

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3104

Appeal PA12-52

Ontario Lottery and Gaming Corporation

August 9, 2012

Summary: The appellant requested records from the OLG relating to his attendance at the Woodbine slots on a specific date in 2002. The request was clarified and the date was changed to 2001. The OLG could not locate any responsive records relating to the 2001 date, and the appellant appealed the reasonableness of the search that was conducted. During mediation one record was located following a second search relating to the original 2002 date and was disclosed to the appellant. The search for responsive records conducted by OLG staff was reasonable and this appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

BACKGROUND:

[1] The appellant submitted the following request to the Ontario Lottery and Gaming Corporation (OLG) under the *Freedom of Information and Protection of Privacy Act*:

A payment was made at Woodbine Casino after [a specified date in July 2002] via a government agency. The OLG and Woodbine Casino were in reception of the money. The Pope was in town then thus security at casino was not at full par. I believe the payment was made in between [August and November 2002].

[2] The OLG acknowledged receipt of the appellant's request and stated that the request did not provide sufficient detail to enable the OLG to identify a record. The OLG asked the appellant to identify the type of record he is seeking.

[3] The appellant subsequently clarified his request by phone, indicating that he is seeking access to the following records:

- A video surveillance tape of an incident that occurred at OLG Woodbine Slots on a specified date in July 2001 between midnight and 3:00 a.m. while the appellant was playing the Double Bonus Game Maker (Red Machine-High Stakes area).
- Any reports that were completed regarding this incident that involved a number of OLG staff members.
- Any records regarding a payment (which the appellant refers to as "winnings") that was made at OLG Woodbine Slots three months after the July 2001 incident.

[4] The OLG issued a decision to the appellant advising that a search of OLG records was conducted and that no records exist in response to the request.

[5] The appellant appealed the OLG's decision.

[6] During the mediation stage of the appeal, the OLG submitted written documentation in the form of a sworn affidavit outlining its search for responsive records. A copy of this documentation was also sent to the appellant. Upon review of the documentation, the appellant advised the mediator that the dates referred to in the affidavit were incorrect. He noted that he had requested records from 2002 (when the Pope was in Toronto); however, the OLG's search was for records from 2001.

[7] The OLG agreed to conduct an additional search for records from 2002, and as a result, located one record. The OLG issued a supplementary decision to the appellant, in which it indicated that it had conducted a search for 2002 records, and granted access to the record that had been located. In doing so, the OLG noted that the record relates to an incident that occurred on a different date in 2002 than those specified by the appellant, and that no other records responsive to the request were found. The OLG also noted that information not responsive to the request, such as employee identification numbers, had been removed and marked as not responsive "NR".

[8] Upon receipt of the OLG's supplementary decision, the appellant contacted the mediator and advised that he was not satisfied with the OLG's decision as he believes additional records should exist in response to his request.

[9] As no further mediation was possible, this file was forwarded to the adjudication stage of the appeal process. The sole issue to be determined is whether the OLG conducted a reasonable search for the requested records.

[10] I sought representations from the OLG, initially. I acknowledged that the OLG had already submitted an affidavit of search for records and additional information, which led to the OLG's original access decision. I included this affidavit as part of the representations on this file, and invited the OLG to provide any additional information on this issue. As well, the OLG was asked to provide submissions and an affidavit regarding the second search that was conducted for 2002 records.

[11] The OLG submitted representations in response. I shared the OLG's submissions (including an affidavit of search, and attachments which incorporate the original affidavit of search and supporting documentation) with the appellant in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. The appellant also provided brief representations.

[12] In this order, I find that the OLG's search for responsive records was reasonable.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

[13] The sole issue to be determined is whether the OLG conducted a reasonable search for records responsive to the appellant's request.

[14] 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 24.¹ 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.

[15] 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.² To be responsive, a record must be "reasonably related" to the request.³

[16] 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.⁴

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469, PO-2592.

[17] 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.⁵

[18] 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.⁶

[19] 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.⁷

[20] During the mediation stage of the appeal, the appellant submitted a number of documents relating to his attendance at the Woodbine slots, to support his contention that additional records should exist. These documents relate to unsuccessful court actions the appellant initiated against certain individuals in his attempts to seek redress for the wrongs he believes were committed against him in connection to his attendance at the Woodbine Slots.

