant, I must be satisfied that disclosure of the withheld personal information would "promote informed choice in the purchase of goods and services."

In the circumstances of this appeal, I find that a meaningful correlation exists between the disclosure of the information in the records and the promotion of "informed choice" for the purposes of section 21(2)(c). In view of the popularity of OLGC's lotteries in the province of Ontario, and the essential monopoly OLGC enjoys, I agree with the Assistant Commissioner's finding in Order PO-2657 that "the public has a right to know whether the OLG[C] is administering the lottery scheme in a manner that is fair to all lottery players," even if retrospectively. In my view, the personal information in the records is directly related to the public's ability to evaluate the OLGC's treatment of insider wins, even though the perspective, at this point, may be more historical. I find that section 21(2)(c) is a relevant consideration in this appeal, and due to the age of the information, I accord the factor moderate weight.

Unlisted factor – public confidence in the integrity of an institution

The opening words of section 21(2) require the head of an institution to "consider all the relevant circumstances." Under the authority of this preamble, former Commissioner Tom Wright identified institutional integrity as an additional factor in Order P-237, stating:

> In addition to the criterion identified in subsection 21(2), in very unusual circumstances, disclosure of personal information could be desirable for the purpose of ensuring public confidence in the integrity of an institution. This could be considered as an additional unlisted circumstance to be taken into consideration under subsection 21(2).

This unlisted factor relating to the integrity of an institution is closely related to, and has been applied in previous orders as an extension of the factor favouring disclosure in section 21(2)(a) [Orders P-1014, MO-2019, MO-2344]. In Order P-1014, the appellant was an individual who had been the subject of a workplace harassment investigation. In finding that this unlisted factor was relevant and favoured disclosure of personal information in the records, Inquiry Officer John Higgins stated:

> If it appears that these investigations are secret trials which prejudice the rights of those accused, public confidence will be eroded. Failure to disclose information which was considered by the investigator in arriving at his decision would clearly prejudice the rights of individuals accused of harassment. Accordingly, I find that this factor applies to information in the records which is directly related to the subject matter of the investigation, the investigator's findings and the Ministry's final disposition of the matter.

In my view, there is a basis for distinguishing this order in the circumstances, since the individual requester was also the "accused" in the workplace investigation and, as such, could be said to have a greater interest in disclosure of the details of the investigation into the complaint against him. However, although the appellant in this appeal is not in the same position as the appellant in Order P-1014, I accept that the CBC essentially represents the public in this forum. Moreover, I agree with the CBC that opening up the process followed by the OLGC in investigating this insider win will ultimately assist in restoring public confidence eroded by the controversy surrounding the institution in recent years.

In my view, this appeal features the "very unusual circumstances" described by Commissioner Wright in Order P-237. For this reason, I find that this unlisted factor, which favours disclosure, should be accorded moderate weight.

Summary and Conclusion

Having weighed the circumstances which favour disclosure of the requested personal information against those which favour the protection of privacy of individuals identified in the records, I find that the balance is tipped in favour of disclosure, with few exceptions. In particular, although I have accorded moderate weight to a small amount of information for the purposes of the factor in section 21(2)(f), and moderate weight to the factor in section 21(2)(i) generally, I have not been satisfied by the evidence presented that the factor in section 21(2)(e) ought to be afforded any significance in this balancing exercise.

Indeed, I have arrived at my finding in favour of disclosure, for the most part, based on the significant weight I have accorded to section 21(2)(a), as well as the moderate weight with which I have vested the factor in section 21(2)(c) and the unlisted factor related to public confidence in institutional integrity. Simply put, the ongoing public scrutiny of the OLGC's activities in relation to the investigation of insider lottery wins through disclosure of the personal information in the records is desirable. For this reason, I find that disclosure of the personal information in the records, other than certain personal information detailed below, would not constitute an unjustified invasion of the affected party's, or other individuals', personal privacy.

With specific regard to the considerations in section 21(2), pages 30, 83, 225 and 226 of the records contain personal information about the affected party and her brother that should *not* be disclosed. In this category of information, I include photos and home addresses (whether verifiably current or not). In my view, there is no connection between this specific personal information and the factors favouring disclosure in section 21(2)(a) and (c), as well as the unlisted (institutional integrity) factor because this information would not materially promote public scrutiny of the OLGC. Accordingly, having weighed the factors relevant to the personal information described above, I find that the balance favours protection of the privacy of the individuals to whom this particular personal information belongs. In the circumstances, therefore, I find that its disclosure would be an unjustified invasion of personal privacy, and that the exception to the mandatory exemption established by section 21(1)(f) does not apply.

Subject to my analysis of the public interest override, below, I find that this information is exempt under section 21(1), and that it must not to be disclosed to the appellant.

