

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-4304

Appeal PA20-00340

Liquor Control Board of Ontario

September 27, 2022

**Summary:** The LCBO received a request under the *Act* for access to the annual fiscal year payments for a specified loyalty program. After notifying a third party, who objected to disclosure, the LCBO issued a decision granting full access to the responsive record. The third party appealed the LCBO's decision to the IPC stating that the record is inaccurate and should not be disclosed on that basis. In this order, the adjudicator upholds the LCBO's decision to disclose the record in its entirety, and dismisses the appeal.

**Statutes Considered:** The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 17(1).

### OVERVIEW:

[1] The Liquor Control Board of Ontario (LCBO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

...the annual amount of financial expenditure in cash or in lieu of cash for the operation of [a specified] loyalty program. As such this request would also include but is not limited to relevant annual amount payments made to [named third-party businesses] for the operation of the [specified loyalty program]. The time period for the request is the past three fiscal years ending in 2018 (2016, 2017, 2018).

[2] Prior to issuing a decision, the LCBO notified the third party business named in the request under section 28 of the *Act*, and the third party objected to disclosure of the information to the requester. Subsequently, the LCBO issued a decision to both the requester and third party granting full access to the responsive record.

[3] The third party, now the appellant, appealed the LCBO's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was appointed to explore resolution.

[4] During mediation, the appellant was asked for but did not provide consent to disclosure of the responsive record to the requester. The appellant also raised concerns that the record generated by the LCBO is inaccurate. The appellant's concern was shared with the requester who continues to pursue access to the record. Since the record is not a record of "personal information" as that term is defined under section 2(1), there is no right of correction under the *Act*.<sup>1</sup> Therefore, the only issue before me is the exemption at section 17(1) for third party information.

[5] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to this appeal commenced an inquiry by inviting representations from the appellant, initially. She received representations from the appellant. She shared the appellant's non-confidential representations<sup>2</sup> with the LCBO, and invited and received its representations. She shared the non-confidential representations<sup>3</sup> of the appellant and the LCBO with the requester, and invited their representations. The appeal was then transferred to me to continue the inquiry, and I received representations from the requester.<sup>4</sup>

[6] In this order, I find that the mandatory section 17(1) exemption does not apply, and I dismiss the third party's appeal. I uphold the LCBO's decision to disclose the record in full, and order it to disclose the record at issue to the appellant.

## **RECORD:**

[7] The record at issue in this appeal consists of a chart of annual fiscal year payments made by the LCBO to the appellant for a specified loyalty program (payment chart).

---

<sup>1</sup> Section 47(1) of the *Act* gives an individual a general right of access to their own personal information that an institution holds. Section 47(2) gives the individual a right to ask the institution to correct that personal information.

<sup>2</sup> Some portions were withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the IPC's *Code of Procedure*.

<sup>3</sup> See above.

<sup>4</sup> I have reviewed all representations submitted in this appeal.

## DISCUSSION:

[8] The sole issue in this appeal is whether the mandatory third party information exemption at section 17(1) of the *Act* applies to the payment chart.

[9] Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

[10] Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.<sup>5</sup> Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.<sup>6</sup>

[11] For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

---

<sup>5</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

<sup>6</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

## **Part 1: type of information**

[12] The types of information listed in section 17(1) have been discussed in prior orders. Based on the representations of the parties, the relevant types of information in this appeal are:

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.<sup>7</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>8</sup>

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>9</sup>

### ***Representations of the LCBO***

[13] The LCBO submits that the payment chart contains commercial and financial information. The LCBO states that the information relates to the purchase of services from the appellant for the loyalty program, and that it contains amounts paid by the LCBO to the appellant to participate in the loyalty program, which is derived from financial data relating to the LCBO's operating costs and expenditures.

### ***Representations of the requester***

[14] The requester's representations do not specifically address the three-part test in section 17(1). However, the requester states that they rely on the LCBO's position that the payment chart is not exempt under section 17(1). The requester further states that the payment chart does not contain third party information.

### ***Representations of the appellant***

[15] The appellant's representations do not specifically address the section 17(1) exemption or the three-part test in section 17(1). However, the appellant acknowledges that the payment chart contains a summary of financial records.

### ***Analysis and findings***

[16] Based on my review of the payment chart and the representations of the parties, I find that the payment chart contains commercial and financial information because

---

<sup>7</sup> Order PO-2010.