[21] In his representations, the appellant provides some information about a deceased individual who he states was a witness to his "winnings". In addition, he provides documentation about his former employment and refers to another individual who, he says, was also present at the time. He asserts that the OLG is involved in a cover-up because of the amount of money at issue.

[22] The OLG provided two affidavits of search from the Program Co-ordinator of Information, Access and Privacy Services (the co-ordinator). In the first affidavit, prepared during the mediation stage of the appeal, the co-ordinator refers to the original request made by the appellant, and indicates that she contacted him to clarify his request⁸ to enable her to identify the record being sought. She outlines the steps taken to search for responsive records relating to the 2001 dates pertaining to the appellant as follows:

- The co-ordinator contacted the Director of Surveillance Services and the Administrative Assistant to the Director of Security Services (Administrative Assistant Security) *via* an "internal search request", as they would most likely have knowledge of security and surveillance records.
- The Administrative Assistant Security advised her that the OLG's tracking system for trespass notices and incident reports did not produce any records

⁵ Order MO-2185.

⁶ Order MO-2246.

⁷ Order MO-2213.

⁸ As indicated in the background section.

in which the appellant's name appears. The Administrative Assistant Security indicated that she had contacted the Manager of Security Services at Woodbine Slots (Woodbine Security Manager) to determine whether that location had any incident reports pertaining to the appellant.

- The Woodbine Security Manager advised that hard copies of security records are destroyed after seven years in accordance with the OLG's records retention policy. Accordingly, no records exist for security records from 2001.
- The Administrative Assistant to the Director of Surveillance Services (Administrative Assistant Surveillance) and the Surveillance Manager at Woodbine (Woodbine Surveillance Manager) responded to the co-ordinator's internal search request that was sent to the Director of Surveillance Services, and both confirmed that no records exist at their locations.
- The co-ordinator sought clarification from the Woodbine Surveillance Manager regarding the retention of video surveillance and surveillance reports and was advised that they were destroyed in 2008 in accordance with the records retention policy.
- Regarding a payment made at Woodbine Slots, the co-ordinator was unable to obtain sufficient details from the appellant to enable a search for records. However, referring to a comment made by the appellant that a power outage had occurred at Woodbine Slots on the date in question, the co-ordinator contacted the Media Relations Co-ordinator to conduct a search for news releases or communications about a power outage affecting the operations at Woodbine Slots as "potentially these records could provide some additional information that would be of assistance regarding the appellant's request." The Media Relations Co-ordinator could not locate any records about a power outage at the time indicated by the appellant.

[23] In her second affidavit of search, prepared in response to the Notice of Inquiry, the co-ordinator outlines the subsequent searches that were conducted for records dating from 2002 pertaining to the appellant:

- The co-ordinator contacted all of the individuals referred to in her original affidavit, who conducted searches as previously identified and confirmed that, with one exception, no records exist as any records that may have existed in 2002 would have been destroyed in accordance with the OLG's records retention policy.
- The Woodbine Security Manager located one record pertaining to the appellant. This record is an incident report dated December 2002. The OLG issued a supplementary decision in which it granted access to this record.

- The Woodbine Security Manager indicated that although a hard copy of this record was destroyed, he located an electronic copy on a disk used to archive and back-up active files. The Manager explains that "[t]his particular incident report is considered an active file as it is for an indefinite ban from the slot facility, therefore an electronic copy would exist on site."

Analysis and findings

[24] I have reviewed the submissions made by the OLG and the appellant, as well as the documentation that the appellant submitted during the mediation stage of the appeal. I find that the co-ordinator made reasonable efforts to contact and clarify the appellant's request. In arriving at this decision, I accept the co-ordinator's evidence that the appellant was unable to provide sufficient detail to enable her to search for a record of the payment referred to by the appellant.

[25] I am satisfied that the individuals who conducted the searches for responsive records were experienced employees and that they searched in locations in which responsive records could reasonably be expected to be located.

[26] The records that the appellant seeks are 10 years old. The OLG has indicated that its records retention policy requires that these types of records be destroyed after seven years. I am satisfied that if records did exist at one time, they would no longer exist because they were properly destroyed in accordance with the OLG's records retention policy.

[27] As I indicated above, 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. I am satisfied that the OLG has met this threshold and find that the search conducted by its staff was reasonable. Accordingly, I dismiss this appeal.

ORDER:

The OLG's search for responsive records was reasonable and this appeal is dismissed.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ August 9, 2012