VALUABLE GOVERNMENT INFORMATION

OLGC claims the discretionary exemption in sections 18(1)(c) and/or (d) to deny access to the information contained in many of the records at issue in this appeal. The specific information in each record subject to the section 18 claim is not identified. Therefore, each record for which section 18 is claimed *and* to which section 14 does not apply will be reviewed in its entirety against the exemption.

Sections 18(1)(c) and (d) read:

> 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;

Broadly speaking, section 18 is designed to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) [the Williams Commission Report] explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute…

Sections 18(1)(c) and (d) take into consideration the consequences that would result to an institution if a record was released [Order MO-1474]. To meet the requirements of these exemptions, the OLGC is required to provide "detailed and convincing" evidence to demonstrate a "reasonable expectation of harm" manifesting with disclosure of the information. In other words, I must be satisfied by the evidence provided that the disclosure "could reasonably be expected to" lead to the specified result. Evidence amounting to speculation of possible harm is not sufficient [See *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner*) (1998), 41 O.R. (3d) 464, (C.A.)].

The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

Given that one of the harms sought to be avoided by section 18(1)(d) is injury to the "ability of the Government of Ontario to manage the economy of Ontario", section 18(1)(d), in particular, is intended to protect the broader economic interests of Ontarians [Order P-1398 upheld on judicial review [1999], 118 O.A.C. 108 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.)].

Representations

As with other issues, the representations provided by the OLGC and the CBC on the possible application of sections 18(1)(c) and (d) in this appeal do not differ materially from those provided to Assistant Commissioner Beamish in Orders PO-2657 (and PO-2264). I did not receive supplementary representations on section 18, although these were invited from the OLGC and the CBC following the release of the above-mentioned orders. Additionally, due to the overlapping of OLGC's law enforcement and valuable government information exemption claims, a great number of the records that were the subject of argument under section 18 are no longer at issue as they have been found to qualify for exemption under section 14(1)(a). Accordingly, relatively brief outlines of the original representations are reproduced below although I have considered each party's submissions in their entirety.

As in Appeals PA06-389 and PA06-394, the OLGC asserts that if the public learns through disclosure in this appeal how prize claimants are tested by OLGC officials, this will assist dishonest individuals in preparing fraudulent prize claims and compromise the determination of the validity of claims, generally. The OLGC also submits that disclosure of the confidential purchase and validation information unique to the winning December 26, 2003 Super 7 ticket would also compromise the security of the win validation process. The OLGC adds that disclosure of this information about prize claim validation investigation processes could reasonably be expected to cause economic and financial harm to the OLGC. The OLGC states:

> Whether it is investigating an initial claim to a prize or a challenge to a prize, [the OLGC] is engaged in a process that is important to the province and its taxpayers' financial interests. Public confidence in the OLG[C]'s investigation process and the lottery system must be maintained if it is to continue to make its large financial contribution to provincial programs. …

In support of its position on general lottery security, the OLGC provided an affidavit from an internal audit manager. Although the affidavit's contents are confidential, for the purposes of this order, it can be stated that it contains information about OLGC ticket security controls which is composed of numerical information and described as "security-sensitive." The OLGC refers to

Order PO-1799 where former Assistant Commissioner Tom Mitchinson "recognized that section 18(1)(d) protected information in the OLG[C]'s transaction records from disclosure." In other affidavit evidence, the OLGC adds that since it "often needs to assess claims made by individuals who do not bear winning tickets, there is information printed on winning tickets that is sensitive." The OLGC also submits that:

> Even if a prize has been successfully claimed there is still a security risk associated with disclosing purchase and validation information because individuals may challenge the first claimant. This is the reason why the OLG[C] publishes winners' pictures and personal information for a short period of time after the prize is paid. Challenges are common.

The OLGC then describes three (ultimately unsuccessful) challenges to the $12.5 million Super 7 prize at issue in this appeal, all of were initiated by individuals who contacted the OLGC the CBC's documentary airing on *the fifth estate* and the release of the Ombudsman's report, *A Game of Trust*.

As in Orders PO-2657 and PO-2664, the appellant's submissions on the OLGC's section 18 exemption claim largely concern the public's interest in the disclosure of the records. The appellant argues that the OLGC has failed to provide sufficiently detailed and convincing evidence to support its claim that disclosure of the information would prejudice, injure or otherwise harm either its own financial interests or those of the Government of Ontario. The appellant submits that the OLGC relies on two "speculative" arguments in seeking to withhold the information under section 18: that disclosure might attract fraudulent challenges to the affected party's lottery win; and that disclosure of the process used to test claims will harm the government and the OLGC.

The appellant disputes the basis of the OLGC's concern about possible challenges to the affected party's lottery win by noting that the limitation period of one year to claim lottery winnings has expired for this prize. The appellant notes that the OLGC "specifically waited for a year to expire in this case because it was an insider win." The appellant submits that publication of more information about the ticket purchase in this instance may result in the "actual winner" coming forward.

