



Information and Privacy
Commissioner/Ontario

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

ORDER P-941

Appeal P-9500085

Ontario Lottery Corporation



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ontario Lottery Corporation (the OLC) received a request for copies of three market research studies prepared for the OLC, as well as for a list of all the research that had been conducted with respect to the Sport Select lottery.

The OLC provided the requester with a copy of the Sport Select research list but denied access to the market research studies in their entirety based on the following exemptions contained in the Act:

- valuable government information - section 18(1)(a)
- economic and other interests - section 18(1)(c)

The requester appealed the denial of access.

A Notice of Inquiry was sent to the appellant and the OLC. Representations were received from counsel for the OLC only.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

The OLC claims that all three market research studies are exempt pursuant to section 18(1)(c) of the Act which states:

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;

To establish a valid exemption under this section, the OLC must successfully demonstrate a reasonable expectation of prejudice to its economic interests or competitive position arising from disclosure of the information contained in the market research studies.

The OLC has explained that one of its business activities is that of developing and marketing new lottery games for sale to the public. The OLC retains external consultants in order to identify the type of lottery games which will appeal to the public, what demographic groups will purchase certain lottery games, and what marketing and promotional activities will enhance the sale of these games. The records at issue in this appeal consist of three such market research studies, prepared by an external consultant. The OLC submits that the market research it commissions allows it to develop unique sales and marketing strategies for its various lottery products.

The OLC further states that the market in which it offers its various lottery games is becoming increasingly competitive. It has identified such activities as break-open tickets offered by various charities, casino gambling and the operation of bingo games and other gaming activities for charities as providing competition. Moreover, the OLC notes that there are also potential private sector competitors looking for entry into the gaming market, gaming via INTERNET being one example.

In his representations, counsel for the OLC states that the market research studies commissioned by the OLC would be of substantial value to persons or entities operating such other gaming activities or to individuals who offer consulting services to such entities. These other entities could use the market analysis data contained in the records to create and market other gaming activities which directly compete with the lottery products of the OLC. While it is true that the OLC holds a monopoly on operating provincial lotteries, based on the information provided in the affidavit of the Acting Vice-President of Marketing of the OLC, I am satisfied that the activities described above compete with the OLC for the same consumer dollar. Accordingly, I find that disclosure of the information contained in the market research studies could reasonably be expected to prejudice the competitive position of the OLC and therefore qualifies for exemption under section 18(1)(c) of the Act.

Because I have found that the records are properly exempt under section 18(1)(c) of the Act, it is not necessary for me to consider the application of section 18(1)(a).

ORDER:

I uphold the decision of the OLC.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 13, 1995