

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4636

Appeal PA21-00338

Ontario Lottery and Gaming Corporation (OLG)

April 10, 2025

**Summary:** An individual made a request under the *Freedom of Information and Protection of Privacy Act* for all records relating to them. The OLG provided access to several hundred records but denied access to others claiming the personal privacy exemption in section 49(b), as well as the solicitor-client privilege in section 49(a) read with section 19. The OLG also claimed that some of the information was not responsive to the access request.

In this order, the adjudicator finds that some of the information the OLG deemed not responsive is actually responsive to the request. She also finds that some records contain the personal information of other people which is exempt under the personal privacy exemption, and that other information in the records is exempt because it is solicitor-client privileged. The adjudicator further finds that certain information the OLG claimed was personal information (such as the signatures of OLG employees in records) does not qualify as personal information and, as a result, the personal privacy exemption does not apply to it. The adjudicator orders the OLG to disclose the signatures of OLG staff contained in the records to the individual who made the access request.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 2 (definition of personal information), 19, 21(1), 24, 49(a) and 49(b).

**Orders Considered:** MO-3937, MO-4060 and MO-4404.

### OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access

decision made by the Ontario Lottery and Gaming Corporation (the OLG) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The access request was for all records relating to the requester, including emails, prize claim information, presentations, audio recordings, chat sessions, pictures, all transactions on LOTTO Advance and PlayOLG.ca, all marketing information sent and surveys completed.

[2] Prior to issuing a decision, the OLG notified a third party of the request. The OLG subsequently issued an access decision granting partial access to records. The OLG withheld certain information claiming the application of the mandatory exemption in section 21(1) (personal privacy), the discretionary exemptions in sections 13(1) (advice or recommendations) and 19 (solicitor-client privilege) and also deemed particular information as non-responsive to the request. The OLG released the records to which it had granted access that were not being held to allow a third party an opportunity to appeal. The OLG did not receive a third party appeal. As a result, it issued a second decision granting full access to the remaining records to which access had been granted.

[3] The requester (now the appellant) appealed the OLG's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] During the mediation of the appeal, the appellant informed the mediator they wish to pursue all of the information in the records, including information deemed as non-responsive. The OLG clarified it was relying on the exemptions in section 49(a) (discretion to refuse access to requester's own personal information) read with sections 13(1) and 19 of the *Act* and section 49(b) (personal privacy).

[5] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I conducted an inquiry, beginning by providing the OLG with the opportunity to provide representations. The OLG provided representations and advised that it was no longer relying on the exemption in section 13(1) and that it had decided that some records previously deemed as not responsive to the access request were now responsive. As a result, section 13(1) is no longer at issue. The OLG issued a supplementary decision to the appellant, disclosing further records. I then sought and received representations from the appellant and further representations from the OLG.

[6] In their representations, the appellant stated that the records they received were not in a searchable format, there were issues with page numbering and that they did not receive the records that were to be disclosed as set out in the OLG's supplementary decision. The OLG was provided with an opportunity to respond. During the inquiry, these issues were resolved to both parties' satisfaction.

[7] The appellant stated in their representations that the OLG arranged for their Twitter<sup>1</sup> account to be suspended and this was done in bad faith. The appellant requested

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<sup>1</sup> At that time, "Twitter" was the name of the social media outfit.

that the IPC order the OLG to reinstate the Twitter account. Under the *Act*, the IPC has no jurisdiction over issues relating to the suspension of a Twitter account. As a result, I will not address this issue further.

[8] For the reasons that follow, I find that most of the records the OLG identified as not responsive to the access request are not responsive. I also find that some of the records contain the personal information of the appellant and other identifiable individuals and that the personal information of individuals other than the appellant is exempt from disclosure under section 49(b). I find that other information, such as the signatures of OLG employees, does not qualify as personal information. Lastly, I find that the exemption in section 49(a) read with the solicitor-client privilege in section 19 applies to some of the records, and that the OLG properly exercised its discretion in withholding information under both sections 49(a) and 49(b).

