



## Decision and Reasons for Decision

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**Application Number:** 220027

**Applicant:** C Moss

**Respondent:** Department of Employment, Economic Development and Innovation

**Decision Date:** 22 September 2010

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS - applicant sought access to information relating to agency's investigations of his lottery claim - whether disclosure of the information would on balance be contrary to the public interest - whether access to documents can be refused under section 47(3)(b) and section 49 of the *Right to Information Act 2009* (Qld)

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## REASONS FOR DECISION

### Summary

1. In this external review, the Applicant contends that the Department of Employment, Economic Development and Innovation (**Department**) should have granted him access to all information responding to his access application made under the *Right to Information Act 2009* (Qld) (**RTI Act**). The Applicant believes the information he has been refused access to would confirm purchasing details of a winning Powerball lottery ticket. The Applicant submitted that if he was given access to the Information in Issue, he would not use it to make fraudulent claims for other lottery prizes.
2. Having considered the evidence available to me, relevant legislation, case law and the parties' submissions, I find that it would be contrary to the public interest to give access to the Information in Issue in this review and that access can be refused under sections 47(3)(b) and 49 of the RTI Act.

### Background

3. The Applicant contends that on 11 August 2004, he bought a winning Powerball lottery ticket from Nundah News (**Lottery Claim**), an agent of the Golden Casket Lottery Corporation Limited (**Golden Casket**). Since 2007, the Applicant has requested various government agencies conduct inquiries and investigations into his Lottery Claim.<sup>1</sup> The Applicant has not succeeded in establishing the validity of his Lottery Claim through these processes.
4. On 30 July 2009, the Applicant lodged an access application under the RTI Act with the Department (**Access Application**) seeking access to:

*All documents relating to my claim for powerball draw 437, the investigations undertaken by Office of Gaming Regulations Golden Casket, the information supplied to the Treasury Investigation and the information supplied to the Premier re the claim I made.*
5. By letter dated 18 September 2009, the Department's Principal RTI Officer<sup>2</sup>, informed the Applicant that he had decided to (**Decision**):
  - grant full access to 65 documents and partial access to 11 documents; and
  - refuse partial access to 11 documents and full access to 27 documents under sections 47(3)(b) and 49 of the RTI Act on the basis that disclosure of the information would, on balance, be contrary to the public interest.
6. By letter dated 16 October 2009 (**External Review Application**) the Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Decision on the following basis:

*insufficiency of provided documents. I specifically requested all press releases pertaining to powerball draw 437... review of the decision denying my access to 27 full documents and ii partial documents on the basis of a third party objecting to the release of these documents...*

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<sup>1</sup> The Applicant's Lottery Claim have been assessed by Golden Casket Lottery Corporation Limited (**Golden Casket**) and reviewed by the Office of Liquor and Gaming Regulation (**OLGR**). A number of Members of Queensland Parliament, including the Premier, have also responded to the Applicant's inquiries.

<sup>2</sup> Mr B Burns.

### Reviewable decision

7. The decision under review is the Department's decision to refuse access to information under section 47(3)(b) of the RTI Act.<sup>3</sup>

### Steps taken in the external review process

8. The steps taken in the external review process are set out in the Appendix.<sup>4</sup>

### Issue in the review

9. The document in issue in this review is the Golden Casket's computerised record of transactions processed at Nundah News on 11 August 2004 (**Computer Record**).<sup>5</sup>

10. As a result of some of the information in the Computer Record being released to the Applicant during this review, only the following information remains subject to the Department's decision to refuse access and is therefore, in issue in this review (**Information in Issue**):

- time of purchase
- ticket number (receipt)
- date of the draw
- type of entry
- number of game(s) played
- number of weeks the ticket was played for
- numbers on the winning game(s)
- division
- number of prizes claimed
- amount claimed
- type of ticket purchased, ie. whether it was a system entry, "with the field" entry, super 66 (including super 66 numbers) or a Winners' Circle purchase.