In reply, the OLGC refers to harm to government interests in the form of "significant additional costs if further claims on this well-known win are made and if the disclosure of the records under appeal compromises its ability to test future claimants."

Analysis and Findings

The OLGC has advised this office that it accepts Assistant Commissioner Beamish's findings in Orders PO-2657 and PO-2664, and that it wishes to maintain its claim for exemption under section 18 only to the extent the original claim was upheld by the Assistant Commissioner.

My findings respecting section 18 in this appeal must, therefore, be accompanied by an outline of the Assistant's Commissioner's finding on sections 18(1)(c) and (d) in Order PO-2657. Starting at page 32 of that order, the Assistant Commissioner categorized the records as follows:

> … The first category includes information about the process for evaluating the claims of insider winners and the investigations conducted to verify their claims. Included in this category is information such as questions asked of the insider winner during the investigation process (e.g. the insider win interview form) and information relating to the process involved in verifying insider wins. In other words, this category is comprised of the information that the parties have referred to as the "testing process."

My findings respecting the application of the law enforcement exemption, above, render it unnecessary to consider this first category of records any further in this order, although I find the Assistant Commissioner's overall reasons instructive. However, some of the records for which section 18(1)(c) and/or (d) are claimed and to which section 14(1)(a) does not apply include information in the second category of records described by Assistant Commissioner Beamish in Order PO-2657. The Assistant Commissioner continued by stating:

> The second category of information includes detailed information about the specific circumstances surrounding the purchase and validation of any particular insider win claim, in this case, that of the affected parties. Included in this category of information are details of the time of purchase and validation of the winning ticket, details of other tickets purchased at the same time and information related to the actual winning ticket and its unique characteristics. This category has been described as information relating to "challenges of this winning ticket."
>
> I note that within each category, there is information that has already been made available to the public, or that has been obtained by the appellant. I will take this into consideration when analyzing the application of section 18 to the two categories.
>
> *OLG[C] Investigation Process – the testing process*
>
> …
>
> I agree with the position taken by the appellant that many of the questions asked and the types of investigations conducted are already within the knowledge of the public. Indeed, there is a discussion of the types of questions asked of insider winners in the Ombudsman's Report.
>
> …

Again, I note that the process outlined in the checklist and the questions posed to the claimant are quite unremarkable and do not describe a highly technical or intricate process.

In my view, **what is important to the integrity of the investigation process are the responses provided by an insider winner as part of the process, not the questions themselves**. Knowledge of the set of questions that an insider will be asked will not assist that individual if they do not have the correct answers.

…

In summary, given the amount of information already in the public sphere relating to the investigation process and the nature of the process itself, **I am not satisfied that disclosure of information in the records that reveal the nature of that process will result in the OLG[C] having a more difficult time in investigating insider wins.** As a result, I find that disclosure of this information cannot reasonably be expected to prejudice the economic interests of the OLG[C], or to be injurious to the financial interests of the Government of Ontario.

Accordingly, I find that the generalized information about the investigation process of the OLG[C] does not qualify for exemption under section 18(1)(c) or (d) .

Purchase and Validation Details of Winning Ticket – challenges to this winning ticket

I find that the **detailed purchase and validation information** that the OLG[C] gathered in the course of its investigation into the affected parties' claim does qualify for exemption under section 18(1)(c) and (d) of the *Act*. The OLG[C] has provided me with sufficiently detailed and convincing evidence to support a finding that the disclosure of this information **could be used by an individual who wishes to make a fraudulent claim to the lottery prize.**

I have considered the argument of the appellant that the limitation period for claiming the lottery prize in this appeal has expired. I have also considered the fact that the information contained in this category of records could be used by an individual who disputes the affected parties' claim to the prize in a civil proceeding against them. I also accept the argument of the OLG[C] that the integrity of the lottery process requires that this information be kept confidential.

The Assistant Commissioner excepted some information about the winning ticket in that appeal from his findings because certain details had already been made public and he was not persuaded that their disclosure could reasonably be expected to prejudice the economic interests of the OLGC or be injurious to the financial interests of the province.

In Order PO-2664, the Assistant Commissioner found the purchase and validation information related to the winning ticket exempt for reasons similar to those expressed in Order PO-2657, and also did not uphold the exemption claim with regard to the information considered to have been previously in the public domain in that case.

In another more recent order relating to the OLGC (Order PO-2709), Adjudicator Catherine Corban addressed the OLGC's denial of access to purchase and validation information under sections 18(1)(c) and (d). While the records before Adjudicator Corban were more limited in scope and volume, she was presented with similar arguments and ultimately arrived at findings consistent with those of the Assistant Commissioner in Orders PO-2657 and PO-2664 with respect to purchase and validation information.

