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

ORDER PO-2610

Appeal PA-050154-1

Ontario Lottery and Gaming Corporation

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NATURE OF THE APPEAL:

The Ontario Lottery and Gaming Corporation (the OLGC) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to:

> …reports, analyses or recommendations, prepared on or after October 2003, regarding the impacts of a smoking ban in Ontario….emails; memorandums or any documents produced that reference the smoking ban within the [OLGC]
> …
> briefing notes with respect to a smoking ban and a list of any and all meetings with stakeholders, Ministry staff, Ministers and or their political staff.
> …
> any documents highlighting negative impacts of a proposed smoking ban on casinos, racetracks, charity bingos or any other legal gaming activity in Ontario…documents highlighting any negative impacts that have already occurred from existing bans across Ontario, as well as Canada or the United States.

The OLGC located the responsive records and issued a decision which provided partial access to one record and denied access to the other records on the basis that they are exempt under sections 13(1) (advice to government), 15(b) (relations with other governments), 17(1)(a) and (c) (third party information) and 18(1)(a), (c) and (d) (economic and other interests of Ontario). The OLGC also stated that it did not have records which would list any "meetings with stakeholders, Ministry staff, the Minister or their political staff."

The appellant appealed this decision, stating that the disclosure of this information is a matter of public interest. The "public interest override" provision in section 23 is, accordingly, an issue in this appeal.

During mediation, the appellant asked that the OLGC accept an expanded request regarding two points. She sought the OLGC's consent to the inclusion of any records that would reflect meetings between the institution and stakeholders, Ministry staff, the Minister or their political staff, as well as any reports that may have received from outside bodies. The OLGC agreed to consider this expanded request and explained that there were no records created as a result of meetings held specifically about the smoking ban, and that they did not have any reports other than the ones at issue in this appeal, which the OLGC themselves initiated. The appellant accepted these explanations, and these points have been removed from the scope of the appeal.

As no other issues could be resolved in mediation, the file was transferred to the adjudication stage of the appeal process. An Adjudicator began the adjudication process by sending a Notice of Inquiry to the OLGC and a company whose interests may be affected by the disclosure of the information in one of the records (the affected party), outlining the facts and issues in the appeal, and inviting them to provide representations. The OLGC, but not the affected party, submitted representations in response.

The Adjudicator then provided the appellant with a Notice of Inquiry setting out the facts and issues in the appeal, along with a complete copy of the OLGC's representations. The appellant also provided representations in response to the Notice of Inquiry.

RECORDS:

The records remaining at issue and the exemptions claimed for them are**:**

- **Record A,** Draft Smoking Ban Impact Analysis – withheld in full under sections 13(1) (advice and recommendations), 15(b) (relations with other governments), 17(1)(a) and (c), 18(1)(a), (c), (d) and (g) (economic and other interests of Ontario);
- **Record B**, Request for Proposal, Gaming Market Assessment – withheld in full under sections 18(1)(a), (c) and (d);
- **Record C**, Terms of Reference, Assessment of the Impact of a Province-Wide Smoking Restriction – withheld in full under sections 18(1)(a), (c) and (d); and
- **Record D**, briefing note on Province-wide Smoke Free Strategy Impact on OLGC Gaming Facilities – withheld in part under sections 13(1), 18(1)(a), (c) and (d).

DISCUSSION:

PRELIMINARY ISSUE

LATE RAISING OF DISCRETIONARY EXEMPTIONS

In its representations, the OLGC advised that a "correction to the exemptions is being noted… The exemptions to Record A and Record B were erroneously switched in the decision letter but have been corrected in this representation."