## **RECORDS:**

[9] Of the 1650 original pages of records, there are approximately 740 pages of records remaining at issue, consisting of emails, chat messages, investigation summary reports, prize claim declaration forms, a case report, cheque details and discussion notes.<sup>2</sup>

## **ISSUES:**

- A. Which records are responsive to the request?
- B. Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- C. Does the discretionary exemption at section 49(a) read with the section 19 exemption, apply to the information at issue?
- D. Does the mandatory personal privacy exemption at section 21(1) or the discretionary personal privacy exemption at section 49(b) apply to the information at issue?
- E. Did the OLG exercise its discretion under sections 49(a) and 49(b)? If so, should the IPC uphold the exercise of discretion?

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<sup>2</sup> In the OLG’s Index of Records, the records are listed by page numbers. I follow that format in this order.

## **DISCUSSION:**

### **Issue A: Which records are responsive to the request?**

[10] The OLG is claiming that several records are not responsive to the request either in whole or in part.<sup>3</sup> Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] To be considered responsive to the request, records must “reasonably relate” to the request.<sup>4</sup> Institutions should interpret requests generously, in order to best serve the purpose and spirit of the *Act*. Generally, if a request is unclear, the institution should interpret it broadly rather than restrictively.<sup>5</sup>

### ***Representations***

[12] The OLG submits that in order to locate records that were responsive to the access request, it attempted to assist the appellant by seeking clarification regarding the nature and content of the requested records. In particular, the OLG asked the appellant what kinds of annual OLG data they were referring to in the request, the categories of records being sought in relation to two instances of lottery winnings and what the requester was seeking in terms of presentation materials prepared by the OLG.

[13] According to the OLG, in response, the appellant re-submitted the request and summarized specific types of information to which they were seeking access, all of which

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<sup>3</sup> The OLG’s representations submit that pages 248, 250-253, 260-266, 274-275, 278-279, 282, 285-286, 289-290, 389-392, 398, 404, 411-413, 424-427, 501, 525, 557-571, 594, 925, 951, 984-989, 1064, 1441-1443, 1448-1481, 1544 and 1550-1561 are not responsive to the request either in whole or in part. The OLG’s Index of Record further lists pages 397 and 927-928 as not responsive.

<sup>4</sup> Orders P-880 and PO-2661.

<sup>5</sup> Orders P-134 and P-880.

related to them. The OLG then conducted a search, and the appellant chose not to pursue records that would result in a fee.

[14] The OLG submits that it withheld information that did not reasonably relate to the request, disclosing as much information as possible about the appellant to them.

[15] The types of information the OLG deemed to be not responsive to the request include the following:

- Information contained in lists about complaints to the OLG that were not submitted by the appellant but were submitted at the same time as the appellant's complaints,<sup>6</sup>
- Internal OLG matters unrelated to the request such as conversations between employees about training programs and management discussions about staffing,<sup>7</sup> and
- Information about winnings from players other than the appellant.<sup>8</sup>

[16] The appellant's representations do not address this issue.

### ***Analysis and findings***

[17] The appellant's access request was for all records relating to them. On my review of the records, I find that with the exception of information the OLG withheld on pages 250, 253, 260-266, 282 and 289-290, all of the remaining information is not responsive to the access request. Many of these records are email and "chat" message chains in which OLG employees are discussing a number of issues, including the appellant. However, the information relating to the appellant has already been severed from the records and disclosed to them. The remaining information, I find, relates to individuals other than the appellant or to internal OLG work-related issues, as described in the OLG's representations. As a result, I find that this information is not responsive to the request and will not be disclosed to the appellant.

[18] As stated above, I find that the records located at pages 250, 253, 260-266, 282 and 289-290 are responsive to the appellant's access requests. The OLG withheld portions of these pages, claiming that they are not responsive to the request. These records are directly related to the access request because they are solely about the appellant. I note that the OLG has also claimed the application of the mandatory exemption in section 21(1) to the information in the records it claims is not responsive. As a result, I consider whether this information qualifies as personal information in Issue B, below.

