



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

ORDER P-1355

Appeal P_9600336

Ontario Lottery Corporation



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NATURE OF THE APPEAL:

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ontario Lottery Corporation (the OLC) for access to the names of the individuals who won the September 2, 1995 LOTTO 6/49 draw, as well as the winning numbers. The appellant claims that she had a verbal agreement with another individual to share the prize if their ticket won. The appellant maintains that this other individual won the lottery and that she is entitled to share in the winnings.

The OLC advised the appellant that four individuals - two from Ontario, one from Quebec and one from Western Canada - won the draw. The OLC stated that it could not release the names of the Ontario winners without their consent. It advised that the other winning tickets were sold by Loto-Quebec and Western Canada Lottery.

The appellant filed an appeal of this decision.

During the appeal, the OLC clarified that it was denying access to the names of the Ontario winners based on the exemption in section 21 of the Act (invasion of privacy). The OLC also confirmed that it did not have custody or control of the names of the winners from outside the province.

The OLC did advise the appellant that the individual with whom she allegedly had a verbal agreement to share her winnings was not a winner of the September 2, 1995 draw, nor of any other draw. In addition, the OLC directed the appellant to the relevant media publications which reported on the Ontario winners at the time the draw was made. Nonetheless, the appellant wished to proceed with the appeal.

This office sent a Notice of Inquiry to the OLC and the appellant. Representations were received from both parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I find that the names of the Ontario lottery winners constitute their personal information. The records contain no information relating to the appellant.

Section 21(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

The OLC relies on Orders P-180 and P-181 to deny access to the requested information. Order P-180 involved a request for access to the names and communities of lottery winners of \$10,000 or more. Order P-181 dealt with a request for access to the press releases pertaining to these winners. The OLC had denied access to the requested information in both cases. These decisions were upheld on appeal.

In finding that disclosure of the requested information would constitute an unjustified invasion of the personal privacy of the lottery winners, Commissioner Tom Wright considered that section 21(2)(e) of the Act was a relevant consideration weighing in favour of non-disclosure of the information. That is, he considered that the winners could be exposed unfairly to pecuniary or other harm. I find that this is also a relevant consideration in the present appeal.

In her submissions, the appellant has provided no information in support of disclosure of the requested information.

Having considered the factors in section 21(2) of the Act and all the other relevant circumstances of this case, I find that disclosure of the names of the lottery winners would constitute an unjustified invasion of the personal privacy of the winners. They are exempt from disclosure pursuant to section 21 of the Act.

CUSTODY AND CONTROL

The OLC maintains that it does not have custody or control of the information related to the winners from outside Ontario.

Section 10(1)(a) of the Act states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

the record or the part of the record falls within one of the exemptions under sections 12 to 22;

In Order 120, former Commissioner Sidney B. Linden outlined what he felt was the proper approach to determining whether specific records fell within the custody or control of an institution:

In my view, it is not possible to establish a precise definition of the words “custody” or “control” as they are used in the Act, and then simply apply those definitions in each case. Rather, it is necessary to consider all aspects of the

creation, maintenance and use of the particular records, and to decide whether “custody” or “control” has been established in the circumstances of a particular fact situation.

A number of orders have considered the issue of custody and control. All of these cases turn on the particular circumstances of the appeal in relation to the principles enunciated by former Commissioner Linden in Order 120. Similarly, this appeal must be decided on the basis of its particular facts.

The OLC submits that the following considerations identified in Order 120 are relevant in the present appeal:

- information on lottery prize winners in other provinces is collected by the staff of those lottery corporations - the OLC only collects personal information from prize winners of Interprovincial Lottery Corporation products, such as Lotto 6/49, sold in Ontario;
- the OLC does not have access to the official prize winner databases of other lottery jurisdictions;
- the OLC does not have the right of possession of official lottery prize winner databases of other jurisdictions;
- the OLC has no authority to regulate the use of prize winner information collected in other provinces;
- the OLC has not relied on the records of the other jurisdictions in any way; nor are the records integrated into other OLC records;
- the OLC has no authority to dispose of the prize winner information collected and controlled by other lottery jurisdictions.

The appellant has not made any submissions on the applicability of any of the factors listed in Order 120 to the circumstances of this appeal.

Based on the submissions of the OLC, I find that any records containing the personal information of the Lotto 6/49 prize winners sold by Loto-Quebec and Western Canada Lottery are not in the custody or under the control of the OLC. Accordingly, they are not accessible under the Act.

ORDER:

I uphold the decision of the OLC.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ March 4, 1997