In Order PO-2113, I set out the following principles that have been established in previous orders with respect to the appropriateness of an institution claiming additional discretionary exemptions after the expiration of the 35-day time period prescribed in the Confirmation of Appeal:

> In Order P-658, former Adjudicator Anita Fineberg explained why the prompt identification of discretionary exemptions is necessary in order to maintain the integrity of the appeals process. She indicated that, unless the scope of the exemptions being claimed is known at an early stage in the proceedings, it will not be possible to effectively seek a mediated settlement of the appeal under section 51 of the *Act*. She also pointed out that, where a new discretionary exemption is raised after the Notice of Inquiry is issued, this could require a re-notification of the parties in order to provide them with an opportunity to submit representations on the applicability of the newly claimed exemption, thereby delaying the appeal. Finally, she pointed out that in many cases the value of information sought by appellants diminishes with time and, in these situations, appellants are particularly prejudiced by delays arising from the late raising of new exemptions.

> The objective of the 35-day policy established by this Office is to provide government organizations with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced. The 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.

The OLGC submits that the appellant has not been prejudiced by the late raising of the new discretionary exemptions because it did not introduce any new exemptions, but is "merely applying the correct exemption to the intended record".

In the circumstances of this appeal, I am prepared to accept the OLGC's submissions that the late raising of the discretionary exemptions has not prejudiced the appellant. I considered that the appellant had an opportunity to make representations on the late raising of the discretionary exemptions, and did not. Accordingly, I will review the application of all of the exemptions claimed by the OLGC.

ECONOMIC AND OTHER INTERESTS

The OLGC has applied the discretionary exemption in sections 18(1)(a), (c) and (d) to withhold Records A, B and C in their entirety, and Record D in part. In addition, it relies on the application of section 18(1)(g) for Record A only. These sections state:

> 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;
>
> (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
>
> (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

The purpose of section 18 is to protect certain economic interests of institutions. The report titled *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) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

> 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 . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 18(1)(c), (d) or (g) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Record A

Record A is a draft report entitled "Smoking Ban Impact Analysis". This report was prepared for the OLGC by an outside consultant, the affected party. In Order PO-2556 dated March 15, 2007, I addressed the application of sections 18(1)(a), (c) and (d) to the identical document, described in that order as Record 5. In Order PO-2556, I upheld a decision by the Ministry of Finance to deny the current appellant access to this document on that basis that it qualified for exemption under sections 18(1)(a),(c) and (d). I stated that:

> I have carefully reviewed the contents of Record 5 and the submissions made by the Ministry on the application of the section 18(1) exemptions, and conclude that the Ministry has provided me with the kind of detailed and convincing evidence required to make a finding that it is properly exempt under sections 18(1)(a), (c) and (d). The record itself is an extremely detailed study of the impact of smoking bans or partial bans on the gaming industry in a number of jurisdictions around the world. The information is then extrapolated to the circumstances present in Ontario, with its mix of casinos, slot machine facilities at race tracks and charity casinos, and certain conclusions are reached.
>
> Record 5 also provides the Ministry with very explicit information about the possible steps it might take to address the amelioration of a smoking ban in order to continue to maximize its revenues from this source. In my view, the disclosure of information of this sort would reveal commercial information about OLGC-owned facilities that has actual, measurable monetary value. As a result, I find that section 18(1)(a) properly applies to this information. I also am of the

> view that, owing to the nature of the extremely detailed information contained in Record 5, its disclosure to those in other jurisdictions who compete with Ontario in the gaming industry could reasonably be expected to result in harm to the economic interests or competitive position of the OLGC, and, therefore, the Government of Ontario. I accept the Ministry's arguments that competitors could reasonably be expected to make use of the information in Record 5 to strategically aim their advertising and marketing efforts at those who may wish to continue to gamble in a smoking atmosphere. As a result, I find that this information in Record 5 also qualifies for exemption under section 18(1)(c) and (d).

The appellant has not provided persuasive arguments which would lead me to a different conclusion in the present appeal. I have reviewed the contents of Record A, the representations made by the OLGC regarding the application of the exemptions in sections 18(1)(a), (c) and (d) to this record and my finding with respect to Record 5 (Record A in the current appeal) in Order PO-2556, as set out above. I find that Record A qualifies for exemption under sections 18(1)(a), (c) and (d), for the reasons described above.

