



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

# **ORDER M-903**

**Appeal M\_9600352**

**Township of Thurlow**



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## **NATURE OF THE APPEAL:**

The Township of Thurlow (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for all documents relating to the sale of break open tickets, also referred to as “Nevada” tickets, and any documents submitted by or on behalf of a named bingo hall between January 1, 1992 and December 31, 1994, in which the name of a specific individual (the affected person) appears.

Pursuant to section 21 of the Act, the Township contacted the affected person who declined to consent to the disclosure of the requested information.

The Township then issued a decision in which it granted partial access to the records it identified as responsive to the request. The Township denied access to the remaining portions of the records based on the following exemption contained in the Act:

- invasion of privacy - section 14

The requester (now the appellant) appealed the Township’s decision.

The records consist of multiple copies of the forms listed below, completed and submitted on various dates. During the course of mediation, the appellant narrowed the scope of the appeal to include only the following information:

### **Application to Manage and Conduct a Nevada Ticket Lottery (Form NTL-A; 06140 (02/83)):**

- Certificate (page 2) - the name in full, title and signature(s), only if they relate to the affected person.

### **Nevada Ticket Lottery Report (Form NTL-R; 06141 (09/94) and 06141 (12/87)):**

- Certificate (page 2) - the name in full, title and signature(s), only if they relate to the affected person.

### **Notice of Deficiency (Form 06042(87)):**

- the name in full, only if it relates to the affected person.

### **Two letters, dated June 24, 1992 and July 16, 1992, from the Township’s Lottery Licencing Officer to the Ministry of Consumer and Commercial Relations:**

- the severed name and title of the individual to whom the letters were copied, only if they relate to the affected person.

A Notice of Inquiry was sent to the Township, the appellant and the affected person. Representations were received from the appellant only.

This appeal is very similar to Appeal Number M-9600288, which resulted in Order M-886. The same parties are involved, though in this case, the request relates to “Nevada” ticket lotteries, as opposed to bingo lotteries, as was the case in the earlier appeal. The appellant submits that because the issues addressed and the parties to Order M-886 are identical to those presently before me, the doctrine of issue estoppel operates so as to require the disclosure of the records at issue. I will address this argument below.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

In his representations, the appellant concedes that the information remaining at issue qualifies as the personal information of the affected person only. Based on my independent review of the records, I find that the affected person's name, signature and organization title which are contained therein qualify as her personal information.

### **INVASION OF PRIVACY**

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions in section 14(3) apply, the Township must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

In its decision, the Township claims that the disclosure of the information at issue is presumed to constitute an unjustified invasion of the personal privacy of the affected person under section 14(3)(d) of the Act, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to employment or educational history;

Neither the Township nor the affected person submitted representations on this issue. The appellant argues that the presumption found in section 14(3) does not apply in the circumstances

of this appeal because the records relate to the appellant's volunteer, rather than employment activities.

Included with the submissions of the appellant were several witness statements which were disclosed by the affected person in the course of a wrongful dismissal action brought by the affected person against the appellant's client. In these statements, the interviewees describe the affected person as a volunteer for various community organizations and charities in the community where she resides. I have reviewed the records and find that they do not describe the employment history of the affected person but, rather, her involvement as an unpaid volunteer with various community organizations. Neither do the records contain any information relating to the affected person's educational history. For this reason, I find that the presumption in section 14(3)(d) has no application to the records at issue. I also find that none of the other presumptions listed in section 14(3) have any application to the records.

The appellant submits that section 14(2)(d) of the Act (fair determination of rights) is a relevant consideration in this appeal. Section 14(2)(d) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant submits that the affected person and her former employer are parties to an action initiated by the affected person in the Ontario Court, General Division. The appellant has provided some background information describing the nature of the affected person's action and his need, as counsel to the defendant in the proceeding, for the information at issue. He also explains why, in addition to the discovery process which exists through the courts for the production of documents, he believes that access to this information under the Act will ensure that he has available all of the evidence which he requires in order to present a proper case. Finally, he states that the status of the legal action between his client and the affected person has not changed since the issuance of Order M-886 on January 8, 1997.

Having reviewed the records, I find that section 14(2)(d) of the Act is a relevant consideration weighing in favour of the disclosure of the information. The appellant is entitled through the discovery process in the court action to the disclosure of certain documents from the affected person. I find, however, that the information at issue in this appeal may not be accessible from the Township by the affected person and yet it may be of some assistance to the defendant in responding to the allegations raised by the affected person in her action. For this reason, in my view, the personal information is relevant to a fair determination of the appellant's rights within the meaning of section 14(2)(d).

Balancing the factors which favour the disclosure of the personal information against the factors favouring privacy protection, I find that in the circumstances of this appeal, the appellant has successfully established that the factors weighing in favour of disclosure, particularly that in section 14(2)(d), outweigh the privacy considerations of the affected person. Accordingly, I find

that the disclosure of the affected person's personal information which is described above would not constitute an unjustified invasion of her personal privacy and it should be disclosed to the appellant.

Because of the manner in which I have disposed of the records at issue, it is not necessary for me to address the application of the doctrine of issue estoppel in this order.

**ORDER:**

1. I order the Township to disclose the information remaining at issue in this appeal, as described above, to the appellant by **March 26, 1997**, but not before **March 21, 1997**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the Township to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ February 19, 1997