

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-3968

Appeal PA17-565

Ontario Lottery and Gaming Corporation

June 26, 2019

**Summary:** The appellant submitted a request to the Ontario Lottery and Gaming Corporation (the OLG) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to a winning \$50 million lottery ticket. The request was for a copy of the ticket, copies of records documenting the appellant's contact with the OLG, and information about the individual to whom the prize was awarded. The OLG issued a decision in which it granted partial access to the information requested. It denied access to the winner's personal information pursuant to the mandatory personal privacy exemption at section 21(1) and to the remaining information requested, claiming that it was exempt under sections 18(1)(c) and (d) (economic and other interests of Ontario). The appellant appealed the OLG's decision to deny access to a copy of the winning ticket. In this order, the adjudicator finds that sections 18(1)(c) and (d) apply to the winning ticket and upholds the OLG's decision to deny access to it.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 18(1)(c) and 18(1)(d).

**Orders Considered:** Orders PO-2657, PO-2664 and PO-2812.

### OVERVIEW:

[1] This appeal is about whether the appellant has a right of access to a copy of a winning lottery ticket despite a claim by the OLG that the ticket is exempt from disclosure because of the economic harms exemptions at section 18(1)(c) and (d) (economic and other interests of Ontario) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] In 2015, the Ontario Lottery and Gaming Corporation (OLGC) awarded a prize of

approximately \$50 million to the bearer of a winning Lotto Max lottery ticket. Approximately six weeks after the draw, the appellant, who did not have possession of the winning ticket, came forward to say that she once did. She contacted the OLG to say that she suspected that she had purchased the winning ticket but that it had been taken from her.

[3] The OLG investigated the appellant's claims. The investigation did not establish that the appellant was the rightful winner. The appellant then made a request to the OLG under the *Act* for access to the following:

1. Copy of the winning Lotto Max ticket drawn on March 20, 2015.
2. Copies of all correspondence, memoranda, notes and other documentation relating to contacts between me and OLG since March 2015.
3. Particulars of the individual to whom the prize was awarded, including name and address.

[4] In response to the request, the OLG issued a decision granting access to some of the information requested. It denied access to other information, such as retailer device location numbers (RDLs). The OLG also denied access to a copy of the winning ticket and to details about the winning ticket, claiming that this information was exempt under sections 18(1)(c) and (d) of the *Act* because it pertains to the economic or other interests of Ontario. Finally, the OLG denied access to the name, address, phone number and signature of the person to whom the prize was awarded, claiming that this was that individual's personal information and therefore exempt from disclosure under the mandatory personal privacy exemption at section 21(1) of the *Act*.

[5] The requester, now the appellant, appealed the OLG's decision to deny access to a copy of the winning ticket. She wrote that the most important component of her request was access to a copy of the winning ticket and that her only interest is to obtain a photocopy of it so that she could satisfy herself that it is not the ticket she purchased. She did not appeal the OLG's denial of access to records otherwise.<sup>1</sup>

[6] A mediator was appointed to explore the possibility of resolution.

[7] During mediation, the appellant confirmed that she is not seeking access to any other information that the OLG severed from the records that it had previously disclosed to her, such as the RDLs or the personal information of the ticket bearer, and that her only request is to obtain a copy of the ticket or to view it. The OLG

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<sup>1</sup> As a result, neither the personal privacy exemption at section 21(1) nor the OLG's claim that information severed from the records previously disclosed to the appellant is exempt, is at issue in this appeal.

maintained that it relies on sections 18(1)(c) and 18(1)(d) to deny access to the winning ticket.

[8] As no further mediation was possible, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry. As part of my inquiry, both the appellant and the OLGc made representations in response to a Notice of Inquiry and their representations were shared between them.

[9] In this order, I find that the winning ticket is exempt from disclosure under sections 18(1)(c) and (d) of the *Act* and I uphold the OLGc's decision to deny access to it.

## **RECORDS:**

[10] The record at issue is the winning ticket from a Lotto Max lottery draw that took place on March 20, 2015.