As the OLGC has only provided submissions respecting the application of sections 15(b), 17(1) and 18(1)(g) to Record A, it is not necessary for me to assess whether those exemptions also apply to it, as a result of my finding above.

Records B, C and D

Section 18(1)(a): valuable government information

In order for a record to qualify for exemption under section 18(1)(a) of the *Act*, the OLGC must establish 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].

Part 1: type of information

The OLGC submits:

> The information contained in the study relates to the impact the no-smoking legislation will have on OLGC's gaming facilities. The report contains financial and commercial information belonging to OLGC's gaming facilities. These facilities operate in a competitive marketplace – specifically those that operate

> near the US border. Disclosing the impact in revenues by individual site or by aggregate amount, would be injurious to the financial interests of the OLGC and the government. Disclosure of the study would adversely affect OLGC's ability to protect its legitimate economic interests and harm its competitive position.

Based on my review of the records, I find that they clearly contain commercial and financial data and information.

Part 2: belongs to

Neither the OLGC nor the appellant has provided me with representations on Part 2 of the test under section 18(1)(a).

With respect to the second element, for information to "belong to" an institution, previous orders of this office have found that the Government of Ontario or the OLGC must have some proprietary interest in the information contained in the record, either in a traditional intellectual property sense - such as copyright, trademark, 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. [PO-1763, PO-1783, PO-2226, PO-2433]

I find that the information in Records B and C and the undisclosed portions of Record D do not satisfy Part 2 of the test. In my view, they do not contain the types of information contemplated in the discussion above. Further, I advised the OLGC in the Notice of Inquiry that, under section 53 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution. The passage quoted above represents the extent of the OLGC's submissions on this part of the test under section 18(1)(a). Beyond making a bald statement that the information is "proprietary", the OLGC offers no basis for me to find that it has any recognized intellectual property interest in it, nor has it established any basis for concluding that there is a "substantial interest in protecting the information from misappropriation." In my view, this submission is overly broad and does not provide me with sufficient evidence to conclude that this part of the test has been met.

All three parts of the test must be met for section 18(1)(a) to apply, and the fact that Part 2 is not met is a sufficient basis to conclude that the section does not apply. For the sake of completeness, however, I will go on to consider Part 3.

Part 3: monetary value or potential monetary value

The OLGC submits:

> This information would be of substantial value to persons or entities operating other gaming activities in the nearby US market and those operating non gaming activities (such as food and beverage) in the local area and competing markets. This information would also be of value to those persons who offer consulting services to US competitors who are interested in opening gaming facilities in the future. In light of the foregoing the requested information therefore falls under section 18(1)(a).

I also find that the information contained in Records B and C and the undisclosed portions of Record D does not satisfy Part 3 of the test. The OLGC has not provided me with sufficient evidence to demonstrate that these records have monetary value or potential monetary value. The OLGC states that the information would be of value to US competitors, but does not indicate who these competitors might be and how they could benefit from the information therein. In my view, the submissions from the OLGC on this point are broad and insufficiently supported by evidence.

Accordingly, I find that section 18(1)(a) does not apply to the information contained in Records B, C or D.

Section 18(1)(c): prejudice to economic interests

The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. 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 [Order P-1190].

This exemption is arguably broader than section 18(1)(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position [Order PO-2014-I].

As noted previously, in order to establish a reasonable expectation of the harm section 18(1)(c) seeks to avoid, the OLGC must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.

The OLGC submits that releasing the records would result in the type of harm contemplated under this section, stating as follows:

> … the disclosure of this information would prejudice the OLGC in its competitive marketplace and adversely affect its ability to protect its ability to protect its legitimate economic interests. Specifically, the OLGC operates in a highly competitive market for gaming activities. The Commissioner has recognized that the disclosure of certain information by the OLGC would prejudice its economic interests and harm its competitive position [Order P-941].

In addition to Order P-941, the OLGC relies on the decisions in Orders P-1026 and PO-1639.