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<sup>6</sup> Pages 424-427, 501, 525, 557-571, 925, 951, 984-989, 1064, 1441-1443, 1448-1481, 1544 and 1550-1561.

<sup>7</sup> Pages 389-392, 398, 404, 411-413 and 594.

<sup>8</sup> Pages 248, 250-253, 260-266, 274-275, 278-279, 282-285-286 and 289-290.

**Issue B: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[19] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the records contain “personal information,” and if so, to whom the personal information relates. The OLG claims that pages 250, 253, 260-261, 263, 265-266, 270-271, 282, 289-290 and 1540 contain personal information as defined in section 2(1) of the *Act*.

[20] Section 2(1) defines “personal information” as “recorded information about an identifiable individual.” “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>9</sup>

[21] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.<sup>10</sup> See also section 2(3), which states:

3. Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[22] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.<sup>11</sup>

[23] Section 2(1) of the *Act* gives a list of examples of personal information:

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

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<sup>9</sup> See the definition of “record” in section 2(1).

<sup>10</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>11</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

### ***Representations***

[24] The OLG submits that the records contain the personal information of the appellant and other identifiable individuals, including OLG employees. The OLG further submits that the personal information consists of the following information:

- Lottery winners' names, player ID numbers, winnings information, marital status and contact information. This information appears in lists of winners alongside the same information about the appellant,
- Complainants' names, contact information, the nature of the complaints and player ID numbers,
- Signatures of witnesses to Prize Claim Declaration Forms, and
- Signatures of OLG employees on Prize Claim Declaration Forms.

[25] With respect to the signatures of OLG staff appearing on the Prize Declaration Forms, the OLG submits that in Order MO-3937, the IPC found that the personal privacy exemption applies to signatures, including in circumstances where individuals sign in their professional, official or business capacity.

[26] The appellant submits that the names and titles of the OLG employees at issue are publicly available and do not qualify as their personal information.

### ***Analysis and findings***

[27] Based on my review of the records at issue, I find that they contain information that qualifies as the personal information of the appellant and of other identifiable individuals, namely lottery winners and complainants. In particular, I find that the records contain information about the marital status of certain individuals, falling within paragraph (a) of the definition of personal information in section 2(1). I further find that the records contain information relating to financial transactions in which individuals were involved (paragraph (b)), namely the lottery winnings. I also find that certain records contain identifying numbers of individuals (paragraph (c)), the personal opinions or views of individuals (paragraph (e)) and the names of individuals with other information about them (paragraph (h)), such as the nature of complaints made to the OLG by them. Having found that the records contain personal information, I will go on to determine whether this personal information is exempt from disclosure under section 49(b) in Issue D.

[28] I also find that there are two types of information about some of the OLG employees in the records. The first type of information is the signatures of OLG employees and the second are the employee identification numbers of two OLG employees. I find that the signatures do not qualify as the personal information of the employees. The OLG relies on Order MO-3937. In that order, the IPC found that the signatures of municipal employees in their employment agreements qualified as their personal information, but that the signature of representatives of the employer did not. The circumstances described in Order MO-3937 differ from those in this appeal. In this appeal, the signatures of the OLG employees are in their professional capacity contained in records relating to the appellant, not to them. Further, in Orders MO-4060 and MO-4404, the IPC found that certain signatures did not qualify as personal information because they related to individuals in their official capacities, and disclosure would not reveal anything of a personal nature about them. I agree with and adopt the approach taken in Orders MO-4060 and MO-4404, and find that the signatures of the OLG employees do not qualify as their personal information because they were made in the employees' professional capacity and the disclosure of them would not reveal something of a personal nature about them. Because the signatures do not qualify as personal information, the personal privacy exemption in either section 49(b) or 21(1) cannot apply to them. While the OLG has raised concerns about the disclosure of the employees' signatures,<sup>12</sup> it has not claimed any further exemptions with respect to them. As a result, I will order the OLG to disclose these signatures to the appellant.