In my view, these three orders offer relevant precedent for my findings in the present appeal. Moreover, I agree with Assistant Commissioner Beamish's findings regarding section 18 in Orders PO-2657 and PO-2664, and I adopt these findings for the purposes of this appeal.

It cannot be disputed that lotteries are "big business" in Ontario, and that they generate a great deal of revenue for the provincial government that is, in turn, used to fund a variety of programs for the benefit of citizens of the province. As noted previously, in order to establish a reasonable expectation of economic and financial harm to that revenue stream under sections 18(1)(c) or 18(1)(d), the OLGC was required to provide "detailed and convincing" evidence to establish a clear connection between disclosure of the specific information at issue with the forecasted harm.

Adopting the reasons of the Assistant Commissioner in Order PO-2657, and with specific reference to the information actually remaining at issue under section 18, I find that a reasonable expectation of harm to the OLGC and the province's revenue stream is only established for certain lottery security control information for the reasons that follow.

I accept the evidence of the OLGC that three challenges to this winning ticket were initiated following *the fifth estate* series and the release of *A Game of Trust*. In Order PO-2657, Assistant Commissioner Beamish observed that "[k]nowledge of the set of questions that an insider will be asked will not assist that individual if they do not have the correct answers." In my view, the Assistant Commissioner created an important distinction between disclosure of information that would tend to reveal the questions asked by the OLGC, and information that would provide the answers to those questions necessary to sustain a prize claim. I find that the information in the records that would furnish individuals with the "correct answers" to prize claim validation questions and the potential it holds to compromise the OLGC's efforts at due diligence, as the term is used in this context, gives rise to the harm sections 18(1)(c) and (d) seek to avoid.

As occurred in Orders PO-2657 and PO-2664, my findings in this appeal regarding the purchase and validation information related to the winning December 26, 2003 Super 7 ticket are affected to some extent by the fact that information about the win has already been made public through *A Game of Trust, the fifth estate,* and articles appearing in the print media. This finding is consistent with the "public domain" rationale for my decision not to uphold section 14(1)(a) as regards certain information and records for which it was claimed. Information such as the date of the draw, the lottery played and the size of the prize are quite obviously known to the public. In this context, I am not satisfied that disclosure of this particular information could reasonably be expected to prejudice the OLGC's economic interests or be injurious to the financial interests of the province.

The OLGC cited Order PO-1799 to support the application of section 18(1)(d) to exempt "information in the OLG[C]'s transaction records." As I understand the OLGC's submission, Order PO-1799 demonstrates this office's recognition that disclosure of transaction record details amounts to a "security-related breach," thereby threatening the integrity of the provincial lottery system, and necessitating a significant financial investment on the part of the OLGC and the government of Ontario to remedy it.

The OLGC did not elaborate on the specific nature of the information in the transaction records that former Assistant Commissioner Tom Mitchinson found exempt under section 18(1)(d) in Order PO-1799. Moreover, it appears that the scope of the information the OLGC sought to have withheld based on this argument is broader than that contemplated by the former Assistant Commissioner, or possible given the records actually at issue, in Order PO-1799. On my review of Order PO-1799, I note that Assistant Commissioner Mitchinson upheld the application of section 18(1)(d) to the serial (and offset) numbers columns contained in a transaction report. A similar conclusion was reached with respect to this same information in Orders PO-2657 and PO-2664. It must be highlighted that the responsive transaction reports are no longer at issue in this appeal, given that I have found that section 14(1)(a) applies to exempt them. However, based on the evidence, including the confidential affidavit provided by OLGC's internal audit manager, I am satisfied that the serial numbers constitute "security-sensitive" information that is crucial to lottery security. Accordingly, I find that the serial number of the winning ticket in this appeal is exempt under section 18(1)(d) wherever it appears in the records as its disclosure could reasonably be expected to be injurious to the financial interests of the provincial government.

As previously indicated, and consistent with Orders PO-2657 and PO-2664, however, I am not persuaded by the OLGC's evidence that disclosure of the records which document more generally the process followed by the OLGC in investigating the insider win of the $12.5 million December 26, 2003 Super 7 prize will lead to the harms alleged. The records document a prize claim investigation that took place nearly five years ago. It is publicly known that the OLGC's investigation process has undergone change since then as a consequence of problems highlighted by internal reviews, *A Game of Trust* and *the fifth estate*. This further reduces the persuasiveness of the argument that knowledge of the prize claim investigation process could adversely affect the OLGC's economic interests. In my view, it cannot reasonably be concluded that the OLGC would be forced – with disclosure of the information – to incur great expense to

overhaul what is now an outdated process that has already been replaced by a more thorough one. I am similarly not persuaded that disclosure of the investigation process information would lead to the OLGC having greater difficulty investigating insider wins.

