

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3692

Appeal PA15-451

Ontario Lottery and Gaming Corporation

January 31, 2017

**Summary:** The appellant sought access to the names of certain lottery winners withheld by the Ontario Lottery and Gaming Corporation under the mandatory personal privacy exemption at section 21(1) of the *Freedom of Information and Protection of Privacy Act*. The decision of the Ontario Lottery and Gaming Commission is upheld and the appeal is dismissed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) definition of "personal information", 10(2), and 21(1) and (2).

**Orders and Investigation Reports Considered:** PO-2812 and PO-3017.

**Cases Considered:** *Yukon Francophone School Board v Yukon (Attorney General)* 2015 SCC 25 (CanLII); *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369.

### OVERVIEW:

[1] The Ontario Lottery and Gaming Corporation (OLG) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information on all LOTTO 6/49 winners at a named lottery kiosk during a specified time period when the price of a LOTTO 6/49 ticket changed from \$1.00 to \$2.00. In his request, the appellant specified that he sought access to a list of all prize winners, excluding first prize winners, along with the date and the prize amount of each win.

[2] In response to the request, OLG issued a decision denying access to the

responsive record on the basis of the mandatory personal privacy exemption at section 21(1) of the *Act*. OLG advised that it searched its records for the time period of May 2003 to June 2004, when the price change took place, and that one second prize winning LOTTO 6/49 ticket was purchased at the named location for the April 10, 2004, draw date. OLG confirmed that no major winning LOTTO 6/49 tickets were validated at the location during the time period identified. OLG also advised that winners' names, addresses and photographs are released through the media to the general public at the time a prize of \$10,000 or more is claimed in Ontario and that information on all lottery wins of \$1,000 or more is published on its website for a period of 30 days.

[3] The appellant was not satisfied with OLG's decision and he appealed it to the Office of the Information and Privacy Commissioner (IPC).

[4] Mediation of the appeal was attempted. During mediation, OLG wrote to the appellant and noted that in his request, he indicated that a female store clerk checked his lottery ticket at the named location. Although OLG reaffirmed its decision to deny access to the winner's name, it confirmed that the winner of the second prize for a LOTTO 6/49 ticket purchased during the time period at the named location was neither a store clerk nor a female. OLG subsequently issued a supplementary decision letter to the appellant disclosing a portion of the responsive record. OLG clarified its reliance on section 21(1) to deny access to certain information. It also identified other information that it withheld on the basis that it was not responsive to the request. The appellant confirmed that he continues to seek access to the entire responsive record.

[5] As a mediated resolution of the appeal was not possible, the appeal was moved to the adjudication stage of the appeal process for a written inquiry under the *Act*.

[6] I began my inquiry by inviting OLG's representations on the issues set out below. Prior to submitting its representations, OLG issued a second supplementary decision letter to the appellant dated January 27, 2016. In its letter, OLG stated that it had reconsidered its decision on some of the information in the record at issue and that it had also conducted an additional search for prize claim records pertaining to the purchase or validation of winning tickets at the location specified by the appellant in his request. OLG granted the appellant access to the prize amounts in the record at issue and in the additional records that it located, and it disclosed these records to the appellant along with its supplementary decision letter. OLG maintained its claim of section 21(1) over the names of the winners which it continued to withhold. Shortly thereafter, OLG provided representations in response to the Notice of Inquiry and agreed to share them in their entirety with the appellant.

[7] After receiving OLG's supplementary decision and additional disclosure, the appellant confirmed that he wished to continue his appeal and provided representations in response to those of OLG.

[8] In this order, I uphold OLG's decision and dismiss the appeal.

## **RECORDS:**

[9] As a result of the additional records OLG located, the records remaining at issue in this appeal are the names and addresses of the winners withheld from the 12 pages of Retailer Search Winner Reports.

## **PRELIMINARY MATTER:**

### **Bias**

[10] In this inquiry, the appellant expressed concern about the fairness of the IPC's appeal process and about my impartiality as the adjudicator in this appeal. He did so after receiving a letter from me that followed OLG's second supplementary decision letter of January 27, 2016. In my letter, I noted that the IPC had left him multiple voicemail messages over the course of three weeks to determine whether he was satisfied with OLG's revised access decision and additional disclosure, and whether he wished to withdraw his appeal as a result. I concluded my letter by advising that because the appellant had not responded to the IPC's repeated attempts to contact him in the previous three weeks, I was considering closing his appeal file as abandoned, and I invited him to contact the IPC within a week if he wished to pursue the appeal. In response, the appellant sent a letter confirming he wished to pursue the appeal and characterizing my letter as a "threat". He asked that I recuse myself from this appeal on the basis that my letter seemed biased against him and in favour of OLG.