11. The issue to be determined in this external review is whether access to the Information in Issue can be refused under sections 47(3)(b) and 49 of the RTI Act on the basis that disclosure of the information would, on balance, be contrary to the public interest.

### Relevant law

12. An agency must decide to give access to a document unless disclosure would, on balance, be contrary to the public interest.<sup>6</sup>
13. It is the Parliament's intention that the grounds for refusal are to be interpreted narrowly.<sup>7</sup>
14. In determining whether disclosure of information would, on balance, be contrary to the public interest, a decision maker is required by section 49 to:

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<sup>3</sup> See item (e) of the definition of 'reviewable decision' in schedule 6 of the RTI Act.

<sup>4</sup> The Appendix also contains a number of defined terms which are used throughout this decision.

<sup>5</sup> Documents numbered 59 to 80 in the Decision.

<sup>6</sup> Section 49 of the RTI Act.

<sup>7</sup> Section 47(2)(a) of the RTI Act.

- identify any irrelevant factors that apply in relation to the Information in Issue and disregard them
- identify public interest factors favouring disclosure and nondisclosure that apply in relation to the Information in Issue
- balance the relevant factors favouring disclosure and nondisclosure
- decide whether disclosure of the Information in Issue, on balance, would be contrary to the public interest.<sup>8</sup>

15. On external review, an agency bears the onus of establishing that its decision was justified or that a decision adverse to the Applicant should be made.<sup>9</sup> Therefore, in this review, the Department must demonstrate that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

### **Submissions and evidence**

16. In making this decision, I have considered the following:

- Access Application
- Department's Decision
- External Review Application
- Information in Issue
- Submissions received from the Applicant, Department and Golden Casket during this review
- Premier Office correspondence and an attached extract from the Computer Records (**Extract**)
- File notes of telephone conversations held between OIC staff members and officers of the Department during this review
- File notes of telephone conversations held between OIC staff members and Golden Casket during this review
- File notes of telephone conversations held between OIC staff members and the Applicant during this review
- Relevant provisions of the RTI Act as referred to in this decision.

### ***Applicant's submissions***

17. The Applicant submits that:

- he purchased a "ten ticket" entry from Nundah News between 3.15pm and 3.35pm on 11 August 2004
- his ticket won the first division prize in Powerball draw 437 drawn on 30 September 2004 (**\$23 Million Prize**)
- he recalls inconsistencies in media reports regarding the identity of the person to whom the \$23 Million Prize was paid out
- he believes Golden Casket has never paid out the \$23 Million Prize.

18. The Applicant submits that disclosure of the Information in Issue would:

- prove his Lottery Claim;
- show that his Lottery Claim was not properly investigated by OLGR; and
- evidence a cover-up by the Queensland Government in relation to the \$23 Million Prize.

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<sup>8</sup> In accordance with section 49(3) of the RTI Act.

<sup>9</sup> Section 87(1) of the RTI Act.

19. The Applicant submits that if he was given access to the Information in Issue, he would not use it to make fraudulent claims for other lottery prizes.

### **Department's submissions**

20. The Department submits that the Information in Issue does not contain any evidence of a transaction which would prove the Applicant's Lottery Claim. To support this submission, the Department relies on evidence that Nundah News' lottery terminal was 'logged off' on the afternoon of 11 August 2004.
21. The Department submits that the Information in Issue contains records of successful lottery entries processed at Nundah News on 11 August 2004, which, if disclosed, could enable fraudulent claims to be made on winning tickets that remain unclaimed.
22. In the Decision, the Department identifies that disclosure of the Information In Issue could reasonably be expected to:
- cause a public interest harm<sup>10</sup>
  - prejudice the flow of information to a regulatory agency<sup>11</sup>
  - prejudice OLGR's ability to obtain confidential information.<sup>12</sup>
23. The Department also relies on the following provision of the *Lotteries Act 1997* (Qld) (**Lotteries Act**) to support its Decision:

