

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3131

Appeals PA11-495-2 & PA11-502

Ontario Lottery and Gaming Corporation

November 5, 2012

Summary: The OLGC received two requests in the same month for access to information related to the March 21, 2007 \$20 million Lotto 6/49 prize. The OLGC responded by providing information from a "draw report" for the identified Lotto 6/49, but referred the appellant to another lottery jurisdiction with regard to accessing the information related to the winning ticket's purchase, validation and claim. The appellant appealed the decisions to this office, challenging both the adequacy of the OLGC's search and the severance of certain information as non-responsive. This order determines that the information withheld from the draw report is not responsive to the appellant's requests, and that the OLGC conducted a reasonable search. The appellant's other entreaties regarding the March 21, 2007 Lotto 6/49 draw fall outside the jurisdiction of this office.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24(1).

OVERVIEW:

[1] An individual filed two separate requests with the Ontario Lottery and Gaming Corporation (OLGC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the \$20 million prize for the March 21, 2007 Lotto 6/49.

[2] The requester expressed concern about a discrepancy between information regarding the identified Lotto 6/49 draw on a named lottery website, compared to information provided by the OLGc about the win.¹ Seeking to resolve the discrepancy, the requester sought information (in both requests) about the "sell device number" of the retail outlet where the winning ticket was purchased and claimed, the date the win was announced, the location and name of the prize winner, and the date the prize money was paid out. In the second request, the requester also questioned the relationship between a named individual, whom the requester claimed had been awarded the \$20 million Lotto 6/49 prize, several other individuals, and the OLGc's Freedom of Information Co-coordinator (FOIC).²

[3] In the decision letter issued in response to the first request, the OLGc advised the requester that the winning Lotto 6/49 ticket for the draw was purchased in Quebec. The OLGc provided the requester with a one-page "draw report," listing major winner and prize information about the identified Lotto 6/49 draw from both Ontario and all Canadian lottery jurisdictions together.³ The record provided by the OLGc identifies where the major winning prizes were purchased for the March 21, 2007 Lotto 6/49 draw. The OLGc advised the requester that the sales information about the draw had been severed because it was not responsive to the request. The OLGc directed the requester to contact Loto Quebec directly for details regarding the requested purchase and claim information about the winning ticket. Finally, the OLGc referred the requester to OLGc sources of information about winning lottery numbers and disclaimed any affiliation with, or responsibility for, the lottery website identified in the request.

[4] In the second decision letter, the OLGc reiterated that it did not have information about the winner of the March 21, 2007 Lotto 6/49 draw because the winning ticket was purchased in Quebec. The OLGc again directed the requester to "contact Loto Quebec for information regarding the ticket purchase and validation location, the winner and any public announcement made about the win." The OLGc also advised the requester that the OLGc's Investigative Services had reviewed the relationship between the individual named by the requester as having won the March 21, 2007 Lotto 6/49 jackpot prize and the OLGc's FOIC, and had concluded that there was no personal relationship between them. Finally, the OLGc reiterated that it was not responsible for the accuracy of information about winning lottery numbers published on third party websites.

¹ The first request (PA11-495-2) mentions "Lotto 6/49 Stats," while the second request (PA11-502) refers to information provided by the OLGc in a January 7, 2008 letter. This letter represents the decision issued in response to a previous request dealing with the same subject matter by the same individual, which will be addressed in the Discussion section of this order.

² This individual's position title is Program Coordinator, Information Access and Privacy Services for the OLGc; however, for the purposes of this order, the term "FOIC" is used.

³ The five Canadian lottery jurisdictions forming the Interprovincial Lottery Corporation (ILC) consist of: British Columbia Lottery Corporation (BCLC), Western Canada Lottery Corporation (WCLC), Ontario Lottery and Gaming Corporation, Loto Quebec (LQ), and Atlantic Lottery Corporation (ALC).

[5] The requester, now the appellant, appealed both decisions to this office, which opened Appeals PA11-495-2 and PA11-502 to address the issues.