## **ISSUES:**

- A. Does the discretionary exemption at section 18(1) apply to the winning ticket?
- B. Did the OLGc exercise its discretion under section 18(1)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

### **Issue A: Does the discretionary exemption at section 18(1) apply to the winning ticket?**

[11] Broadly speaking, section 18(1) is designed to protect certain economic interests of institutions. Sections 18(1)(c) and (d) state that:

A head may refuse to disclose a record that contains,

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

[12] The purpose of section 18(1)(c) is to protect the ability of institutions to earn

money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive position.<sup>2</sup>

[13] This exemption does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.<sup>3</sup>

[14] Section 18(1)(d) is intended to protect the broader economic interests of Ontarians.<sup>4</sup> For section 18(1)(d) to apply, the institution must show that disclosure of the information in the record could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the province's economy.

[15] For sections 18(1)(c) and (d) to apply, the OLGC must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>5</sup>

[16] The failure to provide detailed evidence will not necessarily defeat a claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 18 are self-evident or can be proven simply by repeating the description of harms in the *Act*.<sup>6</sup>

## ***Representations***

### *Appellant's representations*

[17] The appellant states that hers is a straightforward request that can in no way have a prejudicial effect on the practices of the OLGC or the financial interests of the province, and that to "say otherwise is simply to engage in sophistry."

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<sup>2</sup> Orders P-1190 and MO-2233.

<sup>3</sup> Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2756.

<sup>4</sup> Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] 118 O.A.C. 108, [1999] O.J. No. 484 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.); see also Order MO-2233.

<sup>5</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

<sup>6</sup> Order MO-2363.

[18] The appellant's request has, from the outset, been for access to a copy of the winning ticket. In her appeal, she wrote, by her counsel, that her "only interest is in obtaining a photocopy of the winning ticket so that she can satisfy herself that it is not the ticket she purchased." In her representations in response to a Notice of Inquiry, however, her counsel wrote that the appellant's only request was to view the ticket, not to copy it. Whether by viewing or by copy, the appellant seeks access to the winning Lotto Max ticket.<sup>7</sup>

*OLGC's representations*

[19] The OLGC argues that the information printed on a winning ticket is exempt from the right of access pursuant to sections 18(1)(c) and (d) because the disclosure of such information would harm its ability to secure against lottery fraud. It says the ticket itself is therefore exempt.

[20] The OLGC says that the information printed on winning tickets is security-sensitive and must be "kept secret" in order to preserve the integrity of its investigations into prize claims, including claims by individuals who challenge prize claimants, and of the province's lottery gaming system as a whole. It submits that it keeps information about the purchase and validation of a winning ticket secret so that it can test individuals like the appellant who claim they once possessed it.

[21] The OLGC submits that, except for information about the location at which a winning ticket is purchased (which is published for a six-month period after a draw but then removed because it helps with the OLGC's investigations of non-bearer claims), the remaining information on the face of the ticket is controlled and accessible only to persons within the OLGC who are responsible for prize claim investigations. It states that ticket numbers (which appear on the face of each ticket) are controlled even more tightly and accessible only to an even smaller group of individuals within the institution.<sup>8</sup>

[22] According to the OLGC, the appellant has claimed since 2015 that she is the rightful bearer of the winning ticket. It says that she first contacted the OLGC in early May 2015 to say that she suspected that the winning ticket had been taken from her. She provided information about the ticket she claimed she once possessed and asked

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<sup>7</sup> Manner of access is considered in section 30 of the *Act*. Section 30(1) states that, "subject to subsection (2), a person who is given access to a record or a part thereof under the *Act* shall be given a copy thereof unless it would not be reasonably practicable to reproduce it or part of it by reason of its length or nature, in which case the person shall be given an opportunity to examine it." Given my finding that the ticket is exempt, the question of manner of access does not arise and will not be addressed.

<sup>8</sup> Tickets include a ticket number on their face that identifies each unique ticket. This number is distinct from the winning lottery numbers and is used to assist the OLGC in assessing whether a non-bearer had custody of a winning ticket at some point.

the OLGc to contact her if any of that information matched the winning ticket. None of the information the appellant provided matched. Since then, the OLGc says that it has had extensive contact with the appellant but that she has never once presented accurate information about the actual winning ticket to satisfy the OLGc that she once possessed it.

[23] The OLGc submits that the appellant wants access to the winning ticket so that she can continue to claim that it was once hers. It says that non-bearer claims by individuals like the appellant are common, and that it is therefore important for the OLGc to be able to withhold information with which it can test prize claimants.

