

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4080

Appeal PA18-00663

Alcohol and Gaming Commission of Ontario

October 29, 2020

Summary: The Alcohol and Gaming Commission of Ontario (the AGCO) received an access request from a media requester under the *Freedom of Information and Protection of Privacy Act* for a copy of suspicious transaction reports (STRs) received from the Ontario Lottery and Gaming Corporation regarding money laundering or suspicious transactions. The AGCO denied access, citing the exemptions in sections 14 (law enforcement), 15(1) (relations with other governments), 17(1) (third party information), 18(1) (economic and other interests), and 21(1) (personal privacy). The requester appealed this decision.

In this order, the adjudicator finds that the records are exempt by reason of section 14(1)(g) (law enforcement intelligence information) and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31, section 14(1)(g); *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

Orders Considered: Order MO-1395.

OVERVIEW:

[1] This appeal addresses the issue of access by a member of the media to suspicious transaction reports (STRs) created by the Ontario Lottery and Gaming

Corporation (OLG) to comply with the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,¹ (the *PCMLTFA*).

[2] The Alcohol and Gaming Commission of Ontario (the AGCO) received an access request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)*, for:

...a copy of any reports received from [the] OLG [Ontario Lottery and Gaming Corporation] regarding money laundering or suspicious transactions between January 1, 2016 and December 31, 2017.

[3] The AGCO issued an interim access decision, denying access to STRs in full, citing the application of the law enforcement exemption in section 14 and the personal privacy exemption in section 21(1).

[4] The requester, now the appellant, appealed the AGCO's decision.

[5] During mediation, the appellant narrowed the time period of his request to one month, December 2017. The AGCO issued another interim access decision advising that the third party information exemption in section 17(1) may also apply to the records, in addition to the sections 14 and 21(1) exemptions.

[6] The appellant subsequently narrowed the time period of his request further to STRs received between December 4 to 8, 2017.

[7] After conducting consultations with affected parties, the ministry issued a final decision maintaining the denial of access in full and relying on an additional exemption, section 18(1) (economic and other interests).

[8] The appellant then confirmed with the mediator that he continues to seek access to the records, but is not seeking access to personal information such as names, contact information, or other identifying information.

[9] No further mediation could be conducted and the appeal moved to the adjudication stage. I decided to conduct an inquiry and I sought representations of the AGCO, the affected parties, the OLG, the federal Financial Transactions and Reports Centre of Canada (FINTRAC), and the appellant. The representations were exchanged between the parties in accordance with section 7 of the *IPC Code of Procedure and Practice Direction 7*.²

¹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

² Portions of the AGCO, the OLG and FINTRAC's representations were confidential. Although I will only be referring to the non-confidential representations of these parties in this order, I will consider these parties representations in their entirety in arriving at my determination.

[10] In his representations, the appellant indicated that he is not interested in receiving access to the following information:

- patrons' first name, last name, full residential address, home phone number, date of birth, ID number, date of ID expiration, occupation and name of employer, and
- employees' first name, last name and employee alias.

[11] Therefore, this information is not at issue in this order.

[12] In this order, I find that the records are exempt by reason of the law enforcement exemption in section 14(1)(g) (law enforcement intelligence information), and I dismiss the appeal.

RECORDS:

[13] At issue are 10 suspicious transaction reports (STRs), comprising 47 pages. These reports, compiled by the OLG, are sent by the OLG to FINTRAC under the *PCMLTFA* where there are reasonable grounds to suspect that a transaction or attempted transaction at a casino is related to the commission of a money laundering offence (ML) or a terrorist activity financing offence (TF).

[14] The OLG also provides these same STRs directly to the Gaming Investigations Unit of the Ontario Provincial Police (OPP), a specialized law enforcement bureau embedded within the AGCO, in accordance with the AGCO's Registrar's Standards

[15] FINTRAC assesses and analyzes the data from STRs to uncover financial relationships and networks that will:

- assist law enforcement in investigating or prosecuting offences related to ML/TF, as well as threats to the security of Canada;
- detect trends and patterns related to ML/TF risks;
- uncover vulnerabilities of the Canada's financial system; and
- enhance public awareness of ML/TF matters.

[16] In addition to the prescribed information,³ STRs allow for an expansion on the descriptive details surrounding a transaction, such as nicknames, secondary names, beneficial ownership information, IP addresses, additional account numbers, email

³ See blank STR form at <https://www.fintrac-canafe.gc.ca/reporting-declaration/form/STR-2008-eng.pdf>

addresses, virtual currency transaction addresses and their details, details of purchases or e-transfers, locations, relationships, and background.

