

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3772

Appeal PA16-189

Ontario Lottery and Gaming Corporation

September 27, 2017

Summary: The appellant made a request to the Ontario Lottery and Gaming Corporation (OLG) for a list of tickets returned as “not in winner file” by OLG retailers, and which were subsequently verified by OLG as winning tickets. OLG developed and ran a query to find responsive records, prepared a list and issued a decision letter with which it disclosed the list to the appellant. The appellant appealed, claiming that the list was missing some responsive tickets, raising the issue of whether OLG had properly interpreted the scope of the appellant’s request. In this order, the adjudicator upholds OLG’s decision, and dismisses the appeal.

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

Orders and Investigation Reports Considered: Order PO-3635.

BACKGROUND:

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

I would like to know the number of Cheques issued and claims settled by O.L.G.C. Since jan 2010 November 13, 2015 Disputed for winning Numbers and winning tickets declared as NOT IN WINNER FILE by retailers (O.L.G.C. terminal at retailers location) But subsequently found

winner by O.L.G.C. after verification and validated as winning and settled thereof. Please give the total Number of such claims and the amount settled.

[2] OLG issued an interim decision and fee estimate for developing a computer program to locate the responsive records. Following receipt of payment of the requested deposit from the appellant, OLG issued a time extension pursuant to section 27(1) of the *Act*, extending the time for its response by an additional 90 days.

[3] OLG then issued a final decision advising that it had developed and run a query for every winning validation at a retailer terminal logged over the time period specified in the appellant's request.¹ OLG explained that the ticket history for each ticket was obtained to determine if any winning tickets were given the result of "not in winner's file" from the validation at the retailer terminal. OLG further advised that the query identified results relating to a Poker Lotto issue where winning tickets validated at OLG lottery terminals were returned with the message "validation rejected – not a winner". OLG reported the issue to the Alcohol and Gaming Commission of Ontario, and posted a consumer advisory to advise customers to check their Poker Lotto tickets by visiting the lottery winning numbers page of OLG's website.

[4] OLG provided the appellant with access to a printout of these winning tickets that had been given the result of "not in winner's file".²

[5] The appellant appealed OLG's decision to this office. During mediation, the appellant advised the mediator that the record disclosed to him did not include a ticket with a "not a winner" result for which he had subsequently received a prize. The appellant stated that this ticket should have been included in the list disclosed to him.

[6] The mediator relayed this information to OLG, which responded by advising that the ticket and prize identified by the appellant were outside the scope of his request. OLG explained that the appellant's ticket had in fact been validated as a winning ticket at a retail establishment when it was initially presented, but that when the ticket was subsequently presented again at a retailer, the "not a winner" message appeared because the ticket was presented more than 30 days after the initial validation. The appellant then reported the validation discrepancy to OLG, which paid the appellant his winnings and charged back the retailer.

[7] The mediator conveyed this information to the appellant, who did not agree with OLG's explanation and maintained that information about the payment to him was

¹ Although the wording used by OLG is awkward, it is clear from context that "every winning validation at a retailer terminal" refers to every winning ticket that was initially presented to an OLG retailer terminal.

² OLG initially withheld information from two columns of the printout, relying on the exemption at section 18(1) of the *Act* (economic and other interests of an institution). However, OLG abandoned this exemption claim during adjudication and disclosed the entire record to the appellant.

within the scope of his request. The appellant asked that the appeal proceed to the next stage of the process. Accordingly, the mediator added the issue of the scope of the request to the appeal and the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[8] During my inquiry, I invited and received initial representations from OLG, representations from the appellant, reply from OLG and sur-reply from the appellant. The parties' representations were shared with one another in accordance with this office's *Practice Direction 7* and section 7 of the *Code of Procedure*.

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

DISCUSSION:

[10] The only issue in this appeal is whether OLG has correctly identified the scope of the appellant's request.