In summary, I find that the serial number of the winning ticket is exempt under section 18(1)(d) as lottery security control information, but that the general prize claim investigation process information remaining at issue could not reasonably be expected to result in prejudice to the OLGC's economic interests or injury to the province's financial interests. Accordingly, I find that the latter category of information is not exempt under sections 18(1)(c) or (d), subject to my findings on the OLGC's exercise of discretion, below.

EXERCISE OF DISCRETION

After deciding that a record or part thereof falls within the scope of a discretionary exemption, the head is obliged to consider whether it would be appropriate to release the record, regardless of the fact that it qualifies for exemption. The section 14 and 18 exemptions are discretionary, which means that the OLGC could have chosen to disclose information, despite the fact that it could withhold it. The OLGC was required to exercise its discretion under these exemptions.

On appeal, the Commissioner or her delegated decision-maker (the adjudicator) may determine whether the OLGC failed to exercise its discretion. In addition, the Commissioner or her delegate may find that the OLGC erred in exercising its discretion where it did so in bad faith or for an improper purpose; where it took into account irrelevant considerations; or where it failed to take into account relevant considerations. In either case, I may send the matter back to the OLGC for an exercise of discretion based on proper considerations [Order MO-1573]. It is important to state that I may not, however, substitute my own discretion for that of the OLGC [see section 54(2) of the *Act*].

I have upheld the OLGC's decision to apply sections 14 and 18 to deny access to certain records, or portions of records, and I must, therefore, review the OLGC's exercise of discretion under those exemptions.

Representations

The OLGC maintains that in exercising its discretion to deny access to the records it acted in good faith and considered all relevant factors. The OLGC submits that it considered the nature of the appellant's request and concluded that it did not justify abrogating the interests that are protected by the exemptions claims. In particular, the OLGC maintains that it sought to protect the integrity of its lottery security process in exercising its discretion to deny access under section 18. In addition, the OLGC submits that it exercised its discretion reasonably in light of its position as a third-party to the OPP's investigation into insider lottery wins.

> From its perspective, the OLG[C] considered the potential risk associated with disclosure of the records under appeal and made a reasonable decision to claim section 14.

The appellant submits that the OLGC's simple assertion that it "considered all relevant factors" when exercising its discretion is not sufficient to demonstrate that the OLGC properly exercised its discretion. The appellant submits that the OLGC:

> … failed to appropriately consider the factors listed in the IPC jurisprudence, which include (1) general purpose of FIPPA, (2) the wording of the exemption and the interests it seeks to protect, (3) whether the requester has a sympathetic or compelling need to received the information, (4) whether disclosure will increase public confidence in the operation of the institution, (5) the nature of the information and the extent to which it is significant and/or sensitive to the institution, requester or affected person, (6) the age of the information, and (7) the historic practice of the institution with respect to similar information.

The appellant's arguments are interspersed throughout with references to the compelling public interest in disclosure in this case. The appellant claims that given the strength of the public interest in disclosure, "the exemptions to disclosure have been claimed improperly by the OLG[C] and the Ministry."

Although reply representations were submitted by the OLGC, these did not address the appellant's representations on the exercise of discretion.

Analysis and Findings

I have considered the OLGC's representations on the exercise of its discretion in choosing not disclose the records, as well as the appellant's submissions on the issue. I acknowledge the common thread of the appellant's public interest argument that appears throughout the representations provided on the OLGC's exercise of discretion. However, it bears emphasis that the public interest in disclosure will be addressed under my review of section 23 of the *Act*, below, and not in my determination of this issue.

I have reviewed the representations provided by the parties in the context of the overall circumstances of this appeal. In my view, the evidence before me does not support a finding that the OLGC improperly exercised its discretion under sections 14 and 18 regarding disclosure of records responsive to the appellant's request. Although its representations were brief, I am satisfied that the OLGC exercised its discretion within generally accepted parameters, and that it did not consider irrelevant factors in doing so. I find that the OLGC properly exercised its discretion in this appeal. I uphold the OLGC's exercise of discretion.

PUBLIC INTEREST OVERRIDE

The appellant takes the position that the public interest override in section 23 of the *Act* applies to the withheld information. Section 23 of the *Act* states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)* (2007), 86 O.R. (3d) 259 [*Criminal Lawyers' Association*], the Ontario Court of Appeal held that the exemptions in sections 14 and 19 are to be "read in" as exemptions that may be overridden by section 23. On behalf of the majority, Justice LaForme stated at paragraphs 25 and 97 of the decision:

> In my view s. 23 of the Act infringes s. 2(b) of the Charter by failing to extend the public interest override to the law enforcement and solicitor-client privilege exemptions. It is also my view that this infringement cannot be justified under s. 1 of the Charter. … I would read the words "14 and 19" into s. 23 of the Act.

The Ontario Court of Appeal's decision in *Criminal Lawyers' Association* was appealed to the Supreme Court of Canada, which heard the case on December 11, 2008. The Supreme Court of Canada's decision is currently under reserve.