[17] The prescribed information in the STR form sets out the following headings:

- Part A - Information about where the transaction took place
- Part B1 - Information about how the transaction was initiated
- Part B2 - Information about how the transaction was completed
- Part C - Account information, if the transaction involved an account
- Part D - Information about the individual conducting the transaction
- Part E - Information about the entity on whose behalf the transaction was conducted (if applicable)
- Part F - Information about the individual on whose behalf the transaction was conducted (if applicable)
- Part G - Description of suspicious activity
- Part H - Description of action taken (if applicable)

ISSUES:

- A. Issue A: Does the discretionary law enforcement exemption for law enforcement intelligence information at section 14(1)(g) apply to the records?
- B. Issue B: Did the institution exercise its discretion under section 14(1)(g)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Background⁴

[18] The AGCO, by the authority of the *Alcohol, Cannabis, Gaming Regulation and Public Protection Act, 1996* (the *ACGRPPA*),⁵ regulates gaming in Ontario.

⁴ Compiled from the AGCO's and OLG's representations.

⁵ *Alcohol, Cannabis, Gaming Regulation and Public Protection Act, 1996*, S.O. 1996, c. 26, Sch.

[19] The OLG operates, conducts or manages gaming sites⁶ in Ontario.

[20] The AGCO's Registrar's Standards for Gaming⁷ require the OLG to put in place mechanisms to reasonably identify and prevent unlawful activities at the gaming site. In this regard, at a minimum, the OLG is required to:

1. Conduct periodic risk assessments to determine the potential for unlawful activities, including money laundering, fraud, theft and cheat at play.
2. Ensure that all relevant individuals involved in the operation, supervision or monitoring of the gaming site shall remain current in the identification of techniques or methods that may be used for the commission of crimes at the gaming site.
3. Appropriately monitor player and employee transactions and analyze suspicious transactions for possible unlawful activity.
4. Report suspicious behaviour, cheating at play and unlawful activities in accordance with the established notification matrix.

[21] The records at issue, suspicious transaction reports (STRs), are reports compiled by the OLG. STRs contain details, and analysis, of the personal information and the financial history of individuals⁸ suspected of carrying out transactions related to the commission or attempted commission of money laundering or terrorist activity financing offences contrary to the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*,⁹ (the *PCMLTFA*).

[22] The OLG has a legislated obligation under section 7 of the *PCMLTFA* to provide the STRs to FINTRAC. The OLG also provides these same STRs directly to the Gaming Investigations Unit of the Ontario Provincial Police (OPP), a specialized law enforcement bureau embedded within the AGCO.

Issue A: Does the discretionary law enforcement exemption for law enforcement intelligence information at section 14(1)(g) apply to the records?

[23] The AGCO relies on and adopts OLG's representations, as well as making its own representations. Regarding section 14, these parties rely on sections 14(1)(c), (d), (e), (g), and (l) and 14(2)(b), which read:

⁶ Also referred to as casinos in this order.

⁷ *Registrar's Standards for Gaming, April 2017* (Registrar's Standards) under authority of the *Gaming Control Act, 1992*, S.O. 1992, c. 24 (GCA).

⁸ Also referred to as patrons in this order.

⁹ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

(l) facilitate the commission of an unlawful act or hamper the control of crime.

(2) A head may refuse to disclose a record,

(b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament.

[24] The term "law enforcement" is used in several parts of section 14, and 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, or

(c) the conduct of proceedings referred to in clause (b)

[25] The term "law enforcement" has covered the following situations:

- a municipality's investigation into a possible violation of a municipal by-law that could lead to court proceedings.¹⁰
- a police investigation into a possible violation of the *Criminal Code*.¹¹

¹⁰ Orders M-16 and MO-1245.

- a children's aid society investigation under the *Child and Family Services Act* which could lead to court proceedings¹²
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997*.¹³

[26] This office has stated that "law enforcement" does not apply to the following situations:

- an internal investigation by the institution under the *Training Schools Act* where the institution lacked the authority to enforce or regulate compliance with any law.¹⁴
- a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions.¹⁵

[27] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹⁶

[28] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.¹⁷ The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁸

[29] I will consider the application of section 14(1)(g) (law enforcement intelligence information) to the records first.

Representations on section 14(1)(g)

[30] The AGCO states that the OPP bureau of the AGCO receives the information

¹¹ Orders M-202 and PO-2085.

