



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order 00-33

## INQUIRY REGARDING BRITISH COLUMBIA LOTTERY CORPORATION'S SEARCH FOR GAMING POLICY RECORDS

David Loukidelis, Information and Privacy Commissioner  
August 4, 2000

Quicklaw Cite: [2000] B.C.I.P.C.D. No. 36

Order URL: <http://www.oipcbc.org/orders/Order00-33.html>

Office URL: <http://www.oipcbc.org>

ISSN 1198-6182

**Summary:** Applicant sought gaming policy records from this British Columbia Lottery Corporation and other public bodies. Applicant named several records he said should be in public body's possession, though it did not produce them. Public body found to have fulfilled its s. 6(1) search duty.

**Key Words:** duty to assist – every reasonable effort – respond openly, accurately and completely.

**Statutes considered:** *Freedom of Information and Protection of Privacy Act*, s. 6(1); *Lottery Corporation Act*, s. 12.

**Authorities Considered: B.C.:** Order 00-15; Order 00-19; Order 00-26; Order 00-30; Order 00-32.

### 1.0 INTRODUCTION

Along with Order 00-32 and Order 00-34 – issued concurrently with this order – this decision deals with the applicant's request for records relating to the installation of slot machines at racetracks in British Columbia. By a letter dated July 22, 1999, the applicant sought access to records under the *Freedom of Information and Protection of Privacy Act* ("Act") from the British Columbia Lottery Corporation ("Lottery Corporation"). The applicant's related access requests, for similar information, were made to the Ministry of Employment and Investment ("Ministry") and to the British Columbia Racing Commission ("Commission"). Those requests are dealt with in Order 00-32 and

Order 00-34, respectively. The issue raised in all three cases is the same – has each public body complied with its duty, under s. 6(1) of the Act, to make every reasonable effort to assist the applicant and to respond without delay openly, accurately and completely?

In the applicant's July 22, 1999 access request to the Lottery Corporation, he asked for "any and all information and documentation" (including "memoranda, notes, records, reports, research material, correspondence, instructions, directions, computer data, etc.") relating to: (1) the process regarding the installation of slot machines (including the formulation, development and/or interpretation of the process) as alluded to in a Lottery Corporation letter of February 24, 1999; and (2) "any and all information and documentation within the possession of the Government of British Columbia, its agents and your corporation in particular pertaining to" the following regulation made under the *Lottery Corporation Act* (including the formulation, development and/or interpretation of the regulation) in October 1997:

2. Any person carrying on business or operating an establishment of any kind anywhere in the Province, including without limitation, business and establishments that are licensed under the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 may, upon being licensed by or entering into an agreement with the British Columbia Lottery Corporation, do anything in the Province that is required for the conduct, management or operation of a lottery scheme, including without limitation:

- (a) the installation, maintenance, management, conduct or operation of slot machines; and
- (b) permitting slot machines to be installed, maintained, managed, conducted or operated,

anywhere on that person's place of business or premises in accordance with the terms of the said license or agreement.

This regulation and another were, the applicant says, the subject of litigation in the British Columbia Supreme Court in 1997.

The Lottery Corporation responded on August 17, 1999, providing a total of 15 documents to the applicant. The documents consisted of correspondence to and from the Lottery Corporation, the government and the applicant concerning the applicant's application for installation of slot machines at a particular racetrack. Obviously, the applicant was aware of and already in possession of these documents.

On August 20, 1999, the applicant asked the Lottery Corporation to conduct a further search for support documentation or reference material relating to the regulation at issue. The applicant said it was "incomprehensible that the Board of Directors of a Crown Corporation could consider and pass a Regulation (law) without the benefit of supporting documentation". The Lottery Corporation responded to the applicant on September 7, 1999, informing him that the only supporting documents in its possession were meeting

minutes of a special board of directors meeting held on October 28, 1997 and a copy of a draft regulation, both of which the Lottery Corporation provided to the applicant at that time. The minutes were provided in severed form. The Lottery Corporation also advised that the purpose of the regulation was to “clarify the Corporation’s position vis-à-vis the *Municipal Act* and the *Vancouver Charter*”.

