



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1158

Appeal P-9500630

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 appellant is a former employee of a service provider of the Ontario Lottery Corporation (the OLC). He submitted a request to the OLC for copies of all records in the custody and/or control of the OLC which pertain to his dismissal by his employer.

The OLC located a number of records and granted the appellant full access to them. The appellant appealed this decision to the Commissioner's office as he believes more records exist. In his letter of appeal, the appellant provided details of the specific information he believes to be missing. This information allegedly consists of two responses to two letters included in the records received by the appellant and a copy of a tape recording of a phone conversation between the appellant and an OLC employee.

During mediation, the OLC advised that one of these records was actually included in the records sent to the appellant, and identified that record by providing this office with a copy. With respect to two other records, the OLC indicated that it was not able to determine whether one record had ever existed. Although confirming that the tape recording existed at one time, the OLC indicated that it could not be located.

A Notice of Inquiry was sent to the appellant and the OLC. Representations were received from both parties. The OLC's representations consist of two affidavits sworn by the Terminal Network Administrator (the Network Administrator), and the Administrator of Security Operations North (the Security Administrator). The sole issue to be determined in this appeal is whether the OLC's search for responsive records was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

In his letter of appeal, correspondence with the Commissioner's office and representations, the appellant describes a number of records, some of which had not been referred to earlier, which he believes should exist and the basis for this belief. In addition to those referred to above, the appellant believes that written records of phone conversations between himself and the OLC "Hotline" should exist as well as letters or memoranda relating to a "possible harassment case".

Where a requester provides sufficient details about the records which he is seeking and the OLC indicates that such records do not exist, it is my responsibility to ensure that the OLC has made a reasonable search to identify any records which are responsive to the request. The Act does not require the OLC to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the OLC must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate all records responsive to the request.

As I indicated above, the OLC's representations consist of the sworn affidavits of the Network and Security Administrators. In their affidavits, these two individuals outline the steps taken by each of them to locate records responsive to this request.

The Network Administrator indicates that he is the primary liaison person with the appellant's employer. He states that all records pertaining to his department, including correspondence, reports and incident investigations with any parties including the appellant's employer, are maintained in filing cabinets at a specific location within the OLC building in Sault Ste. Marie.

The Network Administrator indicates that he and a Terminal Network Analyst reviewed the contents of every folder located in these filing cabinets, and did not restrict their search to only those pertaining to the appellant's employer. The Network Administrator confirms that all responsive records located in these filing cabinets were sent to the appellant, and that none of the records referred to by the appellant could be located.

The Security Administrator states that all calls to the OLC "Hotline" are taped for technical reasons. Once the technical problem is corrected, the tape is recycled. The Security Administrator confirms that a tape recording made of a conversation between the appellant and an OLC employee working on the "Hotline" was made, and was kept for a short time in order for the Security Administrator to listen to it to determine whether the nature of the conversation raised any concern. The Security Administrator indicates that the recording did not raise any concerns and the tape was placed in a filing cabinet to be reused for future taping. At this time a number of tapes were taken and then used by an investigator in the department.

The Security Administrator states that he and the investigator both searched their filing cabinets and attempted to locate the tape on which the appellant's conversation was recorded. The tape could not be located and the Security Administrator believes that the conversation was recorded over.

Having reviewed the affidavits provided by the OLC, I am satisfied that the search conducted in the office of the Network Administrator was reasonable in the circumstances. Further, I find the search conducted by the Security Administrator for the tape recording of the appellant's conversation was reasonable.

However, the appellant has provided some evidence that there may exist other records relating to written notes made of phone conversations, as well as other records which might exist in the offices of the Security Administrator. Some of this evidence was only provided in the appellant's representations, and was not specifically referred to in the Notice of Inquiry or otherwise made known to the OLC. However, the records which were provided to the appellant suggest that other records might possibly exist, specifically with respect to the appellant's contact with the OLC "Hotline".

The Security Administrator's affidavit only refers to a search for the specific tape recording of which he was aware due to personal involvement. There is no evidence that a full search was conducted for other types of records which might be responsive to the appellant's request. Accordingly, I am not satisfied that the OLC's search for records was reasonable in the circumstances of this appeal.

ORDER:

1. The OLC's search for records conducted in the office of the Network Administrator was reasonable in the circumstances, and this portion of the appeal is denied.
2. The OLC's search for a tape recording of the appellant's conversation with an OLC employee in the office of Security Operations North was reasonable in the circumstances, and this portion of the appeal is denied.
3. I order the OLC to conduct a further search, specifically in the offices of the Administrator of Security Operations North and in files kept in connection to the OLC's "Hotline" for written notes made of phone conversations, as well as other records which might exist in the offices of the Security Administrator, and to communicate the results of this search to the appellant in writing by **April 17, 1996**. If responsive records are located, I further order the OLC to provide an access decision to the appellant in the form contemplated by sections 26 and 29 of the Act, by **April 29, 1996** without recourse to a time extension.
4. In order to verify compliance with Provision 3 of this order, I order the OLC to provide me with a copy of any correspondence sent to the appellant pursuant to Provision 3 by **April 29, 1996**. These should be forwarded to my attention, c/o Information and Privacy Commission/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ April 2, 1996