[6] A mediator was appointed to explore settlement in both appeals. During mediation, the appellant took the position that additional records responsive to his request for information about the March 21, 2007 Lotto 6/49 jackpot winner should exist. The appellant also suggested that the withheld information about sales on the one-page record is responsive to his request.

[7] As a mediated resolution to the appeals was not possible, they were transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. The adjudicator formerly assigned to these appeals commenced her inquiry by seeking the OLG's representations in response to the outline of the issues in a Notice of Inquiry. The OLG provided written representations that included affidavits from the FOIC and from another member of its Information Access and Privacy Services staff.

[8] With the exception of the information in the draw report that was withheld as non-responsive, the OLG's representations were provided to the appellant, in their entirety, to assist him in providing representations. Upon review of the appellant's representations, the adjudicator formerly assigned to this matter decided to write to the appellant to address his expectations about what remedy this office could offer him respecting the March 21, 2007 Lotto 6/49 jackpot win. Accordingly, the adjudicator wrote to the appellant to acknowledge receipt of his representations and to confirm the limits of her inquiry into the issues, stating:

I note that in your representations you request that I ask a certain individual specific questions on your behalf and obtain certified information from Quebec's [finance] minister.

Please note that your requests are outside my jurisdiction. My role in this appeal is to determine whether the OLG conducted a reasonable search for records responsive to your request. In making that decision, I am also to determine whether any of the withheld information is responsive to your request.

[9] Appeals PA11-495-2 and PA11-502 were recently re-assigned to me, and I am writing one order to address both appeals. I confirm that the scope of this order is limited to reviewing those issues that fall within the jurisdiction of this office under the *Freedom of Information and Protection of Privacy Act*, namely the determination of responsiveness of information severed from the "draw report" and the adequacy of the OLG's search for information in its custody or control.

[10] As I have no jurisdiction to adjudicate or make any findings to address the appellant's other concerns and assertions regarding the March 21, 2007 Lotto 6/49 draw in the manner he has requested, I will not be reviewing them further in this order.⁴

[11] In this order, I find that the withheld information in the record is not responsive to the appellant's requests. I also uphold the OLG's search as reasonable, and I dismiss the appeals.

ISSUES:

- A. Is the withheld information responsive to the appellant's requests?
- B. Did the OLG conduct a reasonable search for records responsive to the appellant's requests?

DISCUSSION:

A. Is the withheld information responsive to the requests?

[12] The appellant takes the position that the portions of the March 21, 2007 Lotto 6/49 draw report withheld by the OLG are responsive to his requests. To establish the proper context for reviewing the adequacy of the searches conducted by the OLG, the scope of the appellant's requests should be clarified first.

[13] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. Section 24(1)(b) requires a requester to "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record." Section 24(2) requires the institution to assist the requester in "reformulating" the request if it does not adequately describe the records sought.

[14] It is a well-settled principle that institutions should strive to give a liberal interpretation to 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. To be considered responsive to the request, records must "reasonably relate" to the request.⁵

[15] The OLG's representations refer to the appellant identifying an apparent discrepancy between information about the March 21, 2007 Lotto 6/49 jackpot-winning ticket on two different websites. The OLG told him that the winning ticket was sold in Quebec, while another website not operated by the OLG claimed that it had been sold

⁴ See Orders MO-2554, PO-2802-I and PO-2883.

⁵ Orders P-134 and P-880.

in Ontario. The appellant apparently sought to resolve the discrepancy by requesting "specific information about the winning ticket and the winner." According to the OLG, the information severed from the draw report relates to:

[OLG's] total sales and share of sales to be applied to the prize pool for the draw as well as the total sales from all the lottery jurisdictions and the share of these sales to be applied to the prize pool for the draw. This information does not relate in any way to the information requested by the appellant ... [and] is clearly not responsive to the appellant's request.

[16] The FOIC summarizes the requests by stating that "the appellant was seeking access to purchase information and not sales information."