Representations

OLG's representations

Background

[11] OLG has provided some further information about the ticket that the appellant claims should have been included in the record disclosed to him. OLG explains that the appellant purchased a lottery ticket for a draw held in October 2010, and his ticket won a prize of \$121.50. His ticket was validated and approved as a winning ticket at a retail store on November 6, 2010. However, the appellant claims that he did not validate his winning ticket on November 6 and did not collect a prize. OLG believes that somebody (if not the appellant) validated the ticket on November 6. However, the ticket was neither ripped nor branded as validated, which is a breach of OLG's validation protocol.

[12] OLG's records then show that the appellant, as he claims, later presented the ticket for validation at two convenience stores, once on March 4, 2011 and again on June 20, 2011. Both times, the ticket was automatically branded "not in winner file" by the lottery terminal because the ticket had already been validated as a winner more than 30 days prior.³

[13] The requester then mailed the ticket to the OLG Prize Centre. On June 21, 2011, staff at the Prize Centre attempted to validate the ticket, which was again rejected as "not in winner file". Given that the validation protocol had not been followed on

³ OLG provided a copy of an OLG fact sheet explaining the circumstances under which a ticket receives a "not in winner file" message, which is consistent with the explanation provided in this case.

November 6th and the appellant claimed that he had not been paid his prize, OLG paid him \$121.50 and charged the retailer the same amount, as permitted by its retailer agreement.

[14] OLG also provided me with a copy of the statement of claim in a civil action brought against it by the appellant. The appellant has sued OLG for "malpractice/fraud" based on his allegation that he purchased 16 winning tickets that he presented for validation and with respect to which he received a "not in winner file" message. In his statement of claim, issued approximately 1½ years before the appellant made his access request, he challenges the accuracy and reliability of OLG's software.

Scope of the request

[15] OLG submits that it responded to the appellant's request based on the wording of the request and its understanding that the requester's primary concern was that OLG's retail validation system is unreliable based on a belief that it frequently identifies winning tickets as non-winning tickets. It therefore developed a query to identify all instances in which winning tickets were presented at a lottery retailer and identified erroneously as non-winning tickets. The search returned a list of incidents associated with a problem that occurred with a Poker Lotto draw in June 2012, a problem that the OLG escalated and managed appropriately.

[16] OLG explains that its search did not identify the appellant's October 2010 ticket because the ticket was validated as a winning ticket when it was first presented to a retailer. In other words, OLG read the request as being for winning numbers and winning tickets declared as "not in winner file" by retailers when initially presented for validation. OLG submits that it was correct to interpret the request in this way, given its strong understanding of the appellant's primary concern, and notes that this office, in Order PO-3635, endorsed a contextual approach to the interpretation of a request.

[17] OLG submits that its interpretation and resulting query returned data directly responsive to the appellant's concern rather than a potentially large and non-responsive "data dump". It believes that the appellant has no interest in receiving a long list of tickets that were validated as winners and then re-presented for a second time more than 30 days later. Such a list would bear no relation to the appellant's known concern about the accuracy of OLG's system. The list OLG prepared, in contrast, responds directly to that concern.

Appellant's representations

[18] The appellant submits that he has been participating in various investigations by OLG, the OPP and the Alcohol and Gaming Commission to prove that the software used by OLG is not reliable or that OLG is fraudulently using it and siphoning off public money in doing so. The appellant refers to several lottery tickets in particular that he submits were returned as "not in winner file" when presented at lottery retailer but

which were subsequently validated by OLG prize centre personnel as being winning tickets. He has provided copies of the tickets marked "not a winner" along with copies of OLG prize centre ticket receipts indicating that the tickets are winning tickets.

[19] The appellant also submitted a copy of a letter he received from the General Investigations department of OLG in relation to one of the tickets he presented to the prize centre. It states in part:

This letter is in regards to your claim of a \$20.00 prize on a Lotto Max ticket presented at the Toronto Prize Centre on August 8, 2015.

Your claim has been thoroughly investigated by the Ontario Provincial Police Investigations & Enforcement Bureau attached to the Alcohol & Gaming Commission of Ontario and the Ontario Lottery & Gaming Corporation, Corporate Investigations. Based on the foregoing, it has been established that the ticket presented has been altered...