¹² Order MO-1416.

¹³ Order MO-1337-I.

¹⁴ Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.).

¹⁵ Order P-1117.

¹⁶ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹⁷ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹⁸ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

contained in the records at issue from the OLG for its own policing and intelligence gathering purposes. The AGCO submits that its purpose for collecting this information meets the IPC's definition of intelligence, which is "information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law."¹⁹ It states:

The AGCO and its assigned OPP bureau are law enforcement agencies. STRs are directly and securely received by the OPP members of the Gaming Investigations Unit embedded within the AGCO and are rarely disclosed to the civilian staff of either the AGCO or the OPP. While the AGCO may rely upon the records to ensure the OLG's compliance with the Registrar's Standards, the records are also relied upon by the OPP to support ongoing efforts to detect and prevent money laundering and terrorism financing offences that may occur at Ontario gaming sites.

The flow of this information from the OLG directly to the OPP underscores the sensitive nature of these records as financial intelligence. The Registrar's Standards do not make explicit that the AGCO's OPP bureau will collect and rely upon the records for policing and intelligence gathering purposes. However, this law enforcement activity is integral to the AGCO's ability to fulfil its law enforcement mandate and ensure the integrity of the gaming sector in Ontario.

[31] The OLG states that STRs identify one or more transactions that it has deemed to be reportable and contain information that:

- identifies a potential crime;
- identifies detection and analysis techniques
- is detailed in nature;
- is kept confidential and required by law to be kept confidential;
- will be used by FINTRAC as a source of intelligence about criminal activity of the most serious kind;
- has been communicated to law enforcement - the AGCO and the OPP - for law enforcement purposes; and,
- may potentially be used or relevant to an ongoing law enforcement investigation.

¹⁹ Orders M-202, MO-1261, MO-1583 and PO-2751.

[32] The OLG states that it is gathering intelligence information pursuant to the *PCMLTFA*. The OLG submits that the interest protected by section 14 includes the interest in gathering and using intelligence. The OLG relies on Order MO-1395, in which the IPC accepted a Toronto Police Services Board argument that the disclosure of intelligence information it had gathered "could restrict their ability to effectively monitor organized criminal activity, and to effectively reduce the existence of and opportunities for crime in this sensitive area of their law enforcement mandate."

[33] The appellant did not provide representations that directly address section 14(1)(g). He states generally that the STRs describe transactions that patrons of casinos in Ontario carried out that were deemed to be reportable under the *PCMLTFA*. He submits that all financial transactions carried out in a casino are widely understood to be scrutinized for possible criminal connections and that revealing this fact does not provide criminals with a road map to baffling the anti-money laundering procedures at casinos.

[34] The appellant states that the OLG has no access to a patron's financial transactions other than their transactions at casinos. He states that disclosure of these limited financial records, which are voluntarily provided by those being scrutinized, does not reveal confidential investigative techniques that would benefit criminals.

[35] The appellant refers to British Columbia (BC) Order FO8-03, where the BC Information and Privacy Commissioner ordered the release of more than 3,000 pages of "Section 86" reports to the CBC in 2008. The appellant submits that these reports, filed with the British Columbia Lottery Corporation (BCLC), are virtually identical to the STRs as they are legally-mandated reports of "any conduct or activity at or near a gaming facility that is or may be contrary to the Criminal Code, the Act or the regulations." He states that these reports are filed with the BC Ministry of Public Safety's Gaming Policy and Enforcement Branch (GPEB) as well as the BCLC, where they are "investigated" and "retained and used as intelligence."

[36] In reply, the AGCO states that the requirements for reporting of suspicious transactions to FINTRAC and for incident reporting to the GPEB in BC differ.

[37] The AGCO states that in BC, section 86 reports are incident reports produced by gaming service providers in BC for submission to the BC gaming regulator. In that province, reporting is required when it involves the commission of an offence under a provision of the Criminal Code that is relevant to a lottery scheme or horseracing, or the commission of an offence under the BC *Gaming Control Act*.

[38] It states that STRs, on the other hand, are required by section 7 of the federal *PCMLTFA*, which requires reporting of financial transactions related to the commission or the attempted commission of a money laundering offence or a terrorist activity financing offence.

[39] It states that the standard for reporting under the *PCMLTFA* is "reasonable grounds to suspect" which is a low evidentiary threshold that indicates that the STRs

are properly intelligence records with a narrow focus on suspected money laundering and terrorist financing efforts.