#### **225 Confidentiality of Information**

- i. A person who is, or was, an inspector, or officer or employee of the Department, must not disclose confidential information gained by the person in performing functions under this Act.*

24. OLGR raised concerns that disclosure of the Information in Issue would only cause the Applicant to "start another round of enquiries."<sup>13</sup>

### **Golden Casket's submissions**

25. Golden Casket submits that the Information in Issue is valuable to potential claimants because it is the type of information which OLGR expects only the genuine winner to know. Golden Casket submits that this information, combined with information the Applicant already knows, could enable him (or anyone he shares the information with) to make fraudulent claims on any of the winning lottery tickets sold at Nundah News on 11 August 2004.<sup>14</sup> On that basis, it is Golden Casket's view that disclosure of the Information in Issue under the RTI Act would support fraudulent claims on winning lottery tickets.

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<sup>10</sup> On the basis that it consists of information of a confidential nature that was communicated in confidence; the disclosure of which could reasonably be expected to prejudice the future supply of information of this type (schedule 4, part 4, section 8(1) of the RTI Act).

<sup>11</sup> Schedule 4, part 3, section 13 of the RTI Act.

<sup>12</sup> Schedule 4, part 3, section 16 of the RTI Act.

<sup>13</sup> OLGR email dated 12 February 2008, released as part of the Decision.

<sup>14</sup> By lodging a "Lost or Damaged Ticket" claim form with Golden Casket.

26. Additionally, the Transaction Dump demonstrates that:

- there were no Golden Casket product sales from Nundah News after 11.58am on 11 August 2004; and
- Nundah News 'logged out' of the Golden Casket System at 12.45pm on 11 August 2004.

### **Findings of fact**

27. The following findings of fact are made:

- the logoff time for the terminal at Nundah News was 12.45 pm
- the last recorded sale at the Nundah News terminal on 11 August 2004 was at 11.48am
- there is no record of a ticket sold which matched the details of the Applicant's Lottery Claim
- several winning entries were sold on the morning of 11 August 2004
- the Information in Issue identifies detail about the winning entries which would support 'Lost or Damaged Ticket' claims on any unclaimed prize thereby enabling fraudulent claims.

### **Application of the law**

#### ***Balancing the public interest***

##### **Irrelevant factors**

28. The concerns raised by OLGR at paragraph 24 are irrelevant factors.<sup>15</sup>

29. The Applicant's advice that he recently appeared on a current affairs television program in relation to his Lottery Claim is also an irrelevant factor.

##### **Factors in favour of disclosure**

30. The Applicant's submissions at paragraph 18 go towards the public interest in disclosure of information which could reasonably be expected to:

- contribute to the administration of justice for a person<sup>16</sup>
- reveal the reasons for a government decision<sup>17</sup>
- enhance government's accountability.

##### ***Would disclosure contribute to the administration of justice for the Applicant?***

31. The Applicant has been advised by OLGR and the Premier's Office<sup>18</sup> that the winning ticket for the \$23 Million Prize was not purchased on the 11 August 2004. As the Information in Issue comprises records of entries sold on 11 August 2004, access to it cannot support the Applicant's Lottery Claim. Disclosure of the Information in Issue cannot reasonably be expected to assist the Applicant to pursue a legal entitlement to the \$23 Million Prize resulting out of the Lottery Claim.

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<sup>15</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>16</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>17</sup> See schedule 4, part 2, item 11 of the RTI Act.

<sup>18</sup> The Premier's Office response of 23 June 2008 revealed the date that the winning entry was purchased.

32. I give no weight to the Applicant's submission insofar as it relies on the Information in Issue to prove his Lottery Claim.

***Would disclosure reveal the reasons for OLGR's decision?***

33. I accept that there is a public interest in disclosing information which may reveal to the Applicant further reasons for the Department's decision that he did not win Powerball Draw 437. However I am satisfied that OLGR's reasons have been revealed to the Applicant and cannot be further explained by the release of the Information in Issue. For that reason, I afford this factor little weight in balancing the public interest in disclosure of the Information in Issue.

