



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

ORDER PO-2948

Appeal PA09-415

Ontario Lottery and Gaming Corporation



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NATURE OF THE APPEAL:

The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Lottery and Gaming Corporation (OLGC) for access to “the combination extraction” and a recording of two telephone conversations that the appellant had with an OLGC employee on a specified date. The “combination extraction” was used with the PICK 4 for a specified date.

The OLGC issued a decision that advised that it had interpreted the request for “Combination Extraction” to mean OLG transaction reports regarding the PICK 4 draw held on the date specified by the appellant. The OLGC noted that the transaction reports for the PICK 4 numbers had been disclosed to the appellant in two prior requests which he filed under the *Act*.

The OLGC also advised that it had no records of any telephone conversations taking place between the requester and the named employee on the specified date.

During mediation of the appeal, the mediator confirmed the time period of the phone calls with the appellant and the OLGC employee and confirmed that the phone conversations had occurred a month prior to the specified date. Accordingly, OLGC searched for and provided a CD copy of the telephone conversations logged between the appellant and the employee. The OLGC provided the appellant with a copy of the software “Multi Media Verint Package” to enable the appellant to “read” the CD on his computer.

Finally, the OLGC provided the appellant with an 18-page report which outlined the PICK 4 tickets purchased at the 7 locations specified by the appellant. At the mediator’s request, the OLGC spoke to the employee who talked to the appellant and this employee confirmed that the 18-page report, with page one containing handwritten notes, was the same report he referred to when talking to the appellant.

The appellant advised the mediator that his computer was unable to “read” the CD; therefore this remains at issue in the appeal. Further, the appellant does not accept that the 18-page report provided to him is the same report that the employee used when talking to him.

Mediation did not resolve the appeal and it 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:

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221 and PO-1954-I]. If I am satisfied that the search

carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist [Order MO-2246].

A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable [Order MO-2213].

By way of background, the appellant alleges that he purchased three winning PICK 4 tickets on July 11, 2008. The appellant lost the tickets before being able to claim his winnings and is seeking records that provide evidence of his wins. He has made several requests to the OLG in furtherance of this objective.

The OLG submits that it has provided the appellant with all of the responsive records, namely, the 18- page report and a CD containing the recorded conversations between the appellant and the OLG employee.

The appellant provided me with copious documents in support of his position that the OLG has somehow altered both records to prevent him from claiming his winnings. The majority of these documents are confusing, repetitive and difficult to understand. Consequently, I have given little weight to most of what the appellant has argued and instead focused on the arguments that I was able to discern. Specifically, the appellant believes that the OLG has altered both the report and the CD to remove evidence of the winning tickets he purchased.

The appellant submits that he purchased three winning PICK 4 tickets that are not shown on the 18-page report sent to him. The appellant submits that he purchased these tickets at different locations and he knows they were winning tickets because when he scanned the tickets the scanners showed that they were winning tickets. The appellant's evidence contends that the 18-page report is not the responsive record because he alleges that the OLG employee confirmed two of the wins on the phone by referring to the report and only needed to confirm the

last win before he would process the win. The appellant alleges that the report confirms the wins but the report he received from the OLG does not.

The appellant argues that the CD has been altered to remove evidence of his wins. He suggests that the CD provided to him is a writeable CD and thus capable of being modified. The appellant also takes issue with the fact that the information on the CD was created and modified during the same time frame.

In support of its position that the 18-page report is the responsive record, the OLG provided an affidavit from the OLG employee who had the telephone conversations with the appellant. The OLG states:

As outlined in paragraph 3 of [named employee's] Affidavit (Exhibit 1), the 18 page report provided to the appellant in response to his request under the [Act], consists of the transaction reports he used during his conversations with the appellant in September 2008.

This report contains all the PICK 4 ticket purchases that were made on July 11, 2008, at the lottery terminals of the retail locations, specified by the appellant where he believes he purchased his ticket.

The OLG submits that all the transaction reports of ticket purchases at the locations specified by the appellant have been provided to him and no other ticket purchase transaction reports exist for these locations for the July 11, 2008 PICK 4 draw.

The Notice of Inquiry indicates that the appellant submits that the 18 page report sent to him is missing references to certain winning tickets. The OLG submits that this request and the responsive records represent ticket purchases at the retail locations specified by the appellant and discussed with [named OLG employee]. As indicated in paragraph 3 of [named employee's] Affidavit, the report indicates that no winning PICK 4 tickets for the July 11, 2008 draw were purchased at the locations specified by the appellant and the appellant was made aware of this. The OLG submits that if any tickets with the winning PICK 4 numbers for the July 11, 2008 draw had been purchased at any of these locations, they would have been contained in these reports.

In support of its position that the CD is responsive to the appellant's request, the OLG submitted affidavit evidence that the information provided to the appellant on the CD was not altered in any way. The OLG states:

As outlined in Exhibit 2 at paragraph 5, the program used by the individual responsible for downloading the telephone conversations and providing them to the Program Coordinator, Information Access and Privacy Services, in response to the access request from the appellant, does not have the capability to edit any recordings that are downloaded.

In addition, as outlined in Exhibit 3, the software used by the Program Coordinator, Information Access and Privacy Services to copy the downloaded recordings to the CD ROM provided to the appellant does not have the capability to make edits to the audio files.

In order to ensure that the audio recordings provided to the appellant had not been edited, a file analysis was also conducted by OLG's Information Technology Risk Management and Planning Department. As indicated in Exhibit 3, paragraph 8, and Exhibit 4, the analysis concluded the audio recording files provided to the appellant were identical to the audio recording files on the server.

Based on my review of the representations from the parties, I find the OLGC's search for records to be reasonable. The appellant submits that the 18-page report sent to him is not the one referred to by the OLGC employee during their telephone conversations. The appellant has not provided me with a reasonable basis to find that additional records may exist that contain the information he is looking for. The appellant's basis for the existence of additional records is his belief that records exist showing his winning ticket information. The OLGC submits that the report provided to him sets out the tickets purchased on July 11, 2008 at the locations which he specified. As none of these locations sold winning tickets, there would not be evidence of the appellant's wins in this report. I find that the appellant has not provided me with sufficient evidence to demonstrate that there exist additional records which would provide information of these winning tickets. Based on the evidence and representations of the OLGC, I find the OLGC's search for the 18-page report to be reasonable.

Similarly, I find that the appellant has not provided me with a reasonable basis to find that additional records exist relating to the telephone calls he had with OLGC employees. The appellant takes issue with the fact that the CD provided to him is capable of being modified. I find the appellant's representations on this issue to be confusing and unhelpful. Moreover, the appellant's arguments do not focus on the fact that additional records exist, rather only that the conversations have been altered in some form to remove information. In any event, I find that the OLGC's search for the recorded conversations between the appellant and the OLGC employee to be reasonable.

Accordingly, I find the OLGC's search for records to be reasonable.

ORDER:

I uphold the OLGC's search for records and I dismiss the appeal.

Original signed by: _____
Stephanie Haly
Adjudicator

January 27, 2011