[40] The AGCO states that the *PCMLTFA* requires broad reporting of suspicious transactions that may not have any associated illegality. The BC reports in Order F08-03 communicated incidents to the regulator, the GPEB, ranging from the “removal of...self-excluded patrons, domestic disputes, attempts by underage or barred patrons to gain access” to “suspected or actual illegal drug use or activity by patrons” to “use of suspected counterfeit bills, cheating and medical emergencies.”

[41] The AGCO states that reporting in BC may also include suspected illegal activities retained for use as intelligence information. Nevertheless, it submits that where the transaction or activity does not involve the commission of an offence or any illegality, the report would not qualify for reporting in BC to the GPEB. It also states that there is no indication that the BC reports include information gathered outside of a particular gaming site or the premises of the reporting gaming service provider.

[42] In reply, the OLG provided detailed representations as to how the reports in Ontario differ from those in BC as set out by FINTRAC below. It also states that the information in the STRs is unknown to the public and explains in detail how the OLG detects money laundering activity in Ontario’s casinos. It states that the STRs include information on how OLG scrutinizes patrons and transactions for compliance with anti-money laundering legislation, how OLG conducts its analysis and how issues are detected and escalated. They also disclose OLG’s suspicions about named individuals and reveal the extent to which the individuals and their accomplices’ activities have been detected. It submits that the release of this confidential and detailed information would cause significant harm to law enforcement.

[43] The OLG submits that the information about the particular means used by it to identify suspicious transactions is not included in, known, knowable or readily derivable from any of the various online FINTRAC publications or any other publicly available information.

[44] The OLG states that ordering disclosure would undermine its efforts to advance its anti-money laundering efforts by giving wrongdoers a playbook on investigative techniques that could help them to stay ahead of the OLG’s evolving methods.

[45] FINTRAC also provided detailed representations as to how, it submits, the reports in BC differ significantly in content, use and purpose from those in Ontario, including stating that:

- [the BC reports] are incident reports in nature and are not produced under the *PCMLTFA*, (which is solely intended to combat the laundering of proceeds of crime and the financing of terrorist activities);
- the BC reports are not protected by a mandatory, legislated prohibition against disclosure, as STRs are under the *PCMLTFA* – a prohibition intended to

guarantee that the intelligence contained in STRs and the subject of the reports are safeguarded, while also ensuring the safety of the individuals who report to FINTRAC and the protection of the fact that an individual report was submitted to FINTRAC; and,

- the STRs are expressly protected under the [federal] *Access to Information Act* by a mandatory exemption and are never to be made public. Their protection has both the goal of ensuring police investigations are not prejudiced and sources of the intelligence are protected, as not doing so could have serious consequences on individuals as well as police and national security investigations.

[46] FINTRAC states that the intelligence it receives through the STRs is used in the course of detecting, preventing, and deterring money laundering and the financing of terrorism. It states that the intelligence FINTRAC discloses to law enforcement agencies is often used in cases involving national security concerns that impact the safety and economic wellbeing of Canadians, whether this is immediately apparent to the public or not.

[47] In sur-reply, the appellant objects to the OLG and FINTRAC having copies of the records to review,²⁰ when he does not.

[48] The appellant also objects to not having access to the AGCO's confidential representations that reveal the contents of the records.²¹ The appellant is not entitled to receive the portions of the representations of other parties that I have determined to contain confidential information. Section 5 of *Practice Direction 7* of the IPC's *Code of Procedure* provides:

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

- (a) disclosure of the information would reveal the substance of a record claimed to be exempt or excluded; or
- (b) the information would be exempt if contained in a record subject to the Act; or

²⁰ OLG prepared the records and FINTRAC received copies of them by reason of section 7 of the *PCMLTFA*.

²¹ Section 52(13) of *FIPPA* does not require the IPC to provide parties with access to, or the opportunity to comment on, representations made to the Commissioner by any other person. It reads:

The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 50 (3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made.

(c) the information should not be disclosed to the other party for another reason.

[49] As well, section 52(13) of *FIPPA* does not require the IPC to provide parties with access to, or the opportunity to comment on, representations made to the Commissioner by any other person. It reads:

The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 50 (3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made.

[50] The appellant submits that the OLG has made contradictory arguments. One example is when the OLG states that the STRs have a lower standard for reporting than BC's Section 86 reports, and include "transactions that may not have any associated illegality."

[51] The appellant further submits that all patrons of casinos know that any transactions they make at a casino will be scrutinized and that the AGCO publicly states in its gaming standards manual that all casinos must "monitor player and employee transactions and analyze suspicious transactions for possible unlawful activity."