<sup>8</sup> Order P-1621.

<sup>9</sup> Order PO-2010.

the information relates to the LCBO's payment to the appellant to participate in the specified loyalty program, and the information is derived from the LCBO's financial data. Therefore, I find that the payment chart contains commercial and financial information within the meaning of section 17(1) of the *Act*.

[17] As part 1 of the three-part test under section 17(1) is met, I must now consider whether the appellant supplied the information contained in the payment chart, in confidence, to the LCBO.

## **Part 2: supplied in confidence**

### ***Representations of the LCBO***

[18] The LCBO submits that the information in the payment chart was not supplied by the appellant, and that it was independently generated by the LCBO's Financial Services Department through data contained within the LCBO's financial system. The LCBO further submits that since no information in the chart was supplied by the appellant, the payment chart does not meet part 2 of the section 17(1) test, and therefore, the information is not exempt under section 17(1).

### ***Representations of the requester***

[19] The requester's representations do not specifically address the three-part test in section 17(1).

### ***Representations of the appellant***

[20] The appellant's representations do not specifically address the three-part test in section 17(1). However, the appellant's representations raise concerns that are not at issue in this appeal, such as the reasonableness of the LCBO's search and the responsiveness of the record. Since these concerns are not relevant to my determination of whether the payment chart is exempt under section 17(1), I will not comment further on these arguments. The appellant also raises concerns about the accuracy of the information contained in the payment chart, which I will address below.

## ***Analysis and findings***

[21] The requirement that the information have been "supplied" to the institution by a third party reflects the purpose in section 17(1) of protecting the informational assets of third parties.<sup>10</sup>

[22] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate

---

<sup>10</sup> Order MO-1706.

inferences with respect to information supplied by a third party.<sup>11</sup>

[23] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.<sup>12</sup>

[24] The LCBO submits, and I accept, that the information in the payment chart was generated by the LCBO’s Financial Services Department from the LCBO’s financial data, and it was not supplied by the appellant. The appellant also does not argue that the information contained in the payment chart was supplied by it. Based on my review of the payment chart, the representations of the LCBO, and in the absence of any evidence to the contrary, I find that the information contained in the payment chart was not supplied by the appellant to the LCBO.

[25] Since the appellant, the party resisting disclosure in this appeal, has not established that the information contained in the payment chart was supplied by it to the LCBO, the second part of the three-part test in section 17(1) has not been met. Therefore, it is not necessary to determine whether the appellant has established that there is a reasonable expectation of any of the section 17(1) harms resulting from the disclosure of the payment chart for the purposes of part 3 of the section 17(1) test.

[26] I acknowledge that the appellant raised concerns about the accuracy of the payment chart, and argues that it should be withheld on that basis. Since the payment chart is not a record of “personal information” as that term is defined under section 2(1), there is no right of correction under the *Act*.<sup>13</sup> The adjudicator previously assigned to this appeal noted that the appellant’s arguments about the accuracy of the payment chart may be relevant to part 3 of the three-part test in section 17(1). However, because I have found that I do not need to consider part 3 of the three-part test, I will not summarize or consider these arguments. Furthermore, if the appellant is of the view that the information in the payment chart is inaccurate or misleading, the appellant may provide the requester with the correct information or additional information to correct any misunderstanding.<sup>14</sup>

[27] I find that section 17(1) does not apply to exempt the payment chart at issue.

---

<sup>11</sup> Orders PO-2020 and PO-2043.

<sup>12</sup> Order PO-2020.

<sup>13</sup> Section 47(1) of the *Act* gives an individual a general right of access to their own personal information that an institution holds. Section 47(2) gives the individual a right to ask the institution to correct that personal information.

<sup>14</sup> Orders PO-3459, PO-3567, and PO-3803.

**ORDER:**

1. I uphold the LCBO's decision to disclose the payment chart, and dismiss the appeal.
2. I order the LCBO to disclose the payment chart to the requester in accordance with its access decision by **November 3, 2022** but not before **October 28, 2022**.
3. In order to verify compliance with this order, I reserve the right to require the LCBO to provide me with a copy of the payment chart disclosed to the requester.

Original Signed by: \_\_\_\_\_

Anna Truong  
Adjudicator

September 27, 2022 \_\_\_\_\_