



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2253**

**Appeal PA-030338-1**

**Ministry of Consumer and Business Services**



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Attorney General) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

I would like a copy of a report from Detective Constable Al Schmidt, an Investigator with the Alcohol and Gaming Commission. Det. Constable Schmidt was investigating the Quinte Bingo Hall Sponsor's Association . . . .

In accordance with section 25(1) of the *Act*, the Attorney General forwarded the request to the Ministry of Consumer and Business Services (the Ministry) as the institution with custody of the requested record.

The Ministry denied access to the record on the basis it qualified for exemption under sections 14(1)(a) (interference with a law enforcement matter), 14(2)(a) (law enforcement report), and section 21 (invasion of privacy).

The requester (now the appellant) appealed the Ministry's decision.

Mediation was not successful, and the appeal was transferred to the adjudication stage.

I initiated my inquiry by sending a Notice of Inquiry to the Ministry and to eight individuals whose interests could be affected by disclosure of the record (the affected persons). The Ministry responded with representations. A lawyer representing seven of the eight affected parties also responded with representations. The eighth affected person did not respond. I then sent the Notice of Inquiry to the appellant, together with the non-confidential portions of the two sets of representations. The appellant submitted representations in response.

## **RECORD:**

The record is a seven-page report dated June 20, 2003 prepared by an Ontario Provincial Police (OPP) Officer working as an Investigator for the Investigation and Enforcement Bureau of the Alcohol and Gaming Commission of Ontario (the AGCO). The report involves a specific investigation into a complaint regarding the use of lottery proceeds at a bingo hall.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

#### **General principles**

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

The term “law enforcement” is defined in section 2(1) as follows:

“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)

The Ministry explains in its representations that the AGCO, an agency of the Ministry, oversees the implementation of the *Gaming Control Act* (the *GCA*). Under the terms of orders-in-council issued under the *GCA*, two entities are designed as licensing authorities for the purpose of providing goods and services in the gaming sector: (1) municipal councils; and (2) the Registrar of Alcohol and Gaming (the Registrar).

According to the Ministry, authority to impose terms and conditions on licences flows from the *Criminal Code* of Canada, and a breach may result in criminal charges.

The *GCA* also deals with the registration of persons who wish to supply goods and services to various gaming facilities and persons who provide consulting services to charities that conduct and manage lotteries. A breach in registration requirements under the *GCA* is subject to prosecution under the *Provincial Offences Act*.

The Ministry explains that, in addition to responsibilities for issuing licences, the Registrar has other specific powers and duties under the *GCA*. In particular, the Registrar must ensure that applicants for registration meet the statutory requirements prior to being registered and that registrants continue to meet those requirements during the period of the registration.

Investigators are appointed under the *GCA* to carry out inspections and investigations of individuals and facilities and to review licences and registrations issued by municipal councils and/or the Registrar. The Ministry explains that the AGCO’s Investigations Branch is staffed by seconded OPP officers, who are hired for the express purpose of fulfilling the AGCO’s mandate of enforcing compliance with the *Criminal Code*, the *GCA*, the terms and conditions of licences and the policies of the Registrar. These investigators have authority to lay charges under the *Criminal Code* and under the *Provincial Offences Act* for breaches of the *GCA*.

In light of its statutory mandate, the Ministry submits that the AGCO has the role of a “law enforcement” institution for the purposes of the definition of that term in section 2(1) of the *Act*. The Ministry relies on Orders PO-1889, P-1587 and P-1399 in support of this position.

The appellant’s representations do not address whether the activities fall within the scope of the definition of “law enforcement” in section 2(1).

Consistent with previous orders involving the AGCO and its predecessor, the Gaming Control Commission, I find that the AGCO performs the functions of a “law enforcement” institution. Investigations undertaken in compliance with the *GCA* could lead to proceedings in a court (with respect to *Criminal Code* or *Provincial Offences Act* prosecutions) or a tribunal (the Board of the AGCO) where a penalty or sanction could be imposed (Order PO-1892-F).

**Section 14(2)(a): law enforcement report**

Section 14(2)(a) 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;

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). The title of a document is not determinative of whether it is a report, although it may be relevant to the issue (Order MO-1337-I).

The Ministry submits that the record at issue in this appeal qualifies as a “report” because it is “a formal written account of the information that was gathered as part of the investigation, consideration of that information and it contains a formal statement or account of the results”.

The Ministry goes on in its representations:

The report was prepared by a police officer during the course of law enforcement or inspections. This fulfils the second part of the test to be a law enforcement report under section 14(2)(a).

An OPP officer seconded to the AGCO prepared the report. The OPP officer is a peace officer under the *Police Services Act*. He has certain legal powers and responsibilities with respect to law enforcement. His report was prepared for the AGCO, which has the function of enforcing the law ... This fulfils the third part of the test to be a law enforcement report under section 14(2)(a).

The Ministry points out elsewhere in its representations that, as a result of the investigation and ensuing report, criminal charges were filed against an individual. These charges are pending before the courts and, according to the Ministry, the basis for the charges is set out in the record at issue in this appeal.

The appellant’s representations do not deal directly with the section 14(2)(a) exemption.

I find that the record at issue is accurately characterized as a “report” for the purposes of section 14(2)(a). Having reviewed its content, I find that the record is a formal written account of the information that was gathered by the OPP officer who conducted the inspection of the Quinte Bingo Hall Sponsor’s Association, together with his conclusions based on the results of his investigation and the actions he took, at his discretion, in order to deal with the various investigative findings. Some of these actions involve follow-up activities by the Registrar.

I also find that the report was prepared in the course of a law enforcement inspection undertaken by the OPP officer, specifically the inspection and investigation functions authorized by the *GCA*. Finally, as stated above, I find that the AGCO is an agency that has the function of enforcing and regulating compliance with a law, specifically the *GCA*.

Accordingly, I find that all of the requirements of section 14(2)(a) have been established.

### **EXERCISE OF DICRETION**

Section 14(2)(a) is a discretionary exemption, which means that the Ministry must consider whether to disclose the record despite the fact that it qualifies for exemption. In exercising discretion, the Ministry must take into account the particular facts and circumstances of the case, including issues specific to the appellant and her particular interest in the record.

The Ministry submits:

... In this case, the head considered that the report contains very sensitive personal information in respect of a number of individuals as well as the fact that the law enforcement matters it refers to are continuing.

The confidential portion of the Ministry’s representations also provide additional factors the Ministry took into account in deciding not to disclose the record, including various activities undertaken by the Registrar in response to the findings in the report, some of which remain ongoing.

Based on the Ministry’s representations, including the portions contained in its confidential submission, I find nothing improper about the way in which it has exercised discretion to deny access to the record under section 14(2)(a) of the *Act*.

Because of my finding that the record qualifies for exemption under section 14(2)(a), it is not necessary for me to deal with the section 14(1)(a) and 21(1) exemption claims.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ March 12, 2004