



Information and Privacy
Commissioner/Ontario

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

INTERIM ORDER PO-1865-I

Appeals PA-000314-1 and PA-000315-1

Alcohol and Gaming Commission of Ontario



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NATURE OF THE APPEAL:

The Alcohol and Gaming Commission of Ontario (the AGCO) received two requests from the media under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the following of the 1999 audit: Alcohol and Gaming Commission of Ontario Investigations (Appeal PA-000314-1) and the 1999 audit: Electronic Gaming (Appeal PA-000315-1).

In Appeal PA-000314-1, the AGCO granted partial access to the requested record and denied access to the remainder of the information pursuant to sections 14(1)(c), 14(1)(g) and 14(1)(i) of the *Act*.

In Appeal PA-000315-1, the AGCO granted partial access to the requested record and denied access to the remainder of the information pursuant to section 14(1)(c) of the *Act*.

The requester, now the appellant, appealed the AGCO's decisions to deny access under the *Act*.

During mediation, the AGCO agreed to release the following information:

Appeal PA-000314-1

- the Table of Contents in its entirety
- all of the headings including the sub-headings
- the last paragraph on page 3
- the paragraph under the heading "Conclusion" on page 18

Appeal PA-000315-1

- all of the headings including the sub-headings
- the first paragraph under the heading "Overall Conclusion" on page 1

In both cases, the AGCO issued a revised decision letter to the appellant enclosing a copy of the records including the above information. Accordingly, these portions of the records are no longer at issue in these appeals.

I sent a Notice of Inquiry to the AGCO initially. The AGCO submitted representations in response to this Office.

ISSUE:

The AGCO has requested that I withhold all of their representations from the appellant. The purpose of this interim order is to rule on this request.

DISCUSSION:

Sharing of representations procedure

[IPC Order OP-1865-1/February 2,2001]

In the Notice of Inquiry cover letter to the AGCO, I stated:

The representations you provide to this office may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The Inquiry Procedure document states:

In its representations, the first party must indicate clearly, and in detail:

- Which information in its representations, if any, the party wishes the Adjudicator to withhold from the second party; and
- Its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and

- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

AGCO's confidentiality request

The AGCO addressed the confidentiality of representations in its submissions as follows:

The Alcohol and Gaming Commission of Ontario provides these submissions to the Information and Privacy Commissioner in confidence. The Alcohol and Gaming Commission of Ontario does consent to any part of these submissions being shared with the appellant.

FINDINGS:

Further opportunity to make submissions on the sharing of representations

Based on the *Inquiry Procedure at the Adjudication Stage* document, parties are not permitted a further opportunity to make submissions on the sharing of representations issue, barring exceptional circumstances. The opportunity to do so is provided at the time the original representations are made. There are no exceptional circumstances which would take this case outside the norm. As a result, this interim order constitutes my decision on this issue, and I will not be providing the AGCO with an additional opportunity to make submissions in this regard.

The AGCO's representations

Having reviewed the representations of the AGCO and the Inquiry Procedure set out above, I find that the AGCO's statements on the sharing of representations do not fit within any of the confidentiality criteria.

The AGCO's generalized claim of confidentiality is insufficient to establish a basis for my withholding these representations. The AGCO did not refer to any of the confidentiality criteria mentioned above, and I am unable to find any information in the AGCO's representations that would qualify to be withheld under the criteria.

The first part of the representations refers to background information of these appeals. This information is already known to the appellant.

The rest of the representations that I have decided to disclose to the appellant consist of generalized statements pertaining to the duties and responsibilities of the AGCO under the *Gaming Control Act, 1992* and the *Criminal Code*. The AGCO's background information on the Investigations Branch and the Electronic Gaming Department are also generalized discussions referring to these organizations' legislative duties. I would assume that most, if not all, of this information would be available to the public.

The AGCO's submissions on the actual exemptions do not reveal the substance of either of the records at issue.

I find that there is nothing in the AGCO's representations that should be withheld under any of the confidentiality criteria.

Procedure

I have attached to the AGCO's copy of this interim order a copy of its representations in the form in which they will be sent to the appellant. I intend to send this copy of the representations to the appellant, together with a Notice of Inquiry, no earlier than **February 16, 2001**.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ February 2, 2001