***Would disclosure enhance government's accountability?***

34. The Applicant believes the \$23 Million Prize has not been paid out.
35. I accept that OLGR must be accountable for its activities, serving an important public function as watchdog for the gaming industry.
36. The Information in Issue relates only to the investigation of the Applicant's Lottery Claim and does not disclose anything about the \$23 Million Prize. For that reason I do not consider there to be any accountability public interest factor that would weigh in favour of disclosure.
37. The second accountability issue raised by the Applicant is an allegation that the Extract provided to him by the Premier's Officer had been 'falsified'.
38. I acknowledge that Document 42 has a 'cut and paste' appearance however, as staff of the OIC have explained to the Applicant, the Extract was compiled by OLGR from the Computer Records for the Premier's information.
39. In the course of this external review, I accepted and the Department agreed that disclosure of the Computer Records (save for the Information in Issue) would help the Applicant to see for himself that Document 42 was based on correct information. As the Department has agreed to release information from the Computer Records which will show the Applicant that the Extract was accurate, I consider that there is no further public interest to be served by disclosure of the Information in Issue.

**Factors in favour of non-disclosure**

40. In its Decision, the Department raise three factors in favour of non-disclosure. These are that disclosure of the information could reasonably be expected to:
- cause a public interest harm<sup>19</sup>
  - prejudice the flow of information to a regulatory agency<sup>20</sup>
  - prejudice an agency's ability to obtain confidential information.<sup>21</sup>
41. Common to each of these factors is the assertion that disclosure could reasonably be expected to impede the future supply of lottery information to the Department.

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<sup>19</sup> On the basis that it consists of information of a confidential nature that was communicated in confidence; the disclosure of which could reasonably be expected to prejudice the future supply of information of this type (schedule 4, part 4, section 8(1) of the RTI Act).

<sup>20</sup> Schedule 4, part 3, section 13 of the RTI Act.

<sup>21</sup> Schedule 3, part 3, section 16 of the RTI Act.

42. Golden Casket is required to provide this kind of information to the Department under the Lotteries Act. As there is a statutory requirement, I do not accept that disclosure of the Information in Issue could reasonably be expected to stop Golden Casket supplying the Department with information of this kind in the future. For that reason, I give this factor no weight in balancing the public interest.
43. The Department also referred to the non-disclosure provisions of the Lotteries Act. I have treated this as a submission that the public interest favours non-disclosure.
44. The RTI Act generally overrides provisions in other Acts prohibiting the disclosure of information<sup>22</sup> and therefore the Lotteries Act does not operate to exempt the Information in Issue.<sup>23</sup> Policy reasons behind statutory non-disclosure provisions are, however, public interest factors that need to be considered. I consider in this instance, the fact that disclosure of the Information in Issue is prohibited by the Lotteries Act is one factor to be considered in favour of non-disclosure.<sup>24</sup>
45. I consider that Golden Casket made persuasive submissions about the value of the Information in Issue to potential claimants (both genuine and fraudulent). I therefore accept Golden Casket's submission at paragraph 25 and find that:
- the Information in Issue has a high commercial value to Golden Casket and winning ticket holders, the disclosure of which would diminish the commercial value of that information<sup>25</sup>
  - disclosure of the Information in Issue would enable fraudulent claims on Golden Casket lottery prizes, which could reasonably be expected to:
    1. impede the administration of justice generally for any person who has a genuine claim to an identified lottery prize<sup>26</sup>
    2. prejudice the commercial affairs of Golden Casket.<sup>27</sup>

### **Conclusion**

46. Having identified and examined the public interest factors, I consider that the public interest in disclosure is outweighed by the public interest in non-disclosure.

### **DECISION**

47. I affirm the decision under review by deciding that the Department was entitled to refuse access to the Information in Issue on the basis that disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

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Julie Kinross  
**Information Commissioner**

**Date: 22 September 2010**

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<sup>22</sup> Section 6 of the RTI Act.