Based on the Ontario Court of Appeal decision in *Criminal Lawyers' Association*, cited above, section 23 *could* be applied to override the law enforcement exemption in section 14, the valuable government information exemption in section 18 and the personal privacy exemption in section 21(1) if the following requirements are satisfied: first, there must be a compelling public interest in disclosure of the records; and second, this interest must clearly outweigh the purpose of the exemptions.

Compelling public interest in disclosure

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984].

Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances of the appeal.

Representations

In this appeal, as in the appeals that led to Orders PO-2657 and PO-2664, the appellant provided extremely detailed and substantial submissions. As previously noted, the public's interest in disclosure of the records at issue has formed a common thread throughout the representations of the appellant. As much of the appellant's and the OLGC's representations were outlined in Order PO-2657, I will provide a more brief outline of the parts that are most related to the circumstances of this appeal. The following outline does not reference the many exhibits provided by the appellant, but I have reviewed all of them.

Following an outline of past orders of this office that established key principles related to the public interest override, the appellant submits that:

> … There are serious and legitimate concerns with respect to the number of insider wins that have occurred and with respect to the investigative procedures in place at the OLG[C], particularly in this case, where OLG[C] "held its nose" and paid out the claim despite an obvious need to investigate further [*A Game of Trust* Report at para. 79] The public has a right to properly scrutinize insider lottery wins and the actions of the OLG[C] in investigating those wins, including this particularly egregious case.
>
> There has been a significant public outcry related to the recent disclosure of the very high number of insider lottery wins. The Ontario Ombudsman's Report concluded that:
>
> > The Corporation ignored court decisions which confirmed its obligation to consumers and ignored the warnings and recommendations of its own officials regarding the need for tighter security measures to safeguard the public and the integrity of the system. When it did make security improvements in the past, it did so with no sense of urgency. Instead of increasing vigilance, it sought to avoid responsibility. Instead of proactively assessing the extent of insider wins and systematically addressing complaints, it chose to focus money and time on marketing a new identity, promoting its products, and protecting the interests of its retailer partners. The OLG[C] knew retailer fraud and theft was a reality

> and had the opportunity to act to strengthen lottery security. But instead it chose the path of apathy. …
>
> All of this raises key questions. Given that the Corporation was well aware of its customers' vulnerability to retailer fraud, why would it have failed to implement any effective prevention systems? And why would it be ready to make those systems weaker? The answer is as simple as it is distressing. Prior to October 2006, there was an inappropriate corporate culture within the OLG[C]; in a phrase, the OLG[C] had become fixated on profit rather than public service [*A Game of Trust* Report at paras. 229 and 14] [emphasis added by appellant].
>
> …
>
> What procedures are in place to protect against insider wins that are actually fraudulent claims? Were those procedures followed in the case of this lottery win? These questions go to the heart of the controversy around this issue. It is the central purpose of FIPPA to provide information to the public and shed light on the ongoing operations of government.
>
> As quoted at length in the Introduction to these submissions, the Ombudsman identified this specific OLG[C] investigation and payment as being particularly troubling. …

In the appellant's submission, the inadequate quality of the evidence tendered by the OLGC and the Ministry to establish that section 14 applies in the circumstances of this appeal should lead to the conclusion that "the public's real concerns about this case outweigh" the law enforcement exemption.

> With respect to the OLG[C]'s claim to the s. 18 exemption, the public interest in giving Ontarians the information they need to make informed decisions about lottery purchases and to protect themselves against fraud by insiders clearly outweighs the government's interest in earning revenues from lottery sales. …
>
> Further, there is no risk of an unjustified invasion of personal privacy under s. 21 in this case. As an insider who has won a major jackpot, the affected party should and must expect the public's scrutiny. Any privacy concerns she has are clearly outweighed by the public's right to scrutinize the OLG[C]'s investigation of her claim. The same is true for retailers who are involved in the investigation of an insider win. …
>
> The OLG[C] seems to suggest that the Ombudsman's Report has somehow satisfied the public's need for scrutiny of the OLG[C]... While Exhibit K of the

> OLG[C]'s submissions shows that some of the Ombudsman's recommendations had been implemented by [the date of his report], public scrutiny of the OLG[C] remains essential. … Contrary to the OLG[C]'s submissions, holding the OLG[C] up to scrutiny remains essential and in the public interest. …
>
> The CBC plays an important role in ensuring the public has the information sufficient to scrutinize the actions of the OLG[C], The Ombudsman recognized the important role that investigative journalism played in this controversy: "It is an embarrassment that the failings of the lottery system were not revealed as a result of the Corporation's own introspection, but through the efforts of investigative journalists" [*A Game of Trust* Report para 229]. He identified this case as "the most shocking" of the insider wins he reviewed. The CBC seeks these requested records in the public interest.