[29] Turning to the employee identification numbers on pages 260 and 282, I find that these numbers qualify as the personal information of the employees. In Orders MO-2134 and PO-3456-I, the IPC recognized that employee identification numbers were recorded

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<sup>12</sup> The OLG argues that the disclosure of the employees' signatures presents security risks, particularly where the signatures are combined with other information such as employee names, titles and numbers. The OLG goes on to argue that there is a risk that "bad actors" may use the employee signatures to compromise the OLG's measures for ensuring the integrity of the prize claim process, which includes multiple levels of review and signature by qualified personnel.



in the course of the execution of employees' professional, rather than their personal, responsibilities. However, the IPC found in both orders that disclosure of employees' numbers particularly when taken with their names would reveal something of a personal nature about them, as these numbers are generally connected to their human resources files. On this basis in these orders, the IPC found that the employees' numbers qualified as their personal information. I agree with and adopt the approach taken in Orders MO-2134 and PO-3456-I and, as a result, I find that the employees' numbers qualify as their personal information. I go on to determine if the exemption in section 49(b) applies to this personal information in Issue D.

**Issue C: Does the discretionary exemption at section 49(a) read with the section 19 exemption, apply to the information at issue?**

[30] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this general right of access to one's own personal information.

[31] Section 49(a) of the *Act* reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[32] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their own personal information.<sup>13</sup>

[33] If the institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information. In this case, the OLG relies on section 49(a) read with section 19 to pages 172, 173, 183, 184, 1075, 1140, 1294 and 1295.

[34] Section 19 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It provides, in part, that a head may refuse to disclose a record that is subject to solicitor-client privilege.

[35] Section 19 contains three different exemptions, which the IPC has referred in previous decisions as making up two "branches." The OLG is claiming that the first branch applies found in section 19(a) ("subject to solicitor-client privilege"). Section 19(a) is

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<sup>13</sup> Order M-352.

based on common law. At common law, solicitor-client privilege encompasses two types of privilege. In this appeal, the OLG is claiming that the solicitor-client communication privilege applies.

[36] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.<sup>14</sup> This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.<sup>15</sup> The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.<sup>16</sup>

[37] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.<sup>17</sup> The privilege does not cover communications between a lawyer and a party on the other side of a transaction.<sup>18</sup>

[38] Under the common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege, and voluntarily demonstrates an intention to waive the privilege.<sup>19</sup> There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by the client supports a finding of an implied or objective intention to waive it.<sup>20</sup>

### ***Representations***

[39] As previously stated, the OLG submits that pages 172-173, 183-184, 1075, 1140 and 1294-1295 are exempt either in whole or in part under the solicitor-client communication privilege in Branch 1 of section 19. The records consist of direct communications between the OLG and its internal legal counsel, including requests for legal advice, information provided to counsel to assist in providing legal advice and the provision of the legal advice. All of these communications, the OLG argues, are subject to the common law solicitor-client privilege because they are confidential. In addition, the OLG submits that at no time was counsel for any other party or any other external person outside the scope of the privilege included in the communications, and that the OLG has not waived the solicitor-client privilege.

[40] The appellant submits that the exemption does not apply to records where in-

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<sup>14</sup> Orders PO-2441, MO-2166 and MO-1925.

<sup>15</sup> *Descôteaux v. Mierzewski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

<sup>16</sup> *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

<sup>17</sup> *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

<sup>18</sup> *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).

<sup>19</sup> *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

<sup>20</sup> *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

house legal counsel was simply copied on a communication – not sought for a legal opinion. The appellant further submits that if a record is not marked “privileged or confidential,” it should be disclosed to them. The appellant also suggests that the OLG may have applied the exemption too broadly, and that it may have claimed this exemption in order to frustrate the FOI process.

[41] In reply, the OLG submits that the exemption applies to the continuum of communications between a solicitor and client and that it is clear on the face of the records that they are subject to solicitor-client privilege.