In Order P-941, the records were market research studies and the submissions of the institution satisfied the Adjudicator that the market research studies could be used to "create and market other gaming activities which directly compete with the lottery products of the [institution]". In this case, I have not been provided with sufficient evidence to support a similar conclusion. I have not been provided with submissions from the OLGC as to how disclosure of the information contained in the records would "prejudice its economic interests and harm its competitive position". The OLGC's bald statement to this effect, supported only by the bare assertion that the gaming market is highly competitive, is not sufficient.

In Order P-1026, the records were characterized as "transaction outlines for the interim casino, drafts of the Pre-Opening and Interim Operating Agreement, various 'issues' lists and memoranda, other correspondence and memoranda to the OCC [Ontario Casino Corporation] … from its legal counsel" and other legal correspondence. In that appeal, the adjudicator concluded that, having reviewed the records and the submissions of the parties, disclosure of certain records "could reasonably be expected to result in the OCC being hampered in its ability to negotiate the best possible deal for the province in its continuing negotiations for the permanent casino in Windsor and other casinos…". On this basis, the adjudicator was satisfied that its "economic interests would be prejudiced", and for that reason, the section 18(1)(c) exemption applied. I have not been provided with any similarly persuasive evidence or argument from the OLGC as to how its economic interests would be prejudiced by disclosure of the records at issue in this case.

The OLGC also refers me to Order PO-1639. This case involved information about compensation for the omission of a planned element from the design of Casino Windsor. The evidence showed that the OCC had arrived at a financial settlement with an affected party to avoid potential litigation. The OCC was in the process of developing a third casino at that time and provided a number of different bases for concluding that its economic interests, in that particular context, could reasonably be expected to be prejudiced by the disclosure of detailed information about the settlement it had entered into. I note, in particular, the Adjudicator's finding that "the [OCC] has provided me with sufficient background information to put this appeal and the record in context". This stands in marked contrast to the submissions provided here, which do not offer detailed or convincing evidence to substantiate the OLGC's bald assertions of harm.

I find that section 18(1)(c) does not apply to the information at issue in Records B, C and D.

Section 18(1)(d): injury to financial interests

The OLGC also claims that the information in Records B and C and the remaining portions of Record D is exempt from disclosure under section 18(1)(d). Given that one of the harms sought to be avoided by section 18(1)(d) is injury to the "ability of the Government of Ontario to manage the economy of Ontario", section 18(1)(d), in particular, is intended to protect the broader economic interests of Ontarians [Order P-1398].

Again, as noted above, in order to establish a reasonable expectation of the harm in section 18(1)(d), "detailed and convincing" evidence must be provided in support.

The OLGC's representations on this issue are as follows:

> OLGC's revenues to government represent a significant portion of the Government of Ontario's non-tax revenue. The gaming market in Canada and the US [is] populated by many organizations and is becoming increasingly competitive. The individual reports related to each of OLGC's gaming sites and related internal documents are essential for the successful operation of its charity casinos. Disclosing financial information and *related internal documents* would provide insight into how OLGC operates its individual gaming facilities…
>
> Disclosure of individual site financial information and the *related internal documents* could result in increased competition for the OLGC and therefore negatively impact the provincial gaming revenues and the programs funded by those revenues.
>
> Accordingly, disclosure of the financial internal documents could reasonably be expected to be injurious to the financial interests of the Government of Ontario. [emphases added]

While I acknowledge the OLGC's concerns, I find that they relate to the disclosure of the information in Record A, which I have found to be exempt above. I have not been provided with sufficiently persuasive, detailed and convincing evidence which explains how the release of the information in Records B, C and the undisclosed portions of Record D could reasonably be expected to result in increased competition for the OLGC, thereby causing injury to the financial interests of Ontario. Similarly, the OLGC does not explain how the disclosure of the information included in Records B, C and the remaining portions of Record D would provide its competitors in border communities with a greater understanding of the impacts that the no-smoking ban will have on its gaming sites; nor has it provided me with sufficiently detailed representations in support of its contention that such insight could reasonably be expected to result in injury to the financial interests of the Government of Ontario. As a result, I find that section 18(1)(d) has no application to Records B and C and the undisclosed information in Record D.