As noted previously, the OLGC's representations on the public interest override focus on the assertion that the Ombudsman's report, *A Game of Trust*, has satisfied the need for scrutiny of the OLGC and ensuring the integrity of its prize claim process. The OLGC maintains that:

> Access to the *specific records under appeal* cannot further the public interest in the integrity of OLG[C] lottery security because the Ombudsman examined the records under appeal and drew conclusions about the OLG[C]'s insider win investigation process. We direct your attention to pages 17 to 31 of the Ombudsman Report which discusses the OLG[C]'s investigation process and discusses seven case studies in a highly critical examination of the OLG[C]'s process. At page 20 of his report, the Ombudsman specifically references [the affected party's] win.

According to the OLGC, its commitment to implement the Ombudsman's recommendations regarding the investigation of insider wins demonstrates that the public interest would not be furthered by disclosure to the appellant. The OLGC argues that "disclosure would damage the very security system the Ombudsman said must be improved."

The OLGC maintains that the interest in protecting personal privacy is paramount, and that any public interest favouring disclosure of the records would be met by an "OPP investigation into insider wins." Adding to this point in its reply representations, the OLGC submits that:

> [T]he OLG[C], and the police if they choose to investigate, have the only legitimate role in scrutinizing a lottery claim.
>
> The CBC is free to speculate [as to whether or not the affected party is the rightful winner], but such speculation should not supersede these more valid processes [of the OLGC and OPP] in balancing the public interest against [the affected party's] privacy rights.

The OLGC's representations on the purpose of the exemptions are limited to sections 18 and 21, and state that:

> For sections 18 and 21, in particular, there are harms associated with disclosure that are significant and the CBC's public interest claim is, in essence, self-defeating. The public interest in improving lottery security is not served by a disclosure that would invite lottery fraud and compromise an important security control. Likewise, the public interest in the protection of consumers who buy lottery tickets cannot … be achieved by unnecessarily sacrificing consumer privacy.

Analysis and Findings

In order for me to find that section 23 of the *Act* applies to override the exemption of the information that I have found to fit within sections 14, 18 and 21(1), I must be satisfied that there is a compelling public interest in the disclosure of those particular records that clearly outweighs the purpose of those exemptions.

There can be little dispute, in my view, that there is a public interest in the subject matter of the records at issue. Indeed, the appellant has provided persuasive representations regarding the need for ongoing public scrutiny of the OLGC's prize claim process generally, and the investigation of insider wins, specifically. As Assistant Commissioner Beamish did in Orders PO-2657 and PO-2664, I reject the OLGC's position that the Ombudsman's investigation has satisfied the public need for scrutiny. Assistant Commissioner Beamish addressed the OLGC's position on this point in the following manner:

> I reject the OLG[C]'s contention that the Ombudsman's report, and the subsequent OPP investigation, is sufficient for this purpose. In fact, in my view this suggestion is a misreading and misinterpretation of the Ombudsman's observations and findings. As noted by the Ombudsman at page 51 of his report:
>
> > I am not convinced, however, that the public can rely on the Corporation alone to ensure that real reform takes place. The danger is too great that the OLG[C] will continue to fall back into its old habits of coddling retailers and dismissing consumers' legitimate complaints.
>
> Clearly, the Ombudsman did not see his report as the end of the process, or as the final resolution of all the problems identified in the OLG[C]'s insider win process [Order PO-2657, at page 50].

I agree with the Assistant Commissioner's reasons in Order PO-2657, and adopt them for the purposes of this appeal. I find, therefore, that there exists a significant public interest in the ongoing public scrutiny of the OLGC's prize claim process, including insider wins.

In making this finding, I am implicitly accepting that there is a legitimate role to be played by investigative journalism in this scrutiny. As the Ombudsman stated in *A Game of Trust* (at page 5):

> It was not conscience or self-criticism that smartened the OLG[C] up – it was a public relations nightmare, played out on the public airwaves despite its best efforts at suppression.

I also note that the Assistant Commissioner indicated that had he "found the information in the records relating to the OLG[C]'s insider win process was exempt from disclosure, [he] would have given serious consideration to the application of section 23 to require its disclosure" [Order PO-2657, at page 50]. It should be acknowledged, however, that the Assistant Commissioner found only a relatively small amount of information exempt pursuant to sections 18 and 21(1) in Orders PO-2657 and PO-2664, while in this appeal, much of that same type of information will not be disclosed as a consequence of the application of section 14(1)(a).

In any event, my determination of this issue does not end with the finding that there is a public interest in the subject matter before me. Such a finding merely represents the first threshold to be met. I must also be satisfied that the public interest in ensuring ongoing public scrutiny of the OLGC's prize claim process is sufficiently compelling that disclosure of the records is warranted regardless of their exemption under sections 14, 18 and 21(1). This requires a finding that additional scrutiny of the OLGC's prize claim process is sufficiently compelling to *clearly outweigh the purpose* of the exemptions for law enforcement, valuable government information or personal privacy. In the circumstances of this appeal, the evidence does not lead me to such a finding.