The applicant was not happy with this and requested a review, under s. 52 of the Act, on the basis that further records must exist and that the Lottery Corporation had failed to disclose all responsive records. This request for review was made on September 19, 1999, concurrently with similar requests for review by the applicant relating to the Ministry and the Commission. The applicant wanted his three review requests to be dealt with in one inquiry because they were interrelated. Both the Lottery Corporation and the Ministry objected to the inclusion of the three public bodies in one inquiry. On December 20, 1999, I decided to conduct three separate inquiries.

It appears from the material before me that the Lottery Corporation provided some further records to the applicant during mediation by this Office. Some of those records were apparently disclosed in severed form. They included severed extracts from records of decisions of the Lotteries Advisory Committee established by the government when it announced its gaming policy. The applicant continues to believe that further relevant records exist in the custody or under the control of the Lottery Corporation.

## **2.0 ISSUE**

The only issue to be considered in this inquiry is whether the Lottery Corporation has performed its duty, under s. 6(1) of the Act, to make every reasonable effort to assist the applicant and to respond to the applicant without delay openly, accurately and completely. The Lottery Corporation accepts that it has the burden of proving that it has discharged its s. 6(1) duty.

## **3.0 DISCUSSION**

### **3.1 Applicable Principles** – Section 6(1) of the Act reads as follows:

6. (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

Because the obligations of a public body under s. 6(1) of the Act in searching for responsive records have been canvassed fully in many orders, I see no need to repeat them here. See Order 00-15, Order 00-26 and Order 00-32, for example, on the applicable standards and the evidence that public bodies should provide in inquiries such as this.

### **3.2 Did the Lottery Corporation Fulfill Its Obligations?** – The applicant says he is particularly surprised that he received so few records from the Lottery Corporation

relating to the regulation referred to above. He refers to the litigation concerning the regulation and an extract from the court's decision, where it is said

... the Minister responsible for the Corporation has purported to authorize the Corporation to manage casinos including those with slot machines. This had led the directors of the Corporation to enter into an agreement ... to place slot machines in their casino and to pass the regulations discussed above.

The applicant reasons that, if the Lottery Corporation's statement about there being no other responsive records is true, "then there is no evidence that the Minister authorized the making of the aforesaid Regulations as mandated by statute". The applicant believes the most reasonable and logical inference to be drawn in the circumstances is that other records must exist and that the Lottery Corporation is therefore withholding information responsive to his access request and has failed to meet its s. 6(1) duty to assist him.

The Lottery Corporation submits that it has fully complied with the applicant's access request. In support of its case, it filed an affidavit of the person whose duties and responsibilities include the administration of the Act for the Lottery Corporation. That affidavit describes the responsibilities of that person, the locations of the Lottery Corporation's offices and the general procedure she uses when the Lottery Corporation receives an access request under the Act. Under that procedure – which she says was carried out in this case – she first informs (usually by e-mail) the President and Vice-President of the Lottery Corporation and most of the directors, especially those responsible for the departments that would be most involved, of the request and asks them to look for responsive records.

The Lottery Corporation interpreted the first part of the applicant's access request as relating to information about his application for installation of slot machines at a specific racetrack and not the installation of such slot machines at racetracks generally. This was because the applicant's request specifically referred to a letter from the Lottery Corporation, dated February 24, 1999, which responded to a letter to it from the applicant dated February 18, 1999. This last letter only addresses the process followed by the applicant in respect of his application.

Accordingly, "[b]ecause of the rather narrow definition of records being sought and after consultation with other employees of the Corporation", the person responsible for responding to the access request determined that such records could only be located in one or more of five offices. She then "required" searches for the records in these five offices to be carried out. These searches resulted in the disclosure of a number of records to the applicant. As for the applicant's request for information about the regulation referred to above, the affidavit evidence establishes that the Lottery Corporation conducted a much broader and more thorough search for responsive records.