[11] Upon learning of the appellant's allegation, I invited him to address his concerns in his written representations and he did, as follows. The appellant submits that the IPC is biased against him because:

- his requests regarding the manner in which the IPC was to communicate with him were not granted
- the mediator did not deal with him appropriately during the mediation stage
- he alleges that the mediator made comments to me, resulting in me being biased against him, and
- his request for "another more impartial adjudicator" was refused.

[12] As confirmed recently by the Supreme Court of Canada in *Yukon Francophone School Board v Yukon (Attorney General)*<sup>1</sup> the test for a reasonable apprehension of bias is undisputed and was first articulated by the Supreme Court of Canada as follows:

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<sup>1</sup> 2015 SCC 25 (CanLII) at para 20.

[W]hat would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more like than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.<sup>2</sup>

[13] In the same ruling, the Supreme Court of Canada stated:

Because there is a strong presumption of judicial impartiality that is not easily displaced (*Cojocar v British Columbia Women's Hospital and Health Centre*, [2013] 2 SCR 357, at para 22), the test for a reasonable apprehension of bias requires a “real likelihood or probability of bias”[.]

[14] Applying this test to the circumstances of this appeal, I find that the appellant has not provided sufficient evidence to displace the strong presumption of impartiality in administrative decision-making. The appellant's concerns about the way the IPC communicated with him, including the mediator's dealings with him and the content of my letter to him, amount to a disagreement with the way this appeal was conducted. This is not sufficient to ground an allegation of bias.<sup>3</sup> As well, the appellant's allegations about the mediator improperly communicating with me are entirely without foundation. An informed person, viewing the matter realistically and practically – and having thought the matter through – would not find it likely that I would be unfair in deciding this appeal based solely on the content of my letter, or that the IPC is biased because it did not grant the appellant an oral hearing and assign another adjudicator to his appeal.

[15] I find that the appellant has not established a reasonable apprehension of bias and I dismiss the appellant's bias arguments.

## **ISSUES:**

- A. Do the withheld names and addresses of the winners in the records qualify as “personal information”?
- B. Would disclosure of the withheld names and addresses in the records be an unjustified invasion of personal privacy under section 21(1) of the *Act*?

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<sup>2</sup> *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369, at p 394, per de Grandpre J. (dissenting). The test was subsequently endorsed and clarified by the Supreme Court, for example, in *Wewaykum Indian Band v Canada*, [2003] 2 SCR 259, at para 60 and *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 46, among others.

<sup>3</sup> I note from my review of the appeal file that the IPC communicated with the appellant in accordance with his preferences once he made these known.

## **DISCUSSION:**

### **A. Do the withheld names and addresses of the winners in the records qualify as “personal information”?**

[16] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

(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,

(d) the address, telephone number, fingerprints or blood type of the individual,

(h) the individual’s name where 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[.]

[17] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>4</sup> To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

### ***The parties’ representations***

[18] OLG submits that the IPC has consistently held that an individual’s identity as a lottery winner and information about their win constitute that individual’s personal information. It states that the IPC first took this position in Orders P-180 and P-181, and affirmed it in Orders PO-2812 and PO-3017. OLG offers the following passage from Order PO-3017 in support of its assertion:

Having carefully reviewed the record and the representations, I find that the record contains the personal information of lottery winners. The

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<sup>4</sup> Order 11.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] OJ No 4300 (CA).

personal information in the record includes their names as disclosure of their names would reveal the fact that they are lottery winners, the type of game that was played and the circumstances surrounding the purchase and redemption of their tickets (paragraph (h) of the definition). It also includes personal information relating to their address and other personal contact details (paragraph (d) of the definition.)

[19] OLG argues that there is no basis to depart from the principle set out in these orders, which is sound and applies to the information at issue in this appeal.

[20] The appellant does not address this issue in his representations. Instead, he sets out his concerns and allegations about what he believes happened to his lottery ticket.