[52] The appellant states that FINTRAC quite specifically describes the kinds of activities that would be reported in an STR on its publicly-accessible website, as follows:²²

- Any casino transaction of \$3,000 or more when an individual receives payment in casino cheques made out to third parties or without a specified payee.
- Client²³ requests a winnings cheque in a third party's name.
- Acquaintances bet against each other in even-money games and it appears that they are intentionally losing to one of the parties.
- Client attempts to avoid the filing of a report for cash by breaking up the transaction.
- Client requests cheques that are not for gaming winnings.

²² The appellant refers to https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/casinos_mltf-eng

²³ The client, in this context, is a casino patron.

- Client enquires about opening an account with the casino and the ability to transfer the funds to other locations when you do not know the client as a regular, frequent or large volume player.
- Client purchases large volume of chips with cash, participates in limited gambling activity with the intention of creating a perception of significant gambling, and then cashes the chips for a casino cheque.
- Client puts money into slot machines and claims accumulated credits as a jackpot win.
- Client exchanges small denomination bank notes for large denomination bank notes, chip purchase vouchers or cheques.
- Client is known to use multiple names.
- Client requests the transfer of winnings to the bank account of a third party or a known drug source country or to a country where there is no effective anti-money-laundering system.

[53] The appellant submits that the public disclosure of these techniques has not provided a "road map" for potential criminals, nor does FINTRAC consider them to be confidential or worthy of keeping from the public.

[54] The appellant points out that the AGCO's gaming standards manual also publicly discloses that the OPP's Casino Enforcement Unit "must be provided with independent monitoring equipment with override capability within the Casino Enforcement Unit work area." As a result, he submits that the OPP, not the OLG, should be considered law enforcement in the context of *FIPPA*. Instead, the records only become part of a law enforcement investigation if FINTRAC provides them to a police force after completing its analysis. He states:

The STRs are not high-level investigative analyses produced at the end of an investigation summarizing all the measures law enforcement has taken to bring a money laundering case together. They are, instead, primary pieces of evidence, submitted speculatively in the hope that, when combined with other STRs, financial records and public records, a money-trail can be reconstructed showing illegality...

FINTRAC says casinos and other reporting entities "are among the first that can come into contact with a financial transaction that is potentially linked to money laundering or terrorist financing" and must file an STR "when there are reasonable grounds to suspect that a transaction is related to a money laundering or a terrorist financing offence." Contrary to the submissions of the OLG, FINTRAC and the AGCO, this sounds very similar to Section 86 reports...

[The STRs do not contain a] roadmap for potential money launderers. This is a commonly understood criminal behaviour widely described in existing public documents, not to mention journalistic reports and popular film and television...

From FINTRAC's own description of its activities..., it appears [that] investigative techniques would be described in its analysis, which is produced from hundreds of pieces of evidence, only one of which is an STR.

Individual STRs, therefore, do not constitute an analysis that would reveal an investigative technique, but a single incident report that speaks more to evidence gathering than investigative analysis.

Analysis/Findings

[55] Each STR relates to identifiable patrons of Ontario casinos. The STRs contain the following information that the appellant is not interested in receiving access to:

- patrons' first name, last name, full residential address, home phone number, date of birth, ID numbers, date of ID expiration, occupation and name of employer, and
- employees' first name, last name and employee alias.

[56] In addition to this information, the STRs contain:

- information about the relationship between the patron conducting the identified transaction or transactions and any identified third party;
- the patron's transaction history, locations where the patron has been detected, and details about the patron's suspicious behaviour;
- OLG's opinion about the potential criminality of the patron; and
- a description of any action taken by the OLG.

[57] The term "intelligence information" in section 14(1)(g) has been found to mean:

Information gathered by a law enforcement agency in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law. It is distinct from

information compiled and identifiable as part of the investigation of a specific occurrence.²⁴

[58] I find that the information in the STRs was compiled by the OLG and gathered by a law enforcement agency, the AGCO. I accept that the AGCO is a law enforcement agency, which has the function of enforcing and regulating compliance with a law, namely Ontario's *Gaming Control Act*.²⁵

[59] The OLG has a legislated obligation under the *PCMLTFA* to send the STRs to FINTRAC when OLG analysts have reasonable grounds to suspect that a transaction is related to the commission or attempted commission of a money laundering or terrorist activity financing offence. The form and content of the STRs are prescribed by FINTRAC. The OLG also provides these same STRs to the AGCO's Registrar through the AGCO's OPP Bureau in accordance with the Registrar's Standards. Disclosure of STRs is prohibited under section 8 of the *PCMLTFA*, which reads:²⁶

No person or entity shall disclose that they have made, are making or will make a report under section 7, or disclose the contents of such a report, with the intent to prejudice a criminal investigation, whether or not a criminal investigation has begun.

