



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2177**

**Appeal PA-030038-1**

**Alcohol and Gaming Commission of Ontario**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Alcohol and Gaming Commission of Ontario (the AGCO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for the contents of an investigation file relating to a complaint initiated by the requester about the sale of break open lottery tickets by a named vendor. The AGC located a number of responsive records and initially denied access to them, claiming the application of the invasion of privacy exemption in section 21(1) of the *Act* and the law enforcement exemption in section 14(1)(c) of the *Act*.

The requester, now the appellant, appealed the AGCO's decision. During the mediation stage of the appeal, the appellant agreed to narrow the scope of her request to include four records, designated as Records 12, 15, 21 and 22. The AGCO revised its decision with respect to these records, and applied the discretionary exemption in section 13(1) (advice or recommendations) to Record 22, the law enforcement exemption in section 14(2)(a) to Records 12, 15 and 21 and the mandatory invasion of privacy exemption in section 21(1) to Record 21.

Further mediation was not possible and the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the AGCO initially, as it bears the onus of demonstrating the application of the exemptions claimed to the records. Because Records 12 and 15 appeared to include the personal information of the appellant, I invited the AGCO to make submissions on the possible application of section 49(a) of the *Act*, as well as section 14(2)(a). The AGCO made submissions, the majority of which were shared with the appellant, along with a copy of this Notice. The appellant also made submissions in response to the Notice.

## **RECORDS:**

The records at issue consist of Record 12, a seven-page "investigation report"; Record 15, a one-page "compliance visit report"; Record 21, a one-page criminal records check; and Record 22, a one-page "disposition" report.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemption in section 21(1) applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

The AGCO submits that the records contain the personal information of the appellant, as well as that of the owners of the store who were the subject of the investigation (the affected persons). It states that Records 12 and 15 contain the appellant's name and address, along with other information about her that she provided to its investigator. The AGCO also indicates that Record 12 contains the personal information of the affected persons, including their names, address, marital status and ethnic origin and that Records 15, 21 and 22 also contain information which qualifies as the personal information of the affected persons under section 2(1).

The AGCO also takes the position that Record 15 contains the personal information of the Gaming Compliance Officer who participated in the investigation as it includes the “views or opinions” of this individual, thereby satisfying paragraph (g) of the definition of personal information in section 2(1). I cannot agree with this submission. In my view, the references to the affected persons in the document prepared by the Gaming Compliance Officer are strictly the personal information of the affected persons. The Officer’s views or opinions contained in the report are not personal to her but rather represent her professional or employment-related opinion on the activities of the affected persons. I find that the information contained in Record 15 does not qualify as the personal information of the Gaming Compliance Officer within the meaning of section 2(1).

Based on my review of the content of the records at issue, I find that Records 12 and 15 contain the personal information of the appellant and the affected persons while Records 21 and 22 contain only the personal information of one or more of the affected persons.

#### **LAW ENFORCEMENT REPORT/DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION**

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the *Act*, the AGCO has the discretion to deny an individual access to their own personal information in instances where the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that information. [my emphasis]

The AGCO claimed the exemption in section 14(2)(a) to Records 12 and 15. This section reads:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

Should I find that this exemption applies, I must also satisfy myself that the AGCO has properly exercised its discretion under section 49(a) in denying access to these records.

The AGCO submits that Records 12 and 15 fall within the ambit of the term “law enforcement report”. In order for a record to qualify for exemption under section 14(2)(a) of the *Act*, the AGCO must satisfy each part of the following three part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order 200 and Order P-324]

***Are Records 12 and 15 Reports?***

The AGCO submits that:

Record 12 sets out formally the complaint that was made, the steps that were taken in order to investigate the complaint, it considers what actions might be appropriate and comes to a conclusion with respect to actions that should be taken in the particular case. As a result, Record 12 is a report.

...