### ***Analysis and findings***

[42] I find that all of the information the OLG withheld under section 49(a) read with section 19 is exempt from disclosure because it is subject to solicitor-client communication privilege under section 19(a).

[43] Pages 172-173 – duplicated in page 1075 – consist of an email communication from the OLG’s legal counsel to OLG staff in which legal advice was sought and legal counsel in turn is providing legal advice to staff.

[44] Pages 183-184 – duplicated in pages 1140 and 1294-1295 – consist of an email from the OLG’s legal counsel to OLG employees, where legal counsel has reviewed, revised and commented on a draft document.

[45] I find that these emails are exempt from disclosure under the solicitor-client communication privilege in section 19(a) because they are direct communications of a confidential nature between the OLG’s lawyer and OLG employees, made for the purpose of obtaining or giving legal advice. As previously stated, the privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given. Contrary to the appellant’s position, these emails are not a case where legal counsel was simply copied on them. As previously stated, the emails consist of legal advice directly provided by the OLG’s legal counsel to OLG employees. I further find that on my review of the records, it is clear by implication that the emails were made in confidence by the OLG’s legal counsel.

[46] Finally, I find that there is no evidence to suggest that the OLG waived its solicitor-client privilege with respect to the information it withheld. As a result, I uphold the OLG’s claim that the exemption in section 49(a) read with section 19 applies to these emails, subject to my findings regarding the OLG’s exercise of discretion.

### **Issue D: Does the mandatory personal privacy exemption at section 21(1) or the discretionary personal privacy exemption at section 49(b) apply to the information at issue?**

[47] The OLG has claimed the discretionary exemption in section 49(b) to the personal

information contained in pages 250, 260, 261, 266, 282 and 290. Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.<sup>21</sup>

[48] The section 49(b) exemption is discretionary. This means that the institution can still decide to disclose the record containing another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.

[49] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[50] The OLG is claiming the mandatory exemption in section 21(1) to the personal information contained in pages 253, 265, 270, 271 and 1540. Under section 21(1), where a record contains personal information of another individual but *not* the requester, the institution cannot disclose that information unless one of the exceptions in sections 21(1)(a) to (e) applies, or the section 21(1)(f) exception applies, because disclosure would not be an "unjustified invasion" of the other individual's personal privacy. Sections 21(1) to (4) provide guidance in deciding whether the information is exempt under section 21(1) or 49(b), as the case may be.

[51] In deciding whether either of the section 49(b) exemption or the section 21(1)(f) exception to the section 21(1) exemption applies, sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy.

[52] If any of sections 21(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Section 21(2) lists other factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy, and section 21(4) lists situations where disclosure would not be an unjustified invasion of personal privacy. If any of the section 21(4) situations is present, sections 21(2) and (3) need not be considered.

[53] For records claimed to be exempt under section 21(1) (that is, records that do not contain the requester's personal information), the factors outlined in section 21(2) cannot be used to rebut (disprove) a presumed unjustified invasion of personal privacy under section 21(3).<sup>22</sup> In other words, if disclosure of the other individual's personal information is presumed to be an unjustified invasion of personal privacy under section 21(3), section

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<sup>21</sup> However, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy; Order PO-2560.

<sup>22</sup> *John Doe, v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

21(2) cannot change this presumption.<sup>23</sup>

[54] If the personal information at issue does not fit within any presumptions in section 21(3), the decision-maker<sup>24</sup> considers the factors set out in section 21(2) to determine whether disclosure of the personal information would be an unjustified invasion of personal privacy. If no factors favouring disclosure in section 21(2) are present, the section 21(1) exemption applies because the section 21(1)(f) exception has not been proven.<sup>25</sup>

[55] For records claimed to be exempt under section 49(b) (that is, records that contain the requester's personal information), the decision-maker must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties in deciding whether the disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.<sup>26</sup>

[56] Section 21(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.<sup>27</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[57] Each of the first four factors, found in sections 21(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 21(2) (e) to (i), if established, would tend to support non-disclosure of that information.