[17] The appellant's representations do not directly address the responsiveness of the information withheld from the March 21, 2007 Lotto 6/49 ILC draw report.

Analysis and findings

[18] The appellant's requests clearly resulted from his concerns about the March 21, 2007 Lotto 6/49 \$20 million prize win. As outlined in the introductory section of the order, the appellant contacted the OLG:

... about a discrepancy between information available on two lottery websites regarding the identified Lotto 6/49 draw, as well as with information provided by the OLG. Seeking to resolve the discrepancy, the requester sought information (in both requests) about the "sell device number" of the retail outlet where the winning ticket was purchased and claimed, the date the win was announced, the location and name of the prize winner, and the date the prize money was paid out.

[19] In other words, the appellant's concerns can be characterized as revolving around the purchase, validation and \$20 million prize paid for the March 21, 2007 Lotto 6/49 draw. Accordingly, I find that information reasonably related to those matters would fall within the scope of his requests.

[20] The draw report prepared by the ILC and provided to the appellant in severed form identifies the lottery jurisdiction where the relevant winning ticket was purchased (Quebec) and contains some responsive information. However, I agree with the OLG that the severed information does not relate to the purchase, validation or payout of the winning ticket for the identified Lotto 6/49 draw, but rather only to the Ontario and ILC sales information for the March 21, 2007 Lotto 6/49 draw as a whole. I am satisfied that the withheld information is not reasonably related to the purchase, validation and \$20 million prize paid for the winning ticket, and I find that it is not responsive and need not be disclosed.

B. Did the OLGC conduct a reasonable search for records responsive to the appellant's requests?

[21] The appellant believes that additional information about the March 21, 2007 Lotto 6/49 \$20 million prize should exist and that the OLGC ought to have located it.

[22] Previous orders have established that when a requester claims that additional records exist beyond those identified by an institution (in this case, the OLGC), the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.⁶ If I am satisfied that the search carried out was reasonable in the circumstances, this ends the review of the OLGC's search efforts by this office. If I am not satisfied, I may order further searches.

[23] The *Act* does not require the OLGC to prove with absolute certainty that further records do not exist, but the OLGC must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.⁷ As noted in the previous part of this order, to be considered responsive, a record must be "reasonably related" to the request.⁸ 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.⁹

[24] Finally, although a requester will rarely be in a position to indicate precisely which records an institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist *in the custody or control of the institution*.¹⁰

Representations

[25] The OLGC states that the appellant has submitted a number of requests since 2007 regarding the March 21, 2007 Lotto 6/49 draw and the \$20 million prize. The OLGC notes that in the second current request (Appeal PA11-502), the appellant specifically refers to the January 7, 2008 decision letter issued by the OLGC in response to one of these earlier requests.¹¹

[26] The OLGC's FOIC explains that due to the appellant's previous requests for information related to the March 21, 2007 Lotto 6/49 draw, she was aware that the winning ticket had been purchased in Quebec. She submits that she located the draw

⁶ Orders P-85, P-221 and PO-1954-I.

⁷ Orders P-624 and PO-2559.

⁸ See Order PO-2554.

⁹ Orders M-909, PO-2469 and PO-2592.

¹⁰ Order MO-2246.

¹¹ The appellant also appealed this decision letter, resulting in this office opening Appeal PA07-327-2. Appeal PA07-327-2 was closed by correspondence sent to the appellant by Adjudicator Donald Hale on February 11, 2008.

report prepared and issued by the ILC that confirmed the purchase. The OLGC also provided information about the interprovincial nature of the Lotto 6/49 to explain why the OLGC does not have the information the appellant insists that it should. The OLGC states:

Lotto 6/49 is a Canada-wide lottery. ... All sales and prizes are the responsibility of each lottery jurisdiction. Exhibit B [to the affidavit] is an accurate copy of the [ILC's] Rules and Regulations Respecting Lotteries and Lottery Tickets.