<sup>23</sup> As the Lotteries Act is not listed in Schedule 3, section 12 of the RTI Act.

<sup>24</sup> Schedule 4, part 3, item 22 of the RTI Act.

<sup>25</sup> Schedule 4, part 4, item 7(1)(b)(ii) of the RTI Act.

<sup>26</sup> Schedule 4, part 3, item 9 of the RTI Act.

<sup>27</sup> Schedule 4, part 3, item 2 of the RTI Act.

## APPENDIX

### Steps taken in the external review process

1. On 16 October 2010, OIC staff requested copies of documents relevant to this review from the Department. The Department responded to this request on 20 October 2009.
2. In correspondence dated 30 October 2009, OIC informed the parties that the External Review Application had been accepted.
3. During November 2009, OIC took steps to identify opportunities for early resolution and promote settlement of the External Review Application,<sup>28</sup> however informal resolution attempts were unsuccessful.<sup>29</sup>
4. On 24 November 2009, the Applicant informed OIC that he wanted to gain access to the following documents through the external review process:
  - till tape from the machine at Nundah Newsagency dated 11 August 2004 (**Till Tape**); and
  - Golden Casket's computerised record of lottery transactions at the Nundah Newsagency on 11 August 2004 (**Computer Records**).
5. On 26 November 2009, OIC asked the Department for submissions on the availability of the Till Tape and Computer Record. The Department responded to this request on 2 December 2009.
6. On 30 November 2009 and 2 December 2009, the Applicant provided OIC with further documents in support of his External Review Application.<sup>30</sup>
7. On 9 December 2009, OIC informed the Applicant that the issue to be determined in the review is whether the Department was entitled to refuse access to the Computer Records under the RTI Act.<sup>31</sup>
8. On 5 March 2010, OIC conveyed a preliminary view was conveyed to the Department that its reasons for decision did not support refusal of access to the Computer Records (**Preliminary View**). OIC requested the Department's submissions in response by 22 March 2010.
9. Between 25 March 2010 and 7 May 2010, OIC granted the Department a number of extensions within which to respond to the Preliminary View. The Department indicated that its delays were due to increased workload and the need to obtain submissions from OLGR and Golden Casket.<sup>32</sup>
10. By email dated 14 May 2010, the Department responded to the Preliminary View.

<sup>28</sup> As required under section 90(1) of the RTI Act.

<sup>29</sup> As part of this process, additional documents were released to the Applicant but he informed OIC that this did not resolve all issues in the review.

<sup>30</sup> Including:

- a letter dated 23 June 2008 from the Premier's Office attaching the Extract; and
- a letter from Honourable Peter Lawler MP to the Honourable Tim Nicholls MP dated 29 October 2009.

<sup>31</sup> The Applicant was also informed that the Till Tape is not a document of an agency for the purposes of the RTI Act and would therefore, not be considered further in this review.

<sup>32</sup> OIC contacted the Applicant by telephone to update him about delays during this period.

11. During this review, OIC identified that the disclosure of information in the Computer Records may reasonably be expected to be of concern to Golden Casket. Therefore, OIC consulted Golden Casket in relation to disclosure of this information.<sup>33</sup> As a result of OIC consultation with Golden Casket, the Department agreed to release some of the information in the Computer Record to the Applicant.
12. On 31 May 2010<sup>34</sup> and 4 June 2010<sup>35</sup> OIC conveyed a preliminary view to the Applicant that disclosure of the Information in Issue would, on balance, be contrary to the public interest.
13. On 21 June 2010, the Applicant responded to the preliminary view.
14. On 16 August 2010, the Applicant informed OIC that he had recently appeared on a current affairs television program in relation to his Lottery Claim.

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<sup>33</sup> In telephone conversations on 21 May 2010 and 28 May 2010. OIC also provided Golden Casket with a copy of the Preliminary View for its response.

<sup>34</sup> By telephone.

<sup>35</sup> In writing.