[24] According to the OLGc, its contacts with the appellant (as evidenced in a report that was shared with her)<sup>9</sup> are an example of its prize claim controls in action. It says that its decision to withhold the information based on the exemptions in sections 18(1)(c) and (d) prevents real harms that are linked to the broader economic interests of Ontarians. Specifically, the OLGc states that, if its ability to keep purchase location and "all other requested information" secret is thwarted, it would face increased investigation costs, prize claim litigation, and broader business and reputational harm. Whether it is investigating an initial claim to a prize or a challenge to a prize by a non-bearer, the OLGc submits that it is engaged in a process that is important to the province and its taxpayers' financial interests. It states that public confidence in the OLGc's investigation process and the lottery system must be maintained if it is to continue to make a large contribution to provincial programs.

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

[25] For the reasons that follow, I find that the disclosure of withheld information that is printed on a winning ticket could reasonably be expected to prejudice the OLGc's economic interests and that it is therefore exempt under sections 18(1)(c) and (d).

[26] Previous orders of this office have held that information about the purchase and validation of a winning lottery ticket is exempt from the right of access pursuant to sections 18(1)(c) and (d) because disclosure of such information would harm the OLGc's ability to take effective measures to prevent lottery fraud.

[27] In Order PO-2657, Commissioner Brian Beamish found that information about the purchase and validation of a winning ticket is exempt from the right of public access. He wrote that "detailed purchase and validation information that the [OLGC] gathered in the course of an investigation into the affected parties' claim does qualify for exemption under section 18(1)(c) and (d) of the *Act*." He wrote that knowledge of a specific time that a winning ticket was purchased and validated could assist an

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<sup>9</sup> With certain information that is not at issue in this appeal, such as RDLs, severed.

unscrupulous individual to make a fraudulent claim for a lottery prize. In the case of a large prize, disclosure of this information could therefore reasonably be expected to prejudice the economic interests of the OLG and be injurious to the financial interests of the Ontario government.

[28] Order PO-2664 was a companion order to Order PO-2657. In Order PO-2664, Commissioner Beamish again affirmed an OLG decision to withhold information about the purchase and validation of a winning ticket, though he ordered disclosure of other information (that is not at issue in this appeal) such as information about the draw date, lottery played and size of the prize. He held that, in that particular appeal, information about the location where the winning ticket was purchased and validated could be safely released in the circumstances of that case (which involved an investigation by the Canadian Broadcasting Corporation into an "insider" prize claim), because he was satisfied that the CBC had enough information to make accurate assumptions about the location of the sale of the winning ticket.

[29] In Order PO-2812, Senior Adjudicator John Higgins followed Commissioner Beamish's orders. He found that sections 18(1)(c) and (d) applied to exempt detailed information relating to individual lottery tickets because he accepted that the OLG uses purchase and validation information to test the validity of individual claims to a lottery prize. He wrote that disclosure of this type of information, regardless of its age, could reasonably be expected to result in individuals coming forward who might be making false claims to lottery wins.

[30] The OLG submits that there has been no significant change since these orders were issued, and that it continues to rely on withholding certain information to test lottery claimants. I agree and I have considered these principles in my decision.

[31] As part of operating the provincial lottery and gaming system, the OLG has a legal obligation to pay the lawful bearer of a winning lottery ticket. In doing so, it engages in an investigation process to determine that the person who presents a ticket for payment is indeed the lawful bearer of that ticket and has not, for example, taken the ticket from someone else, or is not presenting a shared ticket as his or her own.

[32] With its representations in this appeal, the OLG has submitted an affidavit sworn by a member of its forensic investigation unit. This affidavit explains the OLG's prize claim investigation process, prize validation procedures, and tools it uses to test non-bearer prize claims. To investigate a win, the OLG asks a person presenting a winning ticket to provide it with information about the ticket purchase and the ticket validation. The OLG can compare this information against the information in its own records to assess whether the person purchased and validated the ticket. If the information provided by the ticket-bearer matches the information in its system, the OLG can conclude that that person likely purchased and validated the winning ticket (if the ticket has been validated other than manually).

[33] Because the OLG uses purchase and validation information to test claimants,

and given the size of some of the prizes awarded, I accept that this information is sensitive and important to the integrity of the OLG's claims investigation process. I also accept that, generally speaking, if this information is made public, the OLG's ability to test prize claimants will be lessened.