To begin, I am satisfied that the disclosure already provided for by this order will serve the public interest by permitting some measure of additional scrutiny of the investigation process followed by the OLGC. In my view, this goal can be accomplished without access to the limited personal information of the affected party and another individual that has been withheld under section 21(1) and the generic, mostly numerical, data I have accepted as key to OLGC lottery security for the purposes of section 18. In my view, there is no meaningful relationship between this exempt information and the need to equip citizens to participate more effectively in scrutinizing the process in question which has, in any event, been greatly modified since this particular investigation was undertaken.

My reasons for not applying the public interest override to the information withheld pursuant to section 14(1)(a) require greater elaboration.

The appellant argued that the "lack of evidence provided in support of the s. 14 claims," means that the "public's real concerns about this case outweigh any ongoing legal investigation." As I understand the appellant's submissions on this point, I am being urged to apply section 23 of the *Act* to override section 14 because the OLGC's and the Ministry's evidence was insufficient to

establish the law enforcement claim in the first place. However, I have found that the section 14(1)(a) law enforcement exemption claim applies in this appeal because I have adjudged the quality of the evidence tendered to be sufficiently detailed and convincing to uphold it, contrary to the appellant's submission.

In Order PO-2751, Senior Adjudicator John Higgins considered the possible application of section 23 of the *Act* to override the law enforcement and solicitor-client privilege exemptions. The records in that appeal related to meetings held by the Criminal Intelligence Service of Canada about a planned child pornography investigation by Canadian law enforcement authorities. The Senior Adjudicator reviewed the arguments presented by the parties about the *Criminal Lawyers' Association* case, and stated the following:

> With respect to the information I have exempted under section 14(1)(c), however, I conclude that the public interest in non-disclosure (as mentioned in the *Hydro* decision, [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.), *leave to appeal refused*]) outweighs any public interest in disclosure, and for that reason, I find that there is not a compelling public interest in disclosure of that information. Even if there were a compelling public interest, it would be outweighed in this case by the purpose of section 14(1)(c), that is, to protect the efficacy of investigative techniques. I reach these conclusions because of the serious nature of crimes associated with child pornography, its enormous impact on victims and on society, and the huge public interest in its suppression and the apprehension of those involved. This interest must take precedence where investigative techniques that may not be publicly known, or easily surmised, are concerned.

I agree with this reasoning, and find it applicable in the circumstances of this appeal with regard to the possible application of section 23 to override the exemption in section 14(1)(a).

The *Hydro* case referred to by Senior Adjudicator Higgins reminds us that the public interest in *non*-disclosure must also be considered. Indeed, in considering the application of section 23 to override section 14, I must weigh the public's interest and right to know what is specifically described by the records withheld pursuant to section 14(1)(a) against whether the disclosure could reasonably be expected to interfere with the identified law enforcement matter. Neither the public interest in law enforcement agencies looking into insider lottery fraud, nor the concerns about the manner in which OLGC investigations *were* carried out, can be taken lightly. However, on balance, I find that the public interest in non-disclosure of the information I have found to relate to the identified law enforcement matter is stronger than the public interest in disclosure.

In accepting the Ministry's confidential submissions and finding that section 14(1)(a) applies to exempt some of the records related to the OLGC's investigation of this insider win, I have accepted the seriousness of the concern related to the identified law enforcement matter. In my view, the public interest in disclosure of the records withheld under section 14(1)(a) is not sufficiently compelling to *clearly* outweigh the purpose of the exemption – preventing a reasonable expectation of interference with an existing law enforcement matter – which forms

the basis of my decision to exempt the information from disclosure. Having carefully considered the circumstances of this appeal and the state of the law in this regard, I decline to apply section 23 to override section 14(1)(a).

In conclusion, and with specific reference to the information I have found to be exempt, I find that the public interest identified here cannot outweigh the purpose of the exemptions in sections 14, 18, and 21(1). Accordingly, I find that section 23 does not apply in the circumstances of this appeal.

ORDER:

1. I order the OLGC to disclose the records, or portions of records, identified in the attached index to the appellant, and to do so by **July 15, 2009** but not before **July 8, 2009**.

   Only copies of those records subject to partial disclosure will be sent to the OLGC with this order. These records are highlighted to provide guidance on my findings regarding disclosure. No copies of records to be disclosed in their entirety will be sent.

2. I uphold the OLGC's decision to deny access to the remaining records, or portions of records, under sections 14, 18 or 21(1), or as non-responsive, as the case may be.

3. In order to verify compliance with this order, I reserve the right to require the OLGC to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: June 10, 2009
Daphne Loukidelis
Adjudicator