Record 15 is a report prepared by a Lottery Licensing/Compliance Officer employed by the City of Toronto. . . . Record 15 sets out formally the complaint made and the steps that were taken in order to investigate the complaint. It recounts information that was gathered as part of the inspection carried out by the Lottery Licensing/Compliance Officer. As a result, Record 15 is a report.

The word “report” means “a formal statement or account of the results of the collation and consideration of information”. Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I].

In my view, both Records 12 and 15 represent a formal statement prepared by their authors following the collation and consideration of the information uncovered in the course of their investigations or inspections. I find that while they include factual information, they also contain conclusions and analysis of the fact situation as discerned in the investigation and inspection process. Accordingly, I find that both Records 12 and 15 may properly be considered to be “reports” for the purpose of section 14(2)(a).

***Were Records 12 and 15 prepared in the course of law enforcement by an agency with the function of enforcing and regulating compliance with a law?***

The AGCO also takes the position that Records 12 and 15 were prepared in the course of “law enforcement”. With respect to Record 12, the AGCO submits that:

An OPP officer prepared record 12. The OPP officer is a peace officer seconded to the AGCO and has all the duties and privileges assigned to him under the *Police Services Act*. The investigation had the potential to result in charges under the *Provincial Offences Act* for a violation of the *Gaming Control Act* (the *GCA*) or administrative action under the *GCA* to revoke or refuse to renew a registration. There was also potential for steps to be taken against the break open ticket

licensee. In a number of previous orders, the Information and Privacy Commissioner has recognized that the AGCO has the function of enforcing and regulating compliance with law as did its predecessors the Gaming Control Commission and the Liquor Licence Board of Ontario (see Orders PO-1889, P-1587 and P-1399). As a result, it may be seen that record 12 was prepared during the course of law enforcement by an agency that has the function of enforcing and regulating compliance with a law.

With respect to Record 15, the AGCO submits that:

As a result of the investigation, the City of Toronto was in a position to recommend to the AGCO that charges be laid under the *GCA*. Further, the City of Toronto, as the licensing authority that issued the licence to the charity selling break open tickets at [the store operated by the affected persons] had the option to suspend or revoke the licence if the licensee failed to oversee the manner in which the tickets were being sold. Thus, record 15 was prepared during the course of law enforcement by a municipal licensing authority.

The Information and Privacy Commissioner has recognized that a municipal licensing authority has a role in enforcing a law. In Order PO-1889, Adjudicator Donald Hale wrote:

Based on the submissions of the AGCO, I am satisfied that the records were prepared in the course of a law enforcement investigation and that the City of Brantford, in its capacity as the issuer of the lottery licences in question to the charities involved, was acting as an agency which has the function of enforcing and regulating a law, in this case the *GCA*.

. . . the AGCO submits that the municipal council of the City of Toronto has the function of regulating and enforcing compliance with law.

The AGCO also provided me with a lengthy description of its role in the regulation and enforcement of gaming legislation in Ontario, as well as a detailed explanation of the role that municipalities play in the regime. This narrative was very helpful in assisting me in reaching the conclusion that the AGCO and the City of Toronto were performing a “law enforcement” function in conducting the investigations which gave rise to the creation of Records 12 and 15.

Section 2(1) of the *Act* defines “law enforcement” in the following manner:

“law enforcement” means,

- (a) policing,

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

In my view, the AGCO and the City conducted investigations that could have resulted in a sanction being imposed on both the seller of the break open tickets, the affected persons, or the charity on whose behalf the tickets were sold. I have no difficulty in finding that the reports which comprise Records 12 and 15 were prepared in the course of law enforcement and that both the AGCO (in the case of Record 12) and the City of Toronto (in the case of Record 15) are agencies with the function of enforcing and regulating compliance with a law, in this case the *Gaming Control Act*. Because of these findings, I am of the view that Records 12 and 15 qualify for exemption under section 14(2)(a).