### ***Analysis and finding***

[21] The records at issue contain the first and last names and middle initials of individuals along with their complete address including street name and number, city of residence and postal code. I find that this information, which is the only information that OLG has withheld, is the personal information of various lottery winners under paragraphs (b), (d) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[22] The names of the lottery winners qualify as personal information under paragraph (h) because their disclosure would reveal the fact that these individuals are lottery winners, the type of lottery game they played and the circumstances surrounding their purchase and redemption of tickets. It also includes personal information relating to their address which is captured by paragraph (d) of the definition. Finally, disclosure of the lottery winners' names in connection with the amount of the prize won – which has already been disclosed to the appellant – would qualify as personal information under the portion of paragraph (b) that relates to "financial transactions in which the individual has been involved".

[23] Having found that the records contain the personal information of various lottery winners, I will now determine whether disclosure of the withheld information is prohibited under section 21(1) of the *Act*.

### **B. Would disclosure of the withheld names and addresses in the records be an unjustified invasion of personal privacy under section 21(1) of the *Act*?**

[24] Where a requester seeks 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. The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21. If the information fits within any of paragraphs (a) to (e) of section 21(1), it is not exempt

from disclosure under section 21.

[25] OLG argues that the disclosure of the withheld names of lottery winners in this appeal is precluded by section 21(1)(f) which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[26] Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, the information is not exempt from disclosure. Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[27] There is no suggestion that any of paragraphs (a) to (h) of section 21(3) applies, or that section 21(4) applies, and I find that these sections do not apply to the circumstances of this appeal.

### ***OLG's representations***

[28] OLG submits that disclosure of the personal information of the winners of lottery prizes who are not OLG "insiders" would constitute an unjustified invasion of personal privacy, and for this reason, the personal information is exempt under section 21(1)(f) of the *Act*. OLG cites Orders PO-2812 and PO-3017 in support of its argument and states that in these orders, the IPC established that the identities of insider winners are accessible to the public but the identities of other lottery prize winners are exempt from the right of public access. It notes that Order PO-2812 held that affected winners had not consented to the disclosure of their personal information as contemplated by section 21(1)(a), and it adopts and relies upon its submissions in Order PO-2812 as they are set out at pages nine to 11 of that order. It notes that the version of the consent form it used at the time of Order PO-2812 was broader than the one it currently uses and only allowed OLG to publish information for five stated purposes, including "to assist the OLG in managing and promoting its lottery prize games and in maintaining the lottery integrity thereof". OLG states that its current consent form includes only the latter stated purpose and for this reason, the factual basis for a "no consent" finding in this appeal is stronger than it was in Order PO-2812.

[29] Regarding the factors under section 21(2) and the balancing of interests, OLG adopts and relies on its submissions in Order PO-2812 as they are set out at pages 12 to 17 of that order. In particular, it cites the following reasoning from Order PO-2812 as applicable and argues it supports a finding that the personal information at issue must be withheld under section 21(1)(f) of the *Act*:

The information at issue in this appeal only relates to individuals who have not been identified as insiders. [. . .] I am not satisfied that the evidence supports the appellant's view that there are factors favouring disclosure which outweigh those favouring the privacy interests of lottery winners who, as far as I am aware, are members of the general public. Even if some limited number of them may be individuals who are in fact insiders but have not been identified as such, I do not know who those individuals are, and the great majority of the information in the database is about lottery winners who are members of the general public. In my view, given the importance given to privacy protection under the *Act*, it would not be appropriate to discount the privacy rights of the majority of the individuals represented in the database in order to allow the appellant to attempt to identify a few more insiders. Nor is it by any means certain that, even if the information were disclosed, the latter would occur.

I have therefore decided to proceed on the basis that the assessment of the section 21(2) factors must be based on the interests of lottery winners who are members of the general public.

In that context, I am not satisfied that the application of either of the factors favouring disclosure that the appellant relies on is established.

[30] OLG concludes its representations by asserting that the factual basis for the finding in Order PO-2812 and this appeal are the same and there is no basis for reaching a different conclusion.