Consequently the Ontario Lottery & Gaming Corporation will not take any further action in regards to processing your claim and we consider the matter closed.

[20] Along with this letter, the appellant submitted a copy of his response to OLG in which he stated his disagreement with the decision to close his file, based on the lack of evidence disclosed to him supporting the conclusion that the ticket had been altered.

OLG's reply representations

[21] In reply, OLG states the following with respect to the copies of tickets submitted by the appellant that appear to be marked "not a winner":

The [appellant] has provided the IPC with photocopies of three lottery tickets... The photocopies appear to be marked as non-winning tickets. The [appellant] claims these tickets are examples of tickets that he presented to lottery retailers and that were erroneously identified as non-winning tickets.

OLG has no records showing these tickets were ever presented to a lottery retailer for validation and believes the [appellant] has altered the tickets to support his claims. This explains why they were not identified by OLG's search query and are not included on the chart in issue.

Appellant's sur-reply representations

[22] The appellant states that the list printed out by OLG does not include his many tickets that were declared "not in winner file" even though they are winning tickets. He has submitted various original tickets and copies of tickets to support his position that

he has not altered tickets, and to establish his argument that many tickets that were winners were branded "not a winner" at OLG terminals.

[23] The appellant has also submitted a copy of an email exchange between the OPP and him wherein the OPP Detective Constable states in part:

The information you seek are security measures implemented by OLG for the public safety and to make sure the integrity of the game (Lottery) is upheld. So particulars of branding and sequencing of validated tickets through the document feeder are not ... given out to the public. This information is in place to deter people from manipulating lottery products.

Analysis and findings

[24] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
 - ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[25] This office has found that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act* and that generally, ambiguity in the request should be resolved in the requester's favour.⁴ To be considered responsive to the request, records must "reasonably relate" to the request.⁵

[26] OLG adopted a liberal interpretation of the request in the sense that it did not limit its search query to winning tickets that were actually paid out, as the wording of the appellant's request would suggest. OLG did not respond literally to the appellant's request, but adopted an interpretation that took into account the spirit of the appellant's request. As a result, all winning tickets (whether paid out or not) were

⁴ Orders P-134 and P-880.

⁵ Orders P-880 and PO-2661.

searched.

[27] I also agree with OLG that it was appropriate in this case to apply a contextual approach in interpreting the scope of the appellant's request. Prior to making his access request, the appellant had brought a civil action alleging that he purchased 16 winning tickets that he presented for validation and with respect to which he received a "not in winner file" message. It is evident from the statement of claim that the appellant's allegation is that his winning tickets are being returned as "not in winner file" when he initially presents them to a lottery retailer. I agree with OLG that the ticket mentioned by the appellant during mediation does not fall within the scope of the request, because it was correctly identified as a winning ticket when initially presented at an OLG retailer.

[28] With respect to the three tickets in particular that the appellant referred to in his initial representations, OLG stated that it had no record of the tickets having been presented at a retailer for validation, and alleges that the appellant has altered the tickets to support his position in this appeal. OLG has explained that the reason that the additional tickets submitted by the appellant do not appear on its list is that OLG has no record of those tickets being presented to a retailer for validation. I accept that OLG has no record of them being presented to a retailer for validation.

[29] The appellant's fundamental allegation is that the OLG's software at its retail kiosks is erroneously returning winning tickets as "not in winner file". These concerns are the subject of the appellant's lawsuit against OLG. However, in responding to the appellant's access request, OLG developed and ran the correct query. There could be numerous reasons why OLG does not have a record of the appellant's various winning tickets as having been presented and returned "not in winner file", none of which it would be appropriate for me to decide in this appeal. For example, whether OLG's software is faulty, or whether the appellant may have altered tickets, are issues that may be determined in the ongoing litigation between the appellant and OLG. However, these concerns are outside the bounds of my inquiry, which is limited to determining whether OLG properly interpreted the scope of the appellant's request. For the above reasons, I find that it did.

ORDER:

I uphold OLG's decision and dismiss the appeal.

Original Signed by: _____
Gillian Shaw
Adjudicator

September 27, 2017 _____