



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2135

Appeal PA-020342-1

Ontario Lottery and Gaming Corporation



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NATURE OF THE APPEAL:

The Ontario Lottery and Gaming Commission (the Gaming Commission) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to a named individual who was purported to have won in the LOTO 6/49 draw on November 11, 1992 or November 14, 1992.

The Gaming Commission responded as follows: “[a] search of our winners’ database indicates that no records exist under the name of [named individual].”

The requester appealed the decision, as she believes that the record exists.

I provided a Notice of Inquiry to the appellant and the Gaming Commission and informed them that an oral inquiry will be held to determine whether the Gaming Commission had conducted a reasonable search for records responsive to the request. The inquiry was conducted via teleconference. Present with the appellant were her legal counsel and a witness. Present on behalf of the Gaming Commission were its Information and Privacy Co-ordinator, its legal counsel and a supervisor with the Gaming Commission’s Prize Office. Both the appellant and the Gaming Commission provided oral representations.

DISCUSSION:

REASONABLENESS OF SEARCH

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

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution’s response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

THE APPELLANT:

The appellant stated that she believes that the named individual (the affected person) was the winner of a LOTTO 6/49 lottery draw in November 1992. The appellant stated that she contacted the Gaming Commission on two occasions and spoke to two employees. The appellant stated that one employee confirmed to her that the affected person’s name was on the winners’ list and gave her another telephone number to call in order to obtain the amount of the win. The appellant telephoned the number she was given and spoke to the other employee who told her that he would look for the information and send it to her. The appellant did not receive the information. She attempted to contact the two employees again but did not succeed. The appellant claims that both these employees indicated to her that the information, which she was seeking, was “public information”.

The appellant stated that she went to a specified library where an employee located the information but she was precluded from obtaining it as the librarian advised her that it was confidential.

The appellant indicated that the librarian at another specified library also located the information for her but she was not able to obtain a copy of the printout. The appellant stated that the librarian informed her that the names of the winners were also published in a magazine *Win*.

The appellant stated that she also relies on an entry from the affected person's diary, which indicated that on April 26, 1993, he went to pick up his winnings at a local store. A copy of this diary entry was provided to this office. The appellant confirmed that she was seeking information about a major win, i.e. in excess of \$10,000.

The appellant submitted that information confirming the win must exist and that this information is "public information". The appellant went on to say that the fact that the names of the winners were published in a magazine meant that it was public information and she should be allowed access to it.

The witness who appeared for the appellant confirmed that she is an employee at one of the specified libraries and that she had tried to assist the appellant in her search for information. The witness stated that she had searched the National Library of Canada on the Internet and found *Win! Magazine*, which was published between 1990 and 1996. She advised the appellant to contact the Gaming Commission for back issues. The witness stated that she did not see the name of the affected person at any time during her search for the information.

Counsel for the appellant stated that there was substantial basis for his client's belief that the record exists and he reiterated the statements made by her.

THE GAMING COMMISSION:

The Freedom of Information and Privacy Co-ordinator (the Co-ordinator) stated that the Gaming Commission conducted numerous searches, initially in response to the request and again during the mediation stage of this appeal and no record was located. The Co-ordinator explained that there are two areas within the Commission's Prize Office where information about major wins is recorded – the major winners database and the manual log.

The Co-ordinator stated that the major winners database dates back to the launch of the first lottery game in 1975. A major prize means any win of \$10,000 or more. In 1998 the major prize level was increased to \$50,000. The Co-ordinator clarified that if a jackpot or second prize is less than \$50,000 but \$10,000 or more, it is still entered in the database. The information in the database is retained indefinitely.

The Co-ordinator stated that the manual log contains information about major winners who have won a jackpot or a second prize. The Co-ordinator explained that Lotto 6/49 jackpots and second prizes are generally over \$50,000 but where the amount is less, the prizewinner's name is still recorded in the manual log, provided that the amount is not less than \$10,000. The Co-ordinator stated that entries to the manual log are made on a game and draw date basis.

The supervisor confirmed that she was a supervisor in the Gaming Commission's Prize office and that she had conducted the searches for the information. The supervisor stated that she had searched both the database and the manual log. She stated that separate searches were conducted of the major winners database under the affected person's known names and various combinations of his first and last names and his two middle names. The supervisor stated that no records were found. The supervisor stated that a prizewinner has up to one year to claim the prize.

The supervisor went on to say that the manual log for Lotto 6/49 major winners was also searched for winners in the two November draws. The searches were conducted under the affected person's known names and combinations of his first and last names and his two middle names. The supervisor stated that no records were found.

The Co-ordinator and the supervisor both pointed out that only prizes up to \$200 could be collected from corner or convenience stores. The names of these winners would not be recorded. They also pointed out that the names of prizewinners of amounts under \$10,000, which are claimed at the Prize Office, are also not recorded.

With respect to the *Win! Magazine*, the Co-ordinator confirmed that the Gaming Commission produced a bi-monthly magazine that profiled some of the interesting stories about prizewinners and that the names of these individuals came from the database. The Gaming Commission undertook to provide me with copies of the magazine dated March/April 1993, May/June 1993 and July/August 1993. The Co-ordinator pointed out that these issues do not show the name of the affected person as a major prizewinner.

The Gaming Commission's counsel stated that the two areas containing information on major prizewinners had been searched numerous times and using various combinations of the names provided by the appellant. No record was found. Counsel submitted that had the affected person won a major prize, his name would have been recorded in the database and the manual log. Both the Co-ordinator and counsel submitted that the Gaming Commission had conducted extensive searches for a responsive record and that the searches had been reasonable.

FINDINGS:

I have carefully considered all the relevant submissions submitted by the parties. The appellant has argued that the information should be "public" and that therefore, she should be allowed access to it. The issue before me is not whether the record requested is a "public record" or whether she should be granted access to it. The issue is whether the institution has conducted a

reasonable search of the record. The appellant has also presented arguments as to why the record should exist. In this regard, I have carefully considered the evidence presented by the appellant, her counsel and the witness. I find no reasonable basis that can support the appellant's position.

As I have indicated previously, my responsibility is to ensure that the institution has made a reasonable search to identify all responsive records. The *Act* does not require the institution to prove with absolute certainty that records do not exist. However, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

I am satisfied that the Gaming Commission provided clear and detailed evidence on the numerous searches conducted in order to locate the records. This included information on the criteria for major prizewinners, and the database and manual log where their information is recorded. The Gaming Commission clarified that information about winners of prizes in amounts less than \$10,000 is not recorded even where such a prize is claimed at the Gaming Commission's Prize Office.

The Gaming Commission's searches were conducted by an experienced and knowledgeable employee who was familiar with the type of record being sought. The searches were conducted in the two areas where the record was most likely to be located. In addition, the Gaming Commission expended a reasonable effort to try and locate any records, which may be responsive to the request. I note that it conducted searches against the known names of the affected person and combinations of both the known names and his two middle names. The Gaming Commission provided copies of *Win! Magazine* to me. I have reviewed all the copies provided and I find that they do not contain any of the names of the affected person.

Based on all of the above, I find that the searches conducted by the Gaming Commission were reasonable.

ORDER:

I dismiss the appeal.

Original signed by: _____
Mumtaz Jiwan
Acting Adjudicator

_____ March 31, 2003