[60] I find that the information in the STRs was gathered in a covert manner with respect to ongoing efforts devoted to the detection and prosecution of crime or the prevention of possible violations of law, namely the crimes of money laundering and terrorist financing offences contrary to the *PCMLTFA*. As set out by the OLG in its representations, the STRs:

- are comprised of confidential intelligence information about individuals suspected of crime who cannot be "tipped off";
- contain the identities of employees who are confidential intelligence sources, thereby exposing them to criminal influence and a risk of physical harm;
- contain confidential information about how OLG identifies suspicious transactions;
- may contain patterns in their datasets that can assist a person in evading detection for money laundering or terrorist financing offences; and,

²⁴ Orders M-202, MO-1261, MO-1583 and PO-2751; see also Order PO-2455, confirmed in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233 (Div. Ct.).

²⁵ Cited above, footnote 5. See Orders PO-3637, PO-1889, P-1587, and P-1399.

²⁶ See also sections 7 and 55 of the *PCMLTFA*.

- are kept by the OLG in a secure electronic system accessible only by employees who need to access STR information in the course of their duties. These employees are not authorized to and may not discuss any suspicion or knowledge of suspicious transactions or reports actually or potentially made to any governmental agency

[61] I am satisfied that the information was gathered by the AGCO as part of an ongoing effort to detect instances of money laundering and terrorist financing offences and that it is distinct from information compiled and identifiable as part of the investigation of a specific occurrence regarding specific patrons and specific casino financial transactions.

[62] Although it is well known that casino transactions are widely scrutinized, the particulars of the actual suspicious transactions in the records are not widely known. Nor is the information in the STRs on how OLG scrutinizes patrons and transactions for compliance with anti-money laundering legislation, how OLG conducts its analysis, and how issues are detected and escalated widely known. The records also demonstrate OLG's suspicions about named individuals and reveal the extent to which the activities of individuals and their accomplices have been detected.

[63] I accept FINTRAC's submission that the STRs contain intelligence information. This information is used in the course of detecting, preventing, and deterring money laundering and the financing of terrorism. I also accept that there is a real possibility that, if the information contained in the STRs connected to this file is released to the public multiple law enforcement and national security investigations could be affected.

[64] I agree with the AGCO, the OLG and FINTRAC, as set out in their representations, that there are significant differences between BC's "section 86" reports sent to the GPEB under that province's *Gaming Control Act* and the STRs at issue in this appeal, which are sent to FINTRAC. This includes differences in the content, the level of detail, the reporting requirements and the utilization of these two types of reports as set out above, including:

- The *PCMLTFA* requires broad reporting of suspicious transactions that may not have any associated illegality. STRs are sent directly to FINTRAC by the entity that "conducts and manages" gaming in each province.
- Where the transaction or activity does not involve the commission of an offence or any illegality, the report would not qualify for reporting as a Section 86 report under the BC *Gaming Control Act*.
- The STRs provide more level of detail than the Section 86 reports in BC. The STRs requires significant details respecting patrons, their personal characteristics and attributes.

[65] The BC section 86 reports are not reports that are focussed on providing intelligence information to FINTRAC on money laundering or terrorist financing

activities, as is the case with the STRs. The information contained the section 86 BC reports are qualitatively different. As set out in BC Order F08-03:

Typically, the s. 86 forms sent to GPEB contain the name of the casino operator, the date, time and location of the suspected criminal activity, whether the police were called, who made the report and some details about the incident. The type of information in these records ranges from file opening information, to reports on different types of incidents occurring both inside a casino or outside, in the vicinity of a casino...

The types of reported incidents range from removal of barred or self-excluded patrons, removal for refusal to produce identification, altercations between patrons, domestic disputes, attempts by underage or barred patrons to gain access, assaults, threats of harm, attempted theft or theft from patrons or the casino, vehicle damage or vehicle theft, intoxicated patrons, suspected or actual illegal drug use or activity by patrons, staff cashier shortages, damage to casino property (e.g., patron damaging a surveillance camera), armed robbery, use of suspected counterfeit bills, cheating and medical emergencies. Some reports describe bad behaviour by patrons—such as a patron trying to pull the wig off another patron, a patron “mooning” several other patrons, swearing at other patrons or casino staff, aggressive, rude or otherwise inappropriate language or gestures by casino patrons—which results in the patrons being barred from the casino for varying periods. Some reports relate to patrons who leave their children unattended in their vehicles or in hotel lobbies while they attend casinos. Others relate to the activities or conduct of casino staff. Some relate to patrons who express suicidal thoughts.

