



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

# **ORDER PO-2926**

## **Appeal PA09-414**

### **Ontario Lottery and Gaming Corporation**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant made a request to the Ontario Lottery and Gaming Commission (OLGC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

One winning PICKS 4 Straight-Play ticket and its OLG Device and location.

One hundred and thirty-three winning PICK 4, 12-way Box tickets and their OLG Devices # and locations.

The appellant added that:

The first set of serial numbers shall be [specified number] as seen above in the reference line. The draw-date [specified date] and the [specified draw number].

The OLGC located responsive records and provided the appellant with the information responsive to the first part of the request. It also sought clarification of the third part of the request. In response to the second part of the request, the “one hundred and thirty-three winning Pick 4 tickets”, the OLGC provided a fee estimate of \$465 for 15.5 hours of search time. The OLGC requested a 50% deposit in order to process the request.

The appellant requested a fee waiver following the filing of his appeal. The OLGC denied the appellant’s fee waiver request and this was added as an issue in the appeal.

Mediation was not possible and the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. During the inquiry into the appeal, I sought and received representations from the OLGC and the appellant. Representations were shared in accordance with Section 7 of the IPC’s *Code of Procedure and Practice Direction 7*.

## **DISCUSSION:**

### **FEE**

I will first determine whether the OLGC’s fee of \$433.80 should be upheld.

An institution must advise the requester of the applicable fee where the fee is \$25 or less.

Where the fee exceeds \$25, an institution must provide the requester with a fee estimate [Section 57(3)].

Where the fee is \$100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or

- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records [Order MO-1699].

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699].

The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Orders P-81 and MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 460. Those sections read:

6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.

3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

In support of its fee estimate, the OLGc submits that it was based on the actual work required to respond to the appellant's request<sup>1</sup>. The OLGc provided an affidavit from the project coordinator who prepared the responsive record; i.e. the document listing the retail locations for 133 winning 12-way box play tickets for the July 11, 2008 Pick 4 draw. In her affidavit, the project coordinator outlined the search and preparation time that she took to manually search OLG's records to locate the retail locations requested:

Determine the 12 various combinations for PICK 4 box play for winning number 9110 (30 minutes)	.5 hours
Search computer transaction reports by combination to locate each 12 way box play winning ticket and then the Retail Location Number for each 12 way box play winning ticket.  Searched 167 transactions and located 129 winning tickets and the corresponding retail location number.  167 transaction @ 2 minutes per transaction = 334 minutes	5.56 hours

<sup>1</sup> The OLGc's original fee was based on a search and preparation time of 15.5 hours. The OLGc conceded in its representations that it had made a calculation error of 1.04 hours.

Search the July 1/08 to July 10/08 computer transaction reports for multidraw purchases to locate an additional 4 winning tickets. (multidraw purchases can be made up to 10 days prior to the draw date)  12 combinations @ 2 minutes per combination per 10 days = 240 minutes	4 hours
Enter the retail location number to ONYX database for name and address of store. Write name and location on computer transaction report. Enter retail location number, name and address to spread sheet and then verify information.  2 minutes @ 133 winning PICK 4 box play tickets = 266 minutes	4.4 hours
Total Time	14.46 hours

The affiant states that the above chart does not include the time required to run the transaction reports, and affirms:

OLG's transaction reports are generated through OLG's lottery gaming system which records each transaction that is conducted on OLG's lottery terminals located at retail locations across the province. Each terminal at a retail location has a unique identifier. This unique number is found on the transaction reports.

To locate the name of the retail location, the unique identifier is entered into OLG's ONYX database that contains the name of the retail location that corresponds with the unique identifier.

OLG does not have an automated system that is capable of generating a list of retail location numbers as well as the name and address of the retail location. Requests for such lists must be generated manually by entering both the retail location number and the name of the retail location to the spread sheet and then verified after locating the information from the transaction reports and ONYX database.

The OLGC submits finally that the appellant advised them by letter that he did not wish to revise his request. Included in this letter was the appellant's payment of the deposit. Subsequently, the OLGC received the balance of the fees and the records were sent to the appellant.

Having carefully reviewed the appellant's extensive representations on the nature of the records received from the OLGC, the appellant makes the following submissions:

- A manual search was not required to locate the records as he spoke to an individual at the OLGC who extracted the information responsive to his request through a computer search.<sup>2</sup>

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<sup>2</sup> The appellant is referring to certain facts present in another request, which is the subject of Appeal PA09-415.