ADVICE OR RECOMMENDATIONS

The OLGC claimed the application of the discretionary exemption in section 13(1) to Record A and the remaining undisclosed information in Record D, a briefing note. As noted above, because of the manner in which I addressed the application of sections 18(1)(a), (c) and (d) to Record A, it is not necessary for me to consider whether it also qualifies for exemption under section 13(1), which states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]

The OLGC submits that Record D was prepared in contemplation of and for the purposes of asking the Government of Ontario to approve its mitigation techniques to off-set the negative consequences of the enactment of no-smoking legislation. The OLGC submits that the information in the records either explicitly or by reference includes those mitigation techniques. It goes on to argue that the disclosure of that information could adversely impact the types of information provided to the Government of Ontario in the future.

I have carefully reviewed the undisclosed portions of Record D and find that they do not contain information which qualifies as advice or recommendations within the meaning of section 13(1). The information does not reflect a recommended course of action; rather, the information simply provides a projection of the possible loss of gaming revenues which could result from the enactment of province-wide, no-smoking legislation. Accordingly, I find that section 13(1) has no application to the information that has been withheld from Record D. As no other exemptions have been claimed for this record, I will order that Record D be disclosed to the appellant, in its entirety.

PUBLIC INTEREST IN DISCLOSURE

I have upheld the OLGC's decision to deny access to Record A on the basis that it is exempt under sections 18(1)(a), (c) and (d). The appellant takes the position that the information at issue in Record A ought to be disclosed on the basis that there exists a public interest in it under section 23 of the *Act*, which reads:

> An exemption from disclosure of a record under sections 13, 15, 17, **18**, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [my emphasis]

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

A public interest is not automatically established where the requester is a member of the media [Orders M-773, M-1074].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [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.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

The appellant's submissions

The appellant argues that there exists a compelling public interest in the disclosure of the information in Record A, submitting that:

> . . . if these documents were released and used to inform the citizenry about the activities and impacts of the government, local business and charitable organizations would have been able to plan accordingly and possibly protect against loss of business rather than being forced to operation in the dark and suffer losses.

Findings

In Order PO-2556, the appellant raised nearly identical arguments in favour of the application of section 23 to the identical document to Record A in the current appeal (referred to as Record 5 in that appeal). In that case, I addressed her arguments as follows and concluded that:

> With respect to Record 5, I am not satisfied based on my review of this document that there exists a "compelling" public interest in the disclosure of this information as well. The record consists of a very detailed and thorough study of the possible ramifications of the implementation of a smoking ban on the gaming industry in Ontario. It addresses these questions by examining the experience of other jurisdictions and projects these findings into the context of the Ontario gaming industry. In my view, Record 5 does not address the possible ramifications of a smoking ban on "small businesses and charitable organizations", as the appellant is seeking. Rather, Record 5 is focused on the gaming industry in Ontario.
>
> In my view, there does not exist a sufficiently compelling interest in the disclosure of the information contained in Record 5 to warrant the application of the provisions of section 23. I conclude that this provision has no application in the present appeal.

In the circumstances, I am not persuaded that I ought to make a different finding in the present appeal from that articulated above in Order PO-2556. As a result, I conclude that the public interest override provision in section 23 has no application to Record A in the current appeal.

ORDER:

1. I order the OLGC to disclose to the appellant Records B, C and D by providing her with copies by no later than **October 15, 2007**, but not before **October 9, 2007.**

2. I uphold the OLGC's decision to deny access to Record A.

3. In order to verify compliance with Order Provision 1, I reserve the right to require the OLGC to provide me with a copy of the records that are disclosed to the appellant.

Original signed by: September 7, 2007
Donald Hale
Adjudicator