[66] As well, the exemption claimed in the BC order, although a law enforcement exemption, was not one that concerned intelligence information. In the BC order, the law enforcement exemptions at issue related to a specific matter or thing and read:

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm a law enforcement matter; ...

(l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system;

[67] In any case, it is not clear that the information at issue in reports in the BC case would qualify as intelligence information under section 14(1)(g) of *FIPPA*, given that this information is different from the information in the STRs before me.

[68] The STRs, when combined with other STRs, as well as financial records and public records, can reconstruct a money-trail showing illegality, namely money

laundering or terrorist financing.

[69] Although the appellant submits that all patrons of casinos know that any transactions, including suspicious transactions, they make at a casino will be scrutinized, the records contain more detail than simply what patrons were observed doing at casinos. The records include more information than the behaviour of the patrons and the financial transactions carried out by them in a casino.

[70] Although, as stated by the appellant, it could be argued that FINTRAC's website reveals some investigative techniques undertaken by the OLG in investigating suspicious transactions, this website does not reveal intelligence information. FINTRAC's website does not reveal the intelligence information, which is gathered by the AGCO from the OLG in a covert manner.

[71] I find that the information on FINTRAC's website does not reveal the actual STR case-specific information. The information published by FINTRAC on its website about STRs describes the purpose and a description of STRs. For example, when describing STRs and their purpose on its website, FINTRAC states:

FINTRAC operates within the legislative authority of the *PCMLTFA* and associated Regulations. Its mandate is to prevent, detect and deter ML/TF [Money Laundering/Terrorist Financing] activities, while ensuring the protection of the information under its control.

For FINTRAC to achieve its mandate, regulated individuals and entities (reporting entities - REs) must implement the legislated requirements and set out specific measures in their compliance programs, including developing and implementing policies and procedures, identifying clients, keeping records and submitting prescribed transaction reports to FINTRAC. FINTRAC assesses and analyzes the data from those reports to create a picture that serves to uncover financial relationships and networks that will:

- assist law enforcement in investigating or prosecuting offences related to ML/TF, as well as threats to the security of Canada;
- detect trends and patterns related to ML/TF risks;
- uncover vulnerabilities of the Canada's financial system; and
- enhance public awareness of ML/TF matters.²⁷

²⁷ See <https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/Guide2/2-eng> This link was sent to the appellant in the Notice of Inquiry.

One of the most valuable and unique report types submitted to FINTRAC is the STR. In addition to the prescribed information, STRs allow for an expansion on the descriptive details surrounding a transaction that is derived from your [the reporting entities] assessment of what you are seeing through your business interactions and activities. Additional information, such as nicknames, secondary names, beneficial ownership information, IP addresses, additional account numbers, email addresses, virtual currency transaction addresses and their details, details of purchases or e-transfers, locations, relationships, and background information are all additional details that FINTRAC uses in its analysis and production of financial intelligence disclosures.

Because of the importance of FINTRAC's financial intelligence to the overall safety and security of Canadians and Canada's financial system, FINTRAC reviews and assesses every STR it receives. When warranted, such as in the case of STRs related to threats to the security of Canada, FINTRAC expedites its analysis in order to disclose financial intelligence to law enforcement and other intelligence partners within 24 hours...

[72] It is not only the information in specific STRs that is considered by FINTRAC in its mandate under the *PCMLTFA* to prevent, detect and deter money laundering and terrorist financing activities but also other intelligence information. Although FINTRAC publishes a list of indicators on its website, this list is by no means exhaustive; other techniques developed by criminals are also set out in the STRs and are considered by FINTRAC.

[73] In Order MO-1395, the records at issue related to the appellant or companies with which he had been associated. In that order, the Toronto Police provided the adjudicator with representations as to how disclosure of the information in the records²⁸ could restrict their ability to effectively monitor organized criminal activity, and to effectively reduce the existence of and opportunities for crime prevention in this sensitive area of their law enforcement mandate.