- The record received does not include all the responsive information. Specifically, the record contains duplicated information and is missing the information of locations where he purchased his winning tickets.

Based on my review of the parties' representations, I find the OLG's fee for search and preparation to be reasonable. I find that the allowable amount for search and preparation is as follows:

Search: 10.06 hours X \$30/hour = \$301.80

Preparation: 4.4 hours X \$30/hour = \$132.00

Total fee: \$432.80

The appellant originally paid the OLG \$465.00 and the OLG has agreed to refund the appellant \$31.20. Based on my calculations, I find that the appellant should be refunded \$32.20.

I accept the OLG's representations that a manual search is required to generate the information responsive to the appellant's request. I reviewed the appellant's related appeal PA09-415 in order to determine whether the same information had been requested and provided to the appellant without the manual search. In Appeal PA09-415, the appellant's request was for the "Combination Extraction" used by a specific OLG employee. This turned out to be a transaction report which does not contain the same information which is the subject of the present appeal. I find the appellant's argument that a manual search was not required to locate the information responsive to his request to be unsubstantiated.

Secondly, I find the appellant's arguments related to missing information in the responsive record to also be unsubstantiated. The appellant argues that the record is missing information that would establish that he had purchased winning tickets at specified locations. The appellant does not provide proof of his claim and he appears to take the position that the missing information establishes the fact that the OLG has deliberately omitted the information. In any event, the appellant's claim that the responsive record is incomplete is unsupported by any evidence.

The OLG's search for the responsive information was a three-step process which I find reasonable in the circumstances. Moreover, the time spent locating the information at 2 minutes per transaction and then 2 minutes per combination is the amount prescribed by the regulation. Further, I find that the 2 minutes allocated by the OLG to prepare the record also to be reasonable.

Accordingly, I uphold the OLG's fee of \$432.80, with a refund of \$32.20 to the appellant.

## **FEE WAIVER**

Section 57(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed by the regulations.

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the *Act*:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726].

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

**Part 1: basis for fee waiver**

In support of its decision not to waive the fee, the OLGC submitted that it took into account the following factors:

- The compilation of the requested information involved a number of steps and the time required to manually search for and compile the requested information was significant at approximately 15 hours;
- No fees were charged to run the computer transaction reports required in order to manually search for each 12 way box play winning ticket;
- Other records were provided to the appellant free of charge;
- The appellant did not wish to narrow the scope of the request;
- Access to the information was granted;
- The appellant requested a fee waiver after he received the records;
- In requesting a fee waiver, the appellant provided copies from Canada Revenue Agency of benefits he was receiving and Income Tax Return information without any other information or explanation to support the request for a fee waiver;
- In the absence of any other detailed information regarding the appellant's financial situation such as expenses or assets, the OLG was unable to determine whether the fee would cause financial hardship;
- Dissemination of this information does not benefit the public interest as the interest in the requested information is of a personal nature.
- The fees comply with the provisions of the *Act*.

Finally, the OLGC submits that granting a fee waiver would shift an unreasonable burden of the cost from the appellant to itself.

In support of his fee waiver request, the appellant provided a copy of an eviction notice sent to him for rent owing. The appellant did not provide any other supporting evidence that the payment of the fee will cause him financial hardship. Further, while the OLGC submitted that the appellant provided them with a copy of his pension cheque and his rental agreement, I could find no such information in the file, and the appellant did not provide me with this information during the inquiry process.



The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship [Order P-1402].

For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393].

Based on my review of the representations of the parties, I find that the appellant is not entitled to a fee waiver. The appellant did not provide me with sufficient evidence of his financial situation including income, expenses, assets and liabilities in order for me to determine whether a financial hardship would result if he were to pay the fee. Furthermore, the appellant has paid the fee and received the records. While I accept that the fee is relatively large and the appellant is of limited means, I do not have enough evidence to enable me to conclude that the appellant is entitled to a fee waiver.

As the appellant has not established the basis for the fee waiver, I do not need to consider whether it would be fair and equitable in the circumstances to grant one.

**ORDER:**

1. I uphold the OLGC's fee of \$432.80. The OLGC is required to refund the appellant \$32.20.
2. I uphold the OLGC's denial of a fee waiver.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ October 29, 2010