

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4417

Appeal PA21-00525

Ontario Lottery and Gaming Corporation (OLG)

July 11, 2023

Summary: The appellant submitted an access request to the Ontario Lottery and Gaming Corporation (OLG) for records relating to himself. The OLG located responsive records and provided the appellant with access to them. The appellant appealed the OLG's decision because he believes additional responsive records should exist. In this order, the adjudicator finds that the OLG conducted a reasonable search for responsive records. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, section 24.

OVERVIEW:

[1] The Ontario Lottery and Gaming Corporation (OLG) received a request pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

"I am requesting a copy of all audio recordings between myself and the Ontario Lottery and Gaming Corporation that took place between the year 2013 and 2021 from phone numbers that I have used which are as follows [a specified number] and [a specified number] and [a specified number]. I am also asking for copies of all letters and emails that I have sent to OLG including their responses to me from between the year 2013 – 2021."

[2] The OLG issued a decision granting full access to 27 Lotus Notes and 2 Outlook emails. It also granted full access to 5 of the 7 audio recordings. Portions of two audio recordings were not responsive to the request and were severed. In addition, the OLG indicated that no audio recordings were located for one of the specified numbers nor were any letters located.

[3] The requester, now the appellant, appealed the OLG's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC).

[4] During mediation, the appellant advised that he made a number of calls to OLG over the years and has also recorded some of the calls himself. He believes OLG is not providing all the audio recordings.

[5] The mediator conveyed the appellant's concerns to the OLG with respect to the appellant's belief that further audio recordings exist.

[6] The OLG agreed to conduct additional searches.

[7] During its first search, the OLG received a list of the appellant's list of audio recordings. The OLG issued a supplementary decision letter providing the appellant with two additional audio recordings.

[8] During its second search, the appellant provided three additional phone numbers that may have been used to call OLG. The OLG agreed to expand their scope and search for further audio recordings again. The OLG confirmed that they were not able to locate any further audio recordings.

[9] During its third search, the appellant provided the OLG with screenshots of the timestamps of the audio recordings he had in his possession. The OLG confirmed that they conducted another search using the screenshots but were not able to locate any further audio recordings.

[10] As further mediation was not possible, this appeal was transferred to the adjudication stage of the appeal process, where I decided to conduct an inquiry under the *Act*. I invited and received representations from the parties.¹

[11] For the reasons that follow, I find that the OLG conducted a reasonable search for records. The appeal is dismissed.

DISCUSSION:

[12] The sole issue in this appeal is whether the OLG conducted a reasonable search

¹ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction 7* and section 7.07 of the IPC's *Code of Procedure*.

for responsive records. In particular, the appellant claims that further audio recordings should exist.

[13] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.² If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the OLG's decision. If I am not satisfied, I may order further searches.

[14] The *Act* does not require the OLG to prove with absolute certainty that further audio recordings do not exist. However, the OLG must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.³ 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 (responsive) to the request.⁴

[15] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁵

Representations of the parties

[16] The OLG submits that it conducted a reasonable search for responsive records. In support of its position, the OLG submitted representations and an affidavit from its Senior Freedom of Information Specialist. The affidavit described the individuals involved in the search, where they searched, and the results of their search.

[17] The appellant submits that additional audio recordings exist. He explains that he compared his audio recordings with the audio recordings he received from the OLG and there were several missing audio recordings from the OLG. The appellant submits that the OLG's explanation that the missing calls may be from a blocked number or a private number is unacceptable. He submits that the OLG's central computer system has caller names and phone numbers in it as the OLG requests this information at the beginning of each call. He also submits that if someone calls from a blocked or private number, the OLG asks the caller for their phone number or inform the caller it needs to open a file to answer their questions.

[18] In addition, the appellant submits that he provided two specific phone numbers in which he called the OLG from and where he provided his name and phone number. However, the audio recordings for these two calls are missing. The first call was made on July 1, 2021 with the phone number ending in 7912. He explains that it was to claim

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2246.

a prize of \$12.00. As evidence of this phone call, he provided a photograph of the letter dated September 7, 2022 from the OLG and a photograph of the cheque demonstrating that the phone call occurred. The second phone call was made on September 12, 2016 with the phone number ending in 4184 (which he claims is not a blocked or private number). He submits that the OLG gave this phone number to the Sault Ste. Marie Police (the police) as the OLG complained that he uttered threats during this call.

[19] Moreover, the appellant alleges that the OLG deletes audio recordings when there is proof of fraud in them. He opines that the OLG destroy audio recordings that contain evidence of fraud to protect itself from civil actions and to deprive him of evidence.

Analysis and findings

[20] I am satisfied that the OLG conducted a reasonable search for records responsive to the appellant's request for the following reasons.

[21] The OLG has described the individuals involved in the search, where it searched, and the results of its search. In my view, the OLG's search was logical and comprehensive. I note that the OLG conducted a total of four searches. As noted above, 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.⁶ I am satisfied that the OLG has provided sufficient evidence to establish this.

[22] I have reviewed the appellant's representations, and I am not persuaded that he has established a reasonable basis for concluding that audio recordings for July 1, 2021⁷ and September 12, 2016 exist. As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.⁸ I accept that the appellant called the OLG on July 1, 2021 to submit his prize claim.⁹ I also accept that at some point the appellant received correspondence from the police as demonstrated by the photograph of the envelope from the police. However, I note that the photograph does not indicate the date when the envelope was sent.

[23] In any event, I accept the OLG's explanation that calls from a private or blocked phone number and where the caller refuses to verify their identity are saved as "anonymous" in its call system. I note that the OLG identified 14 phone calls originating from the appellant but they were made from private or blocked phone numbers.¹⁰ As

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ I note that the appellant's representations states April 1, 2021 but this must be a typo as the OLG has provided him with the audio recording for that date.

⁸ Order MO-2246.

⁹ The OLG's letter of September 7, 2022 stated that he made the prize claim on July 1, 2021.

¹⁰ Paragraph 30 of the Affidavit.

such, these 14 phone calls could not be retrieved using the phone numbers provided by the appellant in his request. I also note that the OLG conducted three additional searches during mediation. These searches involved specifically seeking records related to three additional phone numbers. As I accept the OLG's explanation that it does not delete audio recordings, the only possible and logical explanation for why the OLG is not able to locate the two missing audio recordings is that the appellant made those calls with a phone number he has not provided to the OLG. I accept the OLG's explanation that its call platform system can only be searched using a telephone number.¹¹

[24] For the reasons above, I find that the OLG conducted a reasonable search for responsive records.

ORDER:

I uphold the OLG's search as reasonable and dismiss the appeal.

Original Signed by: _____
Lan An
Adjudicator

July 11, 2023

¹¹ Paragraph 19 of the OLG's representations.