[58] If any of the paragraphs in section 21(4) apply, disclosure of the personal information is not an unjustified invasion of personal privacy and the information is not exempt under section 21(1) or 49(b).

### ***Representations***

[59] The OLG submits that where the personal information of individuals is mixed with the appellant's personal information, it applied the discretionary exemption in section 49(b) to the personal information other than the appellant's on that basis that its disclosure would constitute an unjustified invasion of their personal privacy. The OLG notes that it has severed and disclosed all of the appellant's own personal information to them.

[60] The OLG further submits that it applied the mandatory exemption in section 21(1) where portions of the records contain only the personal information of individuals other

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<sup>23</sup> In such a case, the personal information cannot be disclosed unless one of the circumstances listed in section 21(4) is present, or unless the public interest override at section 23 applies.

<sup>24</sup> The institution or, on appeal, the IPC.

<sup>25</sup> Orders PO-2267 and PO-2733.

<sup>26</sup> Order MO-2954.

<sup>27</sup> Order P-239.

than the appellant.

[61] The OLG submits that the presumption in section 21(3)(f) applies to the personal information because the records describe individuals' monetary winnings. In addition, the OLG states that the factor in section 21(2)(f) – which weighs against disclosure - applies because the personal information is highly sensitive, such as financial information, marital status and other personal circumstances. The OLG further submits that the factor in section 21(2)(h), which also weighs against disclosure, applies because the personal information collected by players is done so to fulfil financial, legal and administrative processes associated with the disbursement and receipt of funds. As a result, the OLG argues that this information was provided in confidence by individuals to it. The OLG also submits that the none of the exceptions in section 21(4) apply.

[62] The appellant's representations do not address any of the presumptions in section 21(3) or the factors in 21(2).

### ***Analysis and findings***

[63] I find that all of the personal information is exempt from disclosure under either section 21(1) or 49(b) because its disclosure would constitute an unjustified invasion of the personal privacy of individuals other than the appellant.

[64] I find that the presumption in section 21(3)(f) applies to the personal information in pages 253, 265, 270 and 271. These pages do not contain the appellant's personal information. Section 21(3)(f) states:

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

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[65] I find that this presumption applies because some of the personal information describes the dollar value of financial transactions of an individual other than the appellant. I further find that this personal information to which section 21(3)(f) applies is contained in records that do not contain the appellant's personal information. As previously stated, under section 21(1), if a presumption in section 21(3) applies, it cannot be rebutted by any of the factors favouring disclosure in section 21(2). As a result, I find that the personal information in pages 253, 265, 270 and 271 is exempt from disclosure under section 21(1).

[66] The OLG has also claimed that section 21(1) applies to the personal information it withheld on page 1540. This record does not contain the appellant's personal information. The OLG withheld an individual's personal email address. The appellant has not submitted that any of the factors that favour disclosure are relevant. With no factors favouring disclosure, I find that disclosure of the personal email address of the individual would be

an unjustified invasion of personal privacy is exempt from disclosure. Because section 21(1) is a mandatory exemption, I uphold the OLG's claim.

[67] The remaining personal information in pages 250, 260, 261, 266, 282 and 290 is contained in records that also contain the appellant's personal information. Therefore, I will consider whether the discretionary exemption in section 49(b) applies to this information. I agree with the OLG and find that the factor in section 21(2)(f) – which weighs against disclosure – applies to this personal information. Section 21(2)(f) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

[68] Based on my review of the personal information at issue, which includes the employee numbers of certain OLG employees, I am satisfied that the personal information is highly sensitive and that its disclosure could reasonably be expected to cause significant personal distress to the relevant individuals.<sup>28</sup> The appellant did not raise any factors in section 21(2) that favour disclosure and I find that none apply. As a result, subject to my findings regarding the OLG's exercise of discretion, I find that the personal information in pages 250, 260, 261, 266, 282 and 290 is exempt from disclosure under section 49(b).