The Lottery Corporation carried out its subsequent search in response to the applicant's August 20, 1999 follow-up request, regarding the regulation, in the same way. That search resulted in disclosure of the draft regulation and meeting minutes referred to above.

The Lottery Corporation says it did not provide the applicant with any records about the litigation involving the regulation because it did not believe this information was within the scope of the applicant's request concerning racetracks. It notes that the court case considered whether the authority of the Lottery Corporation to conduct and manage "lottery schemes" overrode a municipal zoning amendment by-law that prohibited video lottery terminals and slot machines within the City of Vancouver. It also notes that s. 12 of the *Lottery Corporation Act*, which authorizes the Lottery Corporation's board to make regulations, does not require the Minister to authorize such regulations.

In its initial submission, the Lottery Corporation argues that, because of the reference to the February 28, 1999 letter in the applicant's access request, this review can only relate to a request for information about the applicant's own application for slot machines. The Lottery Corporation says the following:

... It is not the Corporation's duty under the Act to go any further than to comply with section 6 insofar as it relates to the request that was made. It is not the Corporation's duty to guess or speculate as to what other requests for information the Applicant might have. There is probably no harm in a public body supplying some additional records which do not fall strictly within the scope of the applicant's request but there is no duty established by the Act for a public body to do so.

If the Applicant wished to expand its request to include records in the possession of the Corporation which relate to the installation of slot machines at all race tracks in British Columbia the Applicant should have filed an additional request and the Corporation would fulfill its mandate under the Act and try and locate any records related to the broader request. Even if the Applicant had used his letter of August 20, 1999 to expand the request made in the paragraph no. 1 of this July 22, 1999 letter, more expansive searches could have been carried out by the Corporation.

It is true that the applicant's July 22, 1999 access request is capable of being narrowly construed as relating only to information about his own application. It is also true that the applicant's August 20, 1999 follow-up letter focusses only on the information he sought about the regulation. These facts support the Lottery Corporation's view that its interpretation of the request – *i.e.*, that the applicant sought information about his application only and not racetrack applications for slot machines generally – was reasonable.

This does not mean I agree that, where there is some doubt about the precise parameters of an individual access request, a public body should, or is entitled to, interpret the request strictly and not seek any further clarification from the applicant. The duty to assist may well – in appropriate cases – require a public body to ensure it understands clearly what information an applicant seeks, including by contacting the applicant where practicable, in order to clarify the request. These observations are related to those in Order 00-30, in which I noted that a public body should treat as responsive to a request any records which, by their plain content or function – and regardless of their names or titles – can readily be considered to be responsive to the request.

As I intimated in Order 00-19 and in Order 00-30, public bodies in any case have an incentive to contact applicants to clarify requests. By doing this, it may be possible in some cases to reduce a request's scope, thus promoting efficiency and reducing costs associated with request processing. It may also increase the applicant's understanding of what the public body has done for the applicant, thus reducing the chances of a request for review being lodged under s. 52 of the Act respecting the public body's discharge of its s. 6(1) duties.

Returning to the case at hand, the Lottery Corporation also argues that, while the applicant may be "astounded" by the fact that very few documents were presented to the Lottery Corporation's board at its October 28, 1997 special meeting, the fact is that it has given all of the records to the applicant and "the Corporation cannot fabricate records and documents now simply because the Applicant feels that what went before the Board was inadequate".

The affidavit provided to me in support of the Lottery Corporation's submissions provides sufficient detail to satisfy me that the search that was carried out was timely and responsive to the applicant's access request. I am also satisfied that the Lottery Corporation's interpretation of the scope of the applicant's access request was reasonable in all of the circumstances of this case. The Corporation's efforts to identify and locate responsive records were reasonable and thorough. For these reasons, I find that the Lottery Corporation has, in compliance with s. 6(1) of the Act, discharged its duty toward the applicant under that section.

#### **4.0 CONCLUSION**

Because I have found that the Lottery Corporation has fulfilled its duty under s. 6(1) of the Act to assist the applicant, no order is called for under s. 58 of the Act.

August 4, 2000

**ORIGINAL SIGNED BY**

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia