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

ORDER PO-1763

Appeal PA-990263-1

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 and salary ranges of all the employees that work for the [OLC]" at its main office in Sault Ste. Marie.

The OLC granted access to a record revealing the classification and salary ranges for all of its employees at its main office. The OLC denied access to the names of the individual employees associated with each salary range pursuant to sections 65(6)3 (employment related matters in which the institution has an interest), 21(1) (unjustified invasion of personal privacy) and 18(1)(a) and (c) (economic interests of Ontario) of the Act. The OLC stated:

> . . . the Act does not cover this employment-related information and as such, does not compel the [OLC] to create an employment-related list. Further, if this information is covered by the Act, OLC believes that its disclosure would be an invasion of the privacy that its employees have come to expect and would negatively impact OLC's ability to retain staff in a competitive labour market. An exception under s. 18(1)(a) is also claimed because it is the OLC's position that such a list would have commercial value, and as such, is considered a corporate asset.

The appellant appealed the OLC's decision to this office.

I initiated the inquiry by sending a Notice of Inquiry to the OLC, which provided representations to me in response. In the circumstances, I found it unnecessary to invite representations from the appellant.

In its representations, the OLC stated that it was no longer relying on section 65(6)3 as a basis for withholding the records. As a result, only the exemptions at sections 21 and 18 remain at issue.

RECORD:

During the mediation stage of the appeal, the OLC indicated that although a specific record containing the names of its employees together with their respective salary ranges does not currently exist, it is willing and able to create such a list from its employee database for the purpose of this appeal. I will consider this list to be the record at issue in this inquiry.

ISSUES:

PERSONAL INFORMATION

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

The requested information consists of names of individuals together with a salary range for each individual. Although the information does not include the precise salary of these individuals, disclosure would reveal information relating to their remuneration. In the circumstances, I am satisfied that the requested information is "about" identifiable individuals within the meaning of the section 2(1) definition of "personal information".

INVASION OF PRIVACY

Introduction

Where a requester seeks personal information of other individuals, section 21(1) of the Act prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In the circumstances, the only exception which could apply is section 21(1)(f) which reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) states that despite section 21(3), a disclosure does not constitute an unjustified invasion of personal privacy if the information falls within one of three categories set out in paragraphs (a) through (c). In this appeal, section 21(4)(a) may apply. That section reads:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> > discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

OLC's representations

The OLC submits:

> Subsection 21(3) provides that certain types of information should be presumed to be an unjustified [invasion] of personal privacy. Subsection 21(4) states "despite subsection(3),"

> a disclosure would not constitute an unjustified invasion of personal privacy if it discloses the "classification, salary range and benefits or employment responsibilities of an individual who is or was an officer or employee of an institution."

The interpretation of both ss. 21(3) and (4) depend on s. 21(2). It provides factors the head "shall" consider. It is significant in this regard that s. 21(4) begins "despite subsection (3)" and not "despite subsections (2) and (3)". The legislature considered the inter-relationship of these sections. From reading the entire section, the head is required in all cases to address the relevant circumstances under s. 21(2). Subsection 21(4) provides certain circumstances in which the presumption under s. 21(3) does not apply. However, it is still necessary for the head to consider all the relevant circumstances in each case. This was recognized be [the] Commissioner in Order M-23 where he says "Generally speaking, if a record contains information of the type described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply." Where on balance disclosure is unjustified, the personal information should not be disclosed, regardless of whether it is listed under s. 21(4).

In the past, the Commissioner has permitted disclosure of names of identifiable individuals along with the information specified in s. 21(4)(a). These decisions stated "of an individual" meant of an identifiable individual in those particular circumstances. However, the key decision in this area is Order M-30. In that case, the requested information was the names of part-time summer employees. The City said it treated its relationship with its employees as confidential. The Commissioner rejected this submission in that case based on the following reason:

> As I see it, to accept the [City's] submission is to say that the public is not entitled to know the names of persons who are or have been employed by the [City], with salaries or wages paid for by tax dollars, to serve them and look after their interests.

He clearly takes into account s. 21(2)(a), the purpose of public scrutiny, in interpreting the section in that case. The Commissioner has followed this reasoning with respect to other employees of municipalities or bodies clearly publically funded [Orders M-23, M-30, M-220 and P-380].

This interpretation of "of an individual" is reasonable in those cases in the context of section 21(2) because:

- There is a clear public scrutiny rationale in relation to individuals employed as civil servants such as municipal employees (s. 21(2)(a)). There is an important accountability concern in such cases. Disclosure of information on such individuals is more likely to be for the purpose of public scrutiny.

- Those decisions related to specific positions of concern (e.g., Archivist or Records and Information Analyst at City of Toronto or CAO and Clerk for Town of Gravenhurst or summer employees at the City of Sudbury). This presents at least some prima facia reason for scrutiny. There may be a concern about those particular positions. Alternatively, it may

be reasonable to request the salary range of a particular individual where there is a concern regarding that individual.

- Section 21(2)(h) requires a head to take into account whether the information was supplied in confidence. Employees of a City have a lower expectation of privacy regarding their positions.

However, the same arguments cannot be made for disclosure of a list of names of all employees at [the OLC's main office] and their salary ranges:

- This is a blanket request for all names and salary ranges of employees at [the OLC's main office]. Such disclosure is not desirable for the purpose of subjecting the activities of the OLC to public scrutiny (s. 21(2)(a)). Such a blanket request is different than a request for the salary range of a particular individual where the purpose may be public scrutiny such as the appropriateness of the compensation of a particular individual. Moreover, it is different from requesting the salary range for a particular position or even the salary ranges for all of the various positions at the OLC.

- [The appellant] is not requesting the total amount spent on salaries at [the OLC's main office] nor the number of employees in each salary range. Either of such requests may illustrate a concern for general overall spending on salaries at the OLC. Instead, he is requesting the names of all employees and their salary ranges. This illustrates that there is another, nonBpublic purpose to the request which does not accord with the spirit or purpose of the Act.

- The employees of the OLC in many ways are more in the nature of employees of a private company. The OLC derives its funds from its operations in a highly competitive marketplace. It is structured as at arm's length from the government and it operates independently. Its employees enter into an employment relationship with the OLC which is very different from that of civil servants. Their employment relationship and its terms are treated as strictly confidential by both the OLC and the employees. It is very important to the employment relationship that this be the case. The OLC employees have a greater expectation of privacy than general public servants. This is a relevant factor under s. 21(2)(h) and generally (the list of factors in s. 21(2) is not exhaustive).

- There are no relevant considerations, including those listed in s. 21(2), which weigh in favour of such disclosure not being an unjustified invasion of personal privacy.

As a result, the names and salary ranges of all employees of the OLC at [its main office] should not be seen as required to be disclosed under section 21(4)(a). It is an unjustified invasion of personal privacy of the employees of the OLC under section 21(1)(f).

Analysis

Does section 21(4)(a) apply?

In my view, the requested information falls within section 21(4)(a), since it discloses the salary range of officers or employees of the OLC. The wording of section 21(4)(a) is clear, and I do not accept the OLC's argument that, in effect, it should be "read down" due to the particular status of the OLC and its employees. The OLC is designated as an institution in the Regulation 460 under the Act, and thus section 21(4)(a) applies to its employees' salary ranges just as it would to the same information about employees of any other institution under the Act.

The OLC suggests that former Commissioner Wright's comments in Order M-30 about the purpose of the municipal counterpart to section 21(4) indicate that the provision should be narrowed to exclude situations where there is a lesser need for public scrutiny. I do not accept this position. First, the Legislature could have used language to restrict the application of section 21(4) to "core" government institutions, which it did not. Second, the OLC's governing statute, the Ontario Lottery Corporation Act (OLCA), indicates the Legislature's desire for some degree of public scrutiny of the OLC's employment structures, including its salary ranges. Section 6(1) of the OLCA states:

> The [OLC] may, subject to the approval of the Lieutenant Governor in Council, establish job classifications, personnel qualifications, salary ranges and other benefits for its officers and employees and may appoint, employ and promote its officers and employees in conformity with the classifications, qualifications, salary ranges and benefits so approved [emphasis added].

Therefore, Commissioner's Wright's comments in Order M-30 do not suggest a different outcome in this appeal from that reached in Order M-30 and other similar cases.

To conclude, I find that section 21(4)(a) applies to the information at issue.

Can factors at section 21(2) override the application of section 21(4)(a)?

The OLC argues that even if section 21(4)(a) applies, the application of this section can be overridden by factors, either listed or unlisted, under section 21(2).

In Order P-237, former Commissioner Wright found that disclosure of information relating to an investigation into allegations of misconduct by police officers was presumed to be an unjustified invasion of those individuals' privacy under section 21(3)(b). However, after considering the factor weighing in favour of disclosure under section 21(2)(a) ("public scrutiny"), the former Commissioner determined that the section 21(3)(b) had been rebutted. Accordingly, he concluded that the section 21 exemption did not apply.

On judicial review in John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767, a majority of the Divisional Court quashed Order P-237. One aspect of the decision concerned the relationship among sections 21(2), (3) and (4), and the impact of a finding that one of the presumptions in section 21(3) was present. On this point, the court stated (at 783-784):

> Having found an unjustified invasion of personal privacy pursuant to s. 21(3)(b), and having concluded that none of the circumstances set out in s. 21(4) existed so as to rebut that presumption, the Commissioner considered both enumerated and unenumerated factors under s. 21(2) in order to rebut the presumption created by s. 21(3).
>
> The words of the statute are clear. There is nothing in the section to confuse the presumption in s.21(3) with the balancing process in s. 21(2). There is no other provision in the Act and nothing in the words of the section to collapse into one process, the two distinct and alternative processes set out in s. 21. Once the presumption has been established pursuant to s. 21(3), it may only be rebutted by the criteria set out in s. 21(4) or by the "compelling public interest" override in s. 23. There is no ambiguity in the Act and no need to resort to complex rules of statutory interpretation. The Commissioner fundamentally misconstrued the scheme of the Act. His interpretation of the statute is one the legislation may not reasonably be considered to bear. In purporting to exercise a discretion in the form of a balancing exercise, he gave himself a power not granted by the legislation and thereby committed a jurisdictional error.

Analogy to John Doe would suggest that as with section 21(3), the application of section 21(4) cannot be "overridden" or "rebutted" by factors under section 21(2). Any different interpretation could be construed as conflicting with John Doe.

In addition, section 21(4), as distinct from section 21(3), is not phrased as a "presumption"; rather, the section states that ". . .disclosure does not constitute an unjustified invasion of privacy . . ." This suggests that if section 21(4) applies, the information is conclusively not exempt under section 21, leaving no room for an argument that section 21(4) merely sets up a presumption which may be rebutted.

I also do not accept the OLC's argument that the opening words of section 21(4), which read "Despite subsection (3)", indicate that section 21(4) only removes the operation of section 21(3), but still leaves room for a conclusion that the information is exempt under section 21. Not all of the types of information captured by section 21(4) necessarily fall within the scope of section 21(3). For example, a salary range would not qualify as an individual's "employment history" under section 21(3)(d), nor is this information subject to any of the other presumptions under section 21(3). Therefore, in my view, section 21(4) should be read such that any information within its scope is necessarily not exempt under section 21, and the factors at section 21(2) cannot apply to such information.

In any event, even if the OLC's interpretation of section 21 were correct, the OLC has not persuaded me that this is an appropriate case in which section 21(2) factors favouring privacy would rebut section 21(4). First, for the reasons outlined above, I am not convinced that the OLC and its employees stand in a position so different from other municipal or provincial government institutions that public scrutiny of the OLC's salary ranges is not necessary or desirable.

Second, the section 21(2)(h) factor ("supplied in confidence") could not apply in the circumstances, since the information in question was not "supplied" to the OLC at all, but was created by it in the course of administering its employment functions.

Third, the fact that the request in this case is for all salary ranges, rather than for specific employees, does not distinguish this case from others in which section 21(4) or its municipal counterpart were found to apply. Section 21(4) does not make a distinction between a request for a salary range of a specific individual and a request for the same information about a group of individuals.

The fact that the appellant may have "another, non-public purpose to the request" has no bearing on whether access should be granted under the Act. Section 4(1) grants a right of access to records not subject to an exemption, without qualification. A requester is not required to justify, or provide reasons for, his or her request [see Order M-96, upheld on judicial review in O.S.S.T.F., District 39 v. Wellington (County) Board of Education (February 6, 1995), Toronto Doc. 407/93 (Ont. Div. Ct.), leave to appeal refused (October 16, 1995) Doc. M15357 (C.A.)]. The only limitation to this principle is that access may be refused where the institution is of the opinion that the request is "frivolous or vexatious", a claim that the OLC has not made in this case.

Conclusion

In the circumstances, based on the application of section 21(4), I conclude that disclosure would not constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(f) of the Act and, therefore, the information at issue is not exempt under section 21.

ECONOMIC INTERESTS

Introduction

The OLC claims that sections 18(1)(a) and (c) apply to the information at issue. Those sections read:

> A head may refuse to disclose a record that contains,
>
> (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

Section 18(1)(a)

In order for a record to qualify for exemption under section 18(1)(a) of the Act, it must be established that the information contained in the record:

1. is a trade secret, or financial, commercial, scientific or technical information; **and**

2. belongs to the Government of Ontario or an institution; **and**

3. has monetary value or potential monetary value [Orders 87, P-581].

In Order M-654, Adjudicator Holly Big Canoe stated with respect to part 3 of the test for exemption under the municipal counterpart to section 18(1)(a):

> The use of the term **"monetary value"** in section 11(a) requires that the information itself have an intrinsic value. The purpose of section 11(a) is to permit an institution to refuse to disclose a record which contains information where circumstances are such that disclosure would deprive the institution of the monetary value of the information . . . [emphasis in original].

The OLC submits:

> A list of the names and salary ranges of employees provides data on the labour costs (i.e., "overhead" and "operating costs") of the OLC. As such, it is financial information under section 18(1)(a).
>
> Only the OLC has specific information as to its employees and their salary ranges. In fact, a list such as the one requested is not currently in existence. The only manner in which the list could be provided is for the OLC to generate it from its personnel database. It is or will be created by the OLC as a result of its contractual relationship with the employees. As a result, the list belongs to the OLC.
>
> Information under section 18(1)(a) must have an intrinsic value. Prior orders have taken into account the nature of the market for the information. There does not necessarily have to be an intention by the institution to sell the information. It falls [within] s. 18(1)(a) if it is a corporate asset and saleable. For example, in Order P-636, the Commissioner found that the OLC's list of addresses for all Sports Select Lottery outlets fell under s. 18(1)(a) as it had potential monetary value. There was no evidence that the OLC intended to sell this list. A list of the names of the employees of the OLC and their salary ranges provides valuable information on these individuals. This is particularly true in a small community such as Sault Ste. Marie where the list of names can be readily matched with the phone numbers and addresses of the individuals.
>
> Lists of names, addresses and salary ranges are valuable information to companies wishing to hire employees with specialized experience (such as in the information technology area). It is also valuable to individuals or companies marketing products or services. The proliferation of telemarketing companies is testament to this fact. They rely on such lists to target their marketing efforts. Such lists may be sold. In fact, the Canadian Marketing Association (CMA) has created Guidelines for List Practice, a set of best practice

> principles for the use of owners and managers of lists to responsibly negotiate the use of their customer data.
>
> In this case, the requester is a sales representative in Sault Ste. Marie for [a named firm] which specializes in marketing [a named product]. It is a reasonable inference that he will either use the names and salary ranges of OLC employees as the basis for calling the employees himself to market his services or will sell the list to others for the same purpose.
>
> As a result, the list of names and salary ranges has a monetary value. It is a valuable corporate asset. The OLC will not sell this list to marketers because the OLC respects its relationship with its employees. However, it could do so. Disclosure of this list would take away the asset from the OLC or destroy its value. Its disclosure would therefore be exempted under s. 18(1)(a).

In my view, the OLC's section 18(1)(a) claim fails because the information in question does not "belong" to the OLC in the sense that this term is used in the Act, nor has the OLC demonstrated that the information has "monetary value" in the sense described in Order M-654.

With reference to the meaning of the phrase "belongs to", Assistant Commissioner Tom Mitchinson stated in Order P-1281:

> The Ministry submits that the database, the data elements, and the selection and arrangement of the data in the database belong to the Government of Ontario or an institution. The Ministry argues that the term "belongs to" in section 18(1)(a) denotes a standard less than ownership or copyright, but does not clearly articulate what that standard is or how it is applicable here. If these words do mean "ownership," the Ministry argues that, quite apart from any consideration of copyright, it has ownership by virtue of its right to possess, use and dispose of the data as outlined in the various statutes authorizing its collection, retention and use under the [Ontario Business Information System (ONBIS)] system, as well as by virtue of its physical possession of the database and its control of the access and use of the ONBIS system.
>
> I do not accept these submissions. In my view, the fact that a government body has authority to collect and use information, and can, as a practical matter, control physical access to information, does not necessarily mean that this information "belongs to" the government within the meaning of section 18(1)(a). While the government may own the physical paper, computer disk or other record on which information is stored, the Act is specifically designed to create a right of public access to this information unless a specific exemption applies. The public has a right to use any information obtained from the government under the Act, within the limits of the law, such as laws relating to libel and slander, passing off and copyright, as discussed below.

> If the Ministry's reasoning applied, all information held by the government would "belong to" it and, presumably, the rights to use information belonging to government could be restricted for this reason alone . . .

Similarly, in his earlier Order P-1114, the Assistant Commissioner stated:

> Individuals, businesses and other entities may be required by statute, regulation, by-law or custom to provide information about themselves to various government bodies in order to access services or meet civic obligations. However, it does not necessarily follow that government bodies acquire legal ownership of this information, in the sense of having copyright, trade mark or other proprietary interest in it. Rather, the government merely acts as a repository of information supplied by these external sources for regulatory purposes.

The Assistant Commissioner has thus determined that the term "belongs to" refers to "ownership" by an institution, and that the concept of "ownership of information" requires more than the right simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trade mark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business to business mailing lists (Order P-636), customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, there is a quality of confidence about the information, in the sense that it is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others. [See, for example, Lac Minerals Ltd. v. Int. Corona Resources Ltd. (1989), 61 D.L.R. 4th 14 (S.C.C.), and the cases discussed therein].

In my view, a list of the names of employees together with their salary ranges clearly different in nature from the type of information described above. The OLC cannot be said to have acquired an ownership interest in the information in an intellectual property or confidential business information sense. There is nothing in the material before me to indicate that the OLC has expended money or applied skill and effort to develop the information, or that there is an additional "value-added" component to it, which might suggest that it "belongs to" the OLC. While this information is not now generally known, it cannot be said to have the necessary quality of confidence about it where: (1) the Act elsewhere specifically contemplates that this type of information may be disclosed without constituting an unjustified invasion of the privacy of the individuals to whom it relates; and (2) the OLC has otherwise failed to demonstrate that it will be deprived of any monetary value in the information as a result of its disclosure.

On this basis, section 18(a) cannot apply. This conclusion is consistent with the purpose of the "economic interests of government" exemption as articulated in Public Government for Private People: The Report of

the Commission on Freedom of Information and Individual Privacy/1980, vol. 2 (Toronto: Queen's Printer, 1980) (at pp. 312-313, 318-319):

> It is accepted that a broad exemption for all information relating to businesses would be both unnecessary and undesirable. Many kinds of information about business concerns can be disclosed without harmful consequence to the firms. Exemption of all business-related information would do much to undermine the effectiveness of a freedom of information law as a device for making those who administer public affairs more accountable to those whose interests are to be served. Business information is collected by governmental institutions in order to administer various regulatory schemes, to assemble information for planning purposes, and to provide support services, often in the form of financial or marketing assistance, to private firms. All these activities are undertaken by the government with the intent of serving the public interest; therefore, the information collected should as far as is practicable, form part of the public record.
>
> . . . . .
>
> There are a number of governmental institutions (in particular, Crown corporations) engaged in the supply of goods and services on a competitive basis. For example, the activities of the Ontario Urban Transportation Development Corporation Limited have been briefly described in a Commission research paper. The purpose of establishing the corporation was to create a publicly-funded corporate vehicle which could assume development risks associated with the improvement of conventional public transportation technologies and the design of new high quality transit systems. While the Corporation's primary objective is to assist in meeting the needs of the province of Ontario for developments in the field of transportation technology, it is also hoped that the corporation will be able to market its expertise and products on a competitive basis in other jurisdictions. In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute.