The appellant argues that the exception in section 14(4) applies to the reports which constitute Records 12 and 15. This section states:

Despite clause (2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

In my view, the exception in section 14(4) has no application to these records. The investigations that gave rise to the creation of Records 12 and 15 were begun as a result of a complaint received from the appellant. Investigations of this sort are undertaken only in response to specific complaints received from the public or from some other source. I find that these investigations cannot properly be described as “routine” and that the exception does not, accordingly, apply.

***Exercise of discretion***

In support of its decision to exercise its discretion not to grant the appellant access to Records 12 and 15, the AGCO indicates that:

. . . the head considered the fact that OPP officers seconded to the AGCO carry on a large number of investigations for a wide range of reasons. Routine disclosure of these reports would reveal investigative techniques. In most cases, disclosure of the reports would require such extensive severing to remove the personal information of third parties that the only thing a requester would be left with is information respecting how investigations are carried out. Given that record 12 falls within the section 14(2)(a) exemption, it should not be disclosed to the appellant.

Section 49(a) is a discretionary exemption. Once it is found that one of the discretionary exemptions listed in section 49(a) applies to a record and the record also contains the personal information of the requester, the institution must determine whether that record is also exempt under section 49(a). An institution must then exercise its discretion to disclose or not disclose the information. In the present appeal, the AGCO has provided me with representations outlining the reasoning behind its decision not to exercise its discretion in favour of the disclosure of the personal information in the record. Based on those submissions and my review of the contents of Records 12 and 15, I find no reason to disturb that determination. Accordingly, I find that Records 12 and 15 are exempt under section 49(a).

## **INVASION OF PRIVACY**

I have found above that Records 21 and 22 contain only the personal information of the affected persons. These records do not contain any personal information relating to the appellant. The AGCO has claimed the application of the section 21(1) invasion of privacy exemption only to Record 21. However, as this is a mandatory exemption, I will also consider its application to Record 22.

Where a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In my view, based on the information contained in the record the only exception which may apply in the present appeal 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) and (3) 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) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption.

[Orders PO-2017, 2033-I and PO-2056-I]

If none of the presumptions in section 21(3) applies, the institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The AGCO relies on the "presumed unjustified invasion of personal privacy" in section 21(3)(b) of the *Act*, which states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The appellant claims that the factor listed under section 21(2)(d) applies in the circumstances of this appeal. This section reads:

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 AGCO submits that the information contained in Record 21 was gathered in the course of its investigation into the allegations of wrongdoing made by the appellant. I find that the information in Record 22 was compiled and is identifiable as part of the AGCO's investigation into a possible violation of the *GCA* on the part of the affected persons. As such, I find that Record 21 fits within the ambit of section 21(3)(b) and that its disclosure is presumed to constitute an unjustified invasion of the personal privacy of the affected persons. As noted above, no factor or combination of factors under section 21(2) can rebut a presumption once it has been established. The appellant has not raised the possible application of section 23 or any of the exceptions in section 21(4) and I find that none of them apply in the circumstances of this appeal. I conclude, therefore, that Record 21 is exempt from disclosure under section 21(1).

Record 22 contains a summary of the findings and the recommendation of the Gaming Registration Officer to the Deputy Registrar with respect to the allegations against the affected persons. Although the AGCO has not claimed the mandatory exemption in section 21(1) for this record, I find that it too was compiled and is identifiable as part of the AGCO's investigation into a possible violation of the *GCA* by the affected persons. As such, like Record 21, I find that the presumption in section 21(3)(b) applies to the personal information contained in Record 22. Again, the factor referred to by the appellant under section 21(2) cannot rebut the operation of the presumption in section 21(3)(b). Section 21(4) does not apply and the appellant has not



raised the application of section 23. I find, therefore, the Record 22 is exempt from disclosure under section 21(1).

By way of summary, I find that Records 12 and 15 are exempt under section 14(2)(a) and that Records 21 and 22 are exempt under section 21(1).

**ORDER:**

I uphold the AGCO's decision.

Original Signed By: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ September 11, 2003