**Issue E: Did the OLG exercise its discretion under sections 49(a) and 49(b)? If so, should the IPC uphold the exercise of discretion?**

[69] The sections 49(a) and 49(b) exemptions are discretionary (the institution "*may*" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[70] In addition, the IPC 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, or it fails to take into account relevant considerations.

[71] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>29</sup> The IPC cannot, however, substitute its own discretion for that of the institution.<sup>30</sup>

[72] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant:<sup>31</sup>

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<sup>28</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

<sup>29</sup> Order MO-1573.

<sup>30</sup> Section 54(2).

<sup>31</sup> Orders P-344 and MO-1573.

- 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, and 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,
- 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, and
- the historic practice of the institution with respect to similar information.

### ***Representations***

[73] The OLG submits that it exercised its discretion properly and in good faith and that, in doing so, adhered to the principle that individuals should have a right to access their own personal information, stating:

OLG has little history of managing requests of this nature, in particular requests of such a wide scope. While OLG was unable to rely on an established practice to apply exemptions in this matter, it undertook a thorough deliberative process in order to ensure that discretionary exemptions were applied with discretion and due consideration.

[74] The OLG further submits that it disclosed the appellant's own personal information to them, withholding only the personal information of other individuals and information that was either exempt from disclosure under the solicitor-client privilege – which it applied narrowly – or not responsive to the request.

[75] The OLG submits that it also re-exercised its discretion during the inquiry of this appeal by no longer relying on the exemption in section 13(1), resulting in the disclosure of further records to the appellant. The OLG concludes by submitting that it severed information wherever possible and applied a focused and consistent methodology when relying on specific exemptions, thus respecting its obligation under section 10(2) to



disclose as much of the record as possible.

[76] The appellant submits that the OLG did not properly exercise its discretion by, for example, applying the solicitor-client privilege exemption too broadly. The appellant further submits that the OLG acted in bad faith by being disrespectful and dismissive of them during the request process and that they had to resort to contacting the Premier's office in order to get "any response" from the OLG.

[77] In reply, the OLG maintained that it acted in good faith, including clarifying the request, remaining communicative, disclosing further records during the appeal and adjusting the format of the records package.

### ***Analysis and findings***

[78] I have considered the OLG's representations on the factors it took into consideration in exercising its discretion to not disclose the records for which it claimed sections 49(a) read with section 19, and 49(b). I am satisfied that the OLG took into account relevant considerations, including the fact that the records contain the appellant's personal information. I note that OLG has already disclosed all of the appellant's personal information to them.

[79] Further, I find that the OLG balanced the appellant's request for disclosure of their own personal information against the purpose and importance of the solicitor-client privilege in section 19, as well as the personal privacy of other individuals. With respect to section 19 in particular, I find that the OLG exercised its discretion by claiming section 19 to only portions of those records, rather than the records as a whole. I further find that during the appeal process, the OLG further exercised its discretion by withdrawing its previous claim under section 13 and in doing so, disclosed further records to the appellant.

[80] For these reasons, I am satisfied that the OLG exercised its discretion within the appropriate parameters, and that it considered relevant factors in doing so and did not consider irrelevant factors. Accordingly, I find that the OLG properly exercised its discretion in this appeal, and I will uphold its exercise of discretion.

### **ORDER:**

1. I uphold the exemptions in section 49(a) read with section 19 to the information subject to solicitor-client privilege, as well as section 49(b) to the personal information of individuals other than the appellant.
2. I find that the signatures of the OLG employees do not qualify as their personal information. I order the OLG to disclose only the withheld signatures on pages 260, 261, 263, 266, 282 and 289 to the appellant by **May 20, 2025** but not before **May 13, 2025**.

3. I reserve the right to require the OLG to provide the IPC with a copy of the records it discloses to the appellant.

Original Signed by: \_\_\_\_\_

Cathy Hamilton  
Adjudicator

\_\_\_\_\_  
April 10, 2025