Thus, the thrust of this exemption is to protect the government's competitive position in the marketplace, and is not designed to shield from public scrutiny information about the administrative or employment activities of institutions.

Section 18(1)(c)

Section 18(1)(c) provides institutions with a discretionary exemption which can be claimed where disclosure of information could reasonably be expected to prejudice an institution in the competitive marketplace, interfere with its ability to discharge its responsibilities in managing the provincial economy, or adversely affect the government's ability to protect its legitimate economic interests (Order P-441).

The OLC submits:

An important consideration regarding the applicability of s. 18(1)(c) is whether the disclosure of the information would provide competitors with valuable information and place them in a preferable position. Relevant factors include the nature of the market facing the institution (such as the degree of competitiveness), the potential effect of disclosure on future negotiations or business dealings and whether it is reasonably likely competitors would use the information to the disadvantage of the institution. In Order P-1190 (upheld on judicial review in Ontario Hydro v. Ontario (Information and Privacy Commissioner), [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), the Commissioner stated:

> In my view, the purpose of section [18(1)(c)] is to protect the ability of institutions such as Hydro to earn money in the market-place. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.

In this case both the market for the services provided by the OLC (that is, competition in the casino and gaming industry) as well as the general market for labour facing the OLC give rise to a reasonable expectation that the disclosure of this information would prejudice the OLC in its competitive marketplace and adversely affect its ability to protect its legitimate economic interests.

The OLC operates in a highly competitive market for gaming and lottery activities. The Commissioner has recognized that disclosure of certain information by the OLC would prejudice the economic interests and harm its competitive position.

The labour market for personnel with valuable experience in the gaming industry is extremely tight. This is particularly true in the Sault Ste. Marie area.
A list of the names of employees and their salary ranges would be very valuable to the OLC's competitors. They could use the information to hire away personnel with valuable experience in the gaming industry. This would harm the OLC's ability to provide services and compete for business. It would also provide the OLC's competitors with an unfair advantage as they do not have to release similar information.

In addition, the OLC would be placed at a competitive disadvantage in the general labour market in Sault Ste. Marie. Other industries would be able to ascertain what the OLC is paying for its skilled and/or experienced employees (such as in the area of information technology) and hire them away.

> The OLC relies on its experienced personnel to enable it to maintain its business on a competitive basis as well as to develop new gaming opportunities. The OLC's personnel are its key competitive asset as it operates in a technology-based and marketing-driven industry. Loss of such employees would harm the OLC's position in its competitive industry.

Also, in support of its representations, the OLC provided an affidavit from one of its officers.

I do not accept the OLC's submission that disclosure of the names of its employees in this context could reasonably be expected to prejudice its economic interests or competitive position. The record does not reveal precisely what amounts the OLC pays its employees, only broad ranges. Thus, it would be difficult for a competitor to devise a targeted strategy of "hiring away" an employee, without more accurate information. Further, with reference to my discussion under personal privacy above, the Legislature has indicated its intention that public scrutiny of salary ranges of the OLC's employees is desirable, by virtue of section 21(4)(a) of the Act and section 6(1) of the OLCA. I see no exceptional circumstances in this case which would bring it outside the norm.

To conclude, I find that the information at issue is not exempt under section 18(1)(a) or (c) of the Act.

ORDER:

1. I order the OLC to disclose to the appellant the names of its employees at its main office in Sault Ste. Marie and their associated salary ranges no later than **March 27, 2000**.

2. In order to verify compliance with provision 1, I reserve the right to require the OLC to provide me with a copy of the material disclosed to the appellant.

Original signed by: March 6, 2000
David Goodis
Senior Adjudicator