[74] The adjudicator in Order MO-1395 accepted the Toronto Police's evidence and found that the information in the records was intelligence information in accordance with section 8(1)(g) of the *Municipal Freedom of Information and Protection of Privacy Act*, the municipal equivalent to section 14(1)(g) of *FIPPA*.

[75] Based on my review of the records and the parties' representations, and relying on Order MO-1395, I find that the records contain intelligence information within the

²⁸ If such records did exist. In that appeal, the Toronto Police refused to confirm or deny the existence of responsive records in accordance with section 8(3) of the *Municipal Freedom of Information and Protection of Privacy Act*, the municipal equivalent to section 14(3) of *FIPPA*.

meaning of section 14(1)(g). The records are ten STRs created over a five day period and considering the actual contents of the STRs and the short time period that these STRs relate to, I find that disclosure would result in disclosure of intelligence information within the meaning of section 14(1)(g).

[76] As such, disclosure of the information in the records could restrict the AGCO's, the OLG's and FINTRAC's ability to effectively monitor criminal money laundering or terrorist financing activities, and to effectively reduce the existence of, and opportunities for, crime prevention in these sensitive areas of their law enforcement mandate.

Conclusion

[77] In conclusion, I find that, subject to my review of the AGCO's exercise of discretion, the records are exempt under section 14(1)(g). The records, the STRs, contain intelligence information within the meaning of that section. Disclosure of the records could reasonably be expected to interfere with the gathering of law enforcement intelligence information related to money laundering and terrorist financing. As well, disclosure of the records could reasonably be expected to reveal law enforcement intelligence information about money laundering and terrorist financing activities.

Issue B: Did the institution exercise its discretion under section 14(1)(g)? If so, should this office uphold the exercise of discretion?

[78] The section 14(1)(g) exemption is discretionary and permits the AGCO to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[79] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[80] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁹ This office may not, however,

²⁹ Order MO-1573.

substitute its own discretion for that of the institution.³⁰

[81] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:³¹

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

Representations

[82] In considering the exercise of discretion under section 14, the AGCO states that it took into account the purposes of *FIPPA*, including:

- a. the principles that information should be available to the public;

³⁰ Section 54(2).

³¹ Orders P-344 and MO-1573.

- b. exemptions from the right of access should be limited and specific;
- c. the privacy of individuals should be protected;
- d. whether disclosure will increase public confidence in the operation of the AGCO as an institution; and
- e. the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester and other affected institutions.

[83] The AGCO states that it exercised its discretion to apply the law enforcement exemption at issue in this appeal after review of the AGCO's mandate and consultation with other affected parties.

[84] In exercising its discretion, it determined that it was appropriate to apply the exemption to the records in whole in light of their highly sensitive nature.

[85] The OLG and FINTRAC support the AGCO's exercise of discretion.

[86] The appellant did not provide representations directly addressing the AGCO's exercise of discretion. He does indicate that Canadian authorities tasked with preventing money laundering are failing in their duties, which includes a lack of criminal charges being laid for money laundering offenses, a lack of convictions obtained for these charges and short sentences for those convicted.

[87] The appellant states that the exposure of the money laundering techniques in BC forced casinos and their oversight bodies to tighten their anti-money laundering rules.

[88] In reply, the AGCO states that it did consider the appellant's public interest arguments in exercising its discretion.

[89] In sur-reply, the appellant states that he suspects that the records detail the failures of law enforcement to prevent money laundering in Ontario casinos as identified by the Financial Action Task Force in their critical report on Canada. He submits that records that highlight and detail the shortcomings and failures of public agencies should be released in order to improve the functioning of the state in a democratic and open society.

Analysis/Findings

[90] The records detail suspicious casino transactions where a particular casino patron may be involved in money laundering or terrorist financing.

[91] Based on my review of the records and the parties' representations in their entirety, I find that the AGCO exercised its discretion in a proper manner taking into account relevant considerations and not taking into account irrelevant considerations.

[92] I find that the AGCO properly considered the sensitivity of the law enforcement

exemption at issue and the purposes of the *Act*. As well, it considered, in particular, the purposes of the *Act* and the public interest considerations raised by the appellant.

[93] Therefore, I am upholding the AGCO's exercise of discretion and find that the records are exempt by reason of section 14(1)(g). As I have found the records exempt on that basis, there is no need for me to also consider whether any of the other claimed exemptions apply to them.

ORDER:

I uphold the AGCO's decision that the records are exempt under section 14(1)(g) and dismiss the appeal.

Original signed by: _____

Diane Smith
Adjudicator

October 29, 2020 _____