### ***The appellant's representations***

[31] The appellant does not directly address this issue in his representations. Rather, he sets out a series of allegations that are based on his belief that he was defrauded out of a winning ticket by a female clerk at the named location who took his winning ticket to cash it herself, and only gave him a free ticket as a prize. He explains that the female clerk was at the location only once – the day he had a winning ticket – and that he never saw her again upon his repeated subsequent visits. The appellant asserts that he was robbed of his prize, that the robbery was a crime, and that any criminal matter trumps any privacy issues. He also asserts, without any elaboration, that disclosure of lottery winners is not covered by the *Act* and that "winners are made available to the public."

[32] The appellant complains that OLG did not investigate the incident and that the IPC, in turn, did not adequately consider his concerns about OLG. Along with his representations, the appellant provides copies of correspondence OLG sent him in response to his concerns about his lottery ticket.



### ***Analysis and finding***

[33] To begin, although the appellant asserts that OLG winners are named publicly, this is not the case in the circumstances of this appeal. The winners whose names appear in the records are not major prize winners or insider winners. They are members of the general public whose names are not currently publicly available, despite the fact that they may have been for a 30-day period after each prize was claimed as noted in OLG's representations.

[34] I agree with OLG that disclosure of the withheld names of lottery winning individuals would be an unjustified invasion of these individuals' personal privacy. I note that OLG relies on the submissions it made in a previous appeal as summarized in Order PO-2812. I agree with the point made by Adjudicator John Higgins in Order PO-2812 that making the personal information of lottery winners publicly available would cause the winners unfair harm as contemplated by the factor in section 21(2)(e) by exposing them to possible harms by others seeking to take advantage of them because of their lottery winnings. I find that the factor in section 21(2)(e) applies in this appeal weighing against disclosure of the withheld information.

[35] The various allegations the appellant makes in his representations appear to allude to two of the factors in section 21(2): public scrutiny of the activities of government under section 21(2)(a) and a fair determination of rights under section 21(2)(d). However, there is nothing beyond the appellant's bald assertions – that OLG acted inappropriately in considering his concerns and that he is a victim of lottery fraud – to establish that either of these factors favouring disclosure applies. In fact, the correspondence that the appellant provided along with his representations, states that OLG investigated his concerns and found no evidence of fraudulent activity.

[36] One of the two letters provided by the appellant indicates that in 2010, OLG reviewed his concerns about the validation of his lottery ticket and did not find any evidence of potentially fraudulent activity to substantiate his claim. It also confirmed that no major LOTTO 6/49 prize validation occurred at the named location between January 1, 2004 and June 2, 2004. The second letter from OLG dated 2015, confirms that OLG again reviewed the appellant's concerns and examined its records, and determined that no major LOTTO 6/49 prize validation occurred at the named location kiosk between January 1, 2003 and June 2, 2004. It reiterates that OLG could not find evidence of fraudulent activity from the information the appellant provided.

[37] For the foregoing reasons, I find that no factors favouring disclosure of the withheld information apply in this appeal. Only the factor in section 21(2)(e) applies and it favours privacy protection. There is no argument that any of paragraphs (a) to (e) under section 21(1) applies, only an argument from OLG that section 21(1)(a) does not apply, which I accept. Accordingly, I find that none of paragraphs (a) to (e) of section 21(1) applies. The section 21(1)(f) exception to the mandatory exemption in section 21(1) only applies if it is demonstrated that disclosure "does not constitute an

unjustified invasion of personal privacy.” As this has not been demonstrated, I find that the withheld personal information is exempt under section 21(1) of the *Act*.

[38] Finally, I note that section 10(2) of the *Act* obliges OLG to disclose as much of any responsive record as can reasonably be severed without disclosing information that is exempt. In this appeal, OLG has provided the appellant with a significant amount of information that is responsive to his request without disclosing the personal information of the lottery winners. The appellant knows that one second prize ticket for \$67,923.00 was purchased at the named location during the applicable time period; that 13 other prizes of lesser value were purchased or validated at the location during the applicable time period; the draw dates for the identified prizes; and that none of the individuals who won the identified prizes were identified as insiders. OLG has also told the appellant that, based on its interpretation of the prize winner’s name, the winner of the identified second prize is not a female.<sup>6</sup>

[39] I find that OLG’s disclosure of a significant amount of information responsive to the appellant’s request satisfies its obligation under section 10(2) of the *Act*.

**ORDER:**

I uphold OLG’s decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_  
January 31, 2017

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<sup>6</sup> OLG notes that it does not have data on the gender of winners in its data base.