OLG does not have access to records held by other lottery jurisdictions. After each Canada-wide game (Lotto 6/49 and Lotto Max), the [ILC] prepares and issues a draw report for each of the lottery jurisdictions. Each report contains information specific to that jurisdiction which is not shared or sent to any other jurisdiction, as well as information relating to the total Interprovincial Lottery winners and prize values. The report also lists the lottery jurisdictions where major winning tickets were purchased as well as the prize values and sales for the draw.

[27] In describing the process by which she retrieved the draw report for the March 21, 2007 Lotto 6/49 from the OLGC's Prize Office, the FOIC notes that she also received a "list of all Ontario prize winners of \$10,000 or more for the ... draw. The \$20 million jackpot prize was not listed on this report." The OLGC affirms its earlier advice that because the appellant is seeking information about a winning ticket purchased in Quebec, he must request information through that jurisdiction; i.e., through Loto Quebec.

[28] The OLGC's other affidavit was provided by the Senior Information and Privacy Analyst, of the OLGC's Information Access and Privacy Services. This individual indicates that the processing of these requests was transferred to him from the FOIC to avoid any appearance of a conflict of interest, given the appellant's assertions in the second request about a relationship between the FOIC and an individual the appellant claimed had won the \$20 million jackpot prize.¹²

[29] The appellant's representations convey dissatisfaction with the OLGC's search and gathering of information with respect to the identity of the individual who claimed the March 21, 2007 Lotto 6/49 jackpot, as well as the "sell device number" of the computer "used to fabricate their purchase or their claim..." The appellant asks that this

¹² The OLGC also provided representations about its internal investigation into the alleged relationship between the FOIC and the named individual. This investigation revealed there was no relationship between these two persons and that, in any event, the individual named by the appellant was not the winner of the March 21, 2007 Lotto 6/49 jackpot prize. Regardless, these peripheral matters are outside the jurisdiction of this office and will not be addressed further.

office order the OLGc to obtain this information through its Investigative Services Department.

Analysis and findings

[30] In the outline of the issue above, I noted that an appellant “must provide a reasonable basis for concluding that such records exist *in the custody or control of the institution.*” The emphasis placed on the last part of the sentence is intentional. My review of the OLGc’s search for responsive records under section 24(1) of the *Act* only encompasses records or information that are demonstrably within the OLGc’s custody or control. Neither this office nor the OLGc has the authority or obligation to perform an investigative function, or obtain information from, an institution in another jurisdiction on the appellant’s behalf.

[31] Based on the OLGc’s representations, I am satisfied that a reasonable effort was made to identify and locate information within the OLGc’s record-holdings that is reasonably related to the purchase, validation and \$20 million prize paid for the winning March 21, 2007 Lotto 6/49 ticket. I accept that relevant OLGc staff were knowledgeable about the subject matter of the requests and conducted searches aware of what information would be responsive to them, at least in part because the appellant had submitted several previous requests for the same information. I am, therefore, satisfied that OLGc staff made adequate and reasonable efforts to locate responsive records.

[32] Moreover, the fact that the appellant may not accept the explanation provided to him about the March 21, 2007 Lotto 6/49 jackpot win does not render his belief that additional records should exist with (or through) the OLGc “reasonable” for the purpose of this review of the search conducted under section 24(1) of the *Act*.¹³

[33] The appellant has been advised previously that if he wishes to obtain further information about the March 21, 2007 Lotto 6/49 \$20 million prize win through access to information, he must make that request directly to Loto Quebec. Contact information has been provided to him for this purpose on several occasions by the OLGc, as well as by mediation staff from this office. The OLGc has met its statutory obligations in responding to the appellant’s requests for information related to this particular Lotto 6/49 draw.

[34] In summary, I find that the searches conducted by the OLGc for information or records responsive to the appellant’s requests were adequate.

¹³ See Order MO-2554.

ORDER:

I uphold the OLGC's decision to withhold the non-responsive information in the record and I also find the OLGC's search to be reasonable. I dismiss the appeals.

Original Signed by: _____
Daphne Loukidelis
Adjudicator

_____ November 5, 2012