[34] Having reviewed the materials before me, including a copy of the ticket, I am satisfied that the winning ticket contains information about its purchase that, if disclosed, could reasonably be expected to diminish the OLG's ability to test the appellant's claim, and by extension, non-bearer claims generally. On its face, the ticket contains information about the time of purchase, retailer location, information about the wager placed, the number of bets or lines played, whether Encore was played, and whether the ticket is an automated "quick pick" or whether the numbers were manually selected. I agree with the OLG that, once disclosed, this information can be used to advance a non-bearer claim. The report provided by the OLG details the appellant's previous unsuccessful efforts to establish her claim, and I accept that disclosure of the ticket at issue could provide key information that could be used to further these efforts.

[35] The OLG's incident report discloses that the appellant has consistently provided information about the prize wager that is inconsistent with the information on the ticket. In these circumstances, I accept the OLG's position that this information should be withheld in order to preserve its ability to test the appellant's claim where she has been unable to independently provide any information to support that she once had the ticket. Moreover, disclosure under the *Act* is considered disclosure to the world. If the information at issue in this appeal were to be disclosed, I am satisfied that it could reasonably be expected to lead to increased investigation costs, prize claim litigation, and broader reputational harm to the OLG.

[36] Given the money involved in the provincial lottery and gaming system, I accept the OLG's position that ticket details used to test lottery claims may be withheld in order to preserve the integrity of lottery games. I accept that the OLG is engaged in a process that is important to the province and to its taxpayers' financial interests. In my view, therefore, public confidence in the integrity of the provincial lottery and gaming system must be maintained, and so the OLG's ability to test claims is of paramount importance. I find that disclosure of the winning ticket, which contains on its face purchase and other information that the OLG uses to test prize claims, particularly non-bearer prize claims, could be prejudicial to its ability to do so, and to its economic interests and to the province's broader financial interests.

[37] I therefore find that sections 18(1)(c) and (d) apply to the winning ticket. Given this finding, I must also consider whether the OLG properly exercised its discretion in denying access to the winning ticket.

**Issue B: Did the OLG exercise its discretion under section 18(1)? If so, should this office uphold the exercise of discretion?**

[38] The section 18(1) exemption is discretionary, and permits an institution to



disclose information, despite the fact that it could withhold it. Where an institution has the discretion to disclose information, the commissioner may determine whether the institution erred in its exercise of discretion, or did so in bad faith or for an improper purpose, or whether it failed to consider relevant factors and considered irrelevant ones.

[39] While this office may send the matter back to the institution for an exercise of discretion based on proper considerations,<sup>10</sup> it may not substitute its own discretion for that of the institution.<sup>11</sup>

[40] Relevant considerations may include those listed below:<sup>12</sup>

- the purposes of the *Act*, including the principles that information should be available to the public and that exemptions from the right of access should be limited and specific
- the wording of the exemption and the interests it seeks to protect
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[41] For the reasons that follow, I uphold the OLGC's exercise of discretion to deny access to the winning ticket under section 18.

[42] The OLGC submits that, in exercising its discretion, it was mindful that the right of access is based on the principle that information should be available to the public and that exemptions to that right are limited and specific. It submits that it considered the size of the prize, the appellant's prior attempts to claim the prize (as evidence of the potential for harm), and the significance of the information at issue to the integrity

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<sup>10</sup> Order MO-1573.

<sup>11</sup> Section 54(2) of the *Act*.

<sup>12</sup> Orders P-344 and MO-1573.

of its prize claim controls. In balancing its interests against the appellant's, the OLGc decided to apply the exemption.

[43] The appellant made no representations regarding the OLGc's exercise of discretion.

[44] I am satisfied that, in exercising its discretion, the OLGc considered its historical practices with respect to similar information, the age of the information, and the costs associated with investigating non-bearer claims for large prizes. The OLGc took into account the need to preserve the integrity of its controls to secure against lottery fraud. I find that these were relevant considerations and that the OLGc did not take into account irrelevant factors in exercising its discretion or exercise its discretion in bad faith. The appellant has given me no reason not to uphold the OLGc's exercise of discretion to deny access to the entire ticket. I find no basis on which to interfere with the OLGc's exercise of discretion in this appeal, and I uphold it.

**ORDER:**

I uphold the OLGc's decision to deny access to the winning ticket under sections 18(1)(c) and 18(1)(d) and dismiss this appeal.

Original Signed By: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

\_\_\_\_\_ June 26, 2019