

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on Investigation into Complaints Regarding AGLC's Authority to Collect Personal Information

December 13, 2002

Alberta Gaming and Liquor Commission

Investigation #2331 and #2333

I. INTRODUCTION

[para 1] In January 2002, the Information and Privacy Commissioner notified the Alberta Gaming and Liquor Commission ("AGLC") that he had received two complaints regarding AGLC's "Personal Disclosure for Licence/Registration Application" form.

[para 2] The Complainants questioned the amount of personal information collected by AGLC. In addition, the Complainants questioned the extent of AGLC's collection, which includes information about individuals other than the applicant applying for a licence/registration. The Complainants asked that the Commissioner review AGLC's authority to collect such information.

[para 3] Section 53(1)(a) of the *Freedom of Information and Protection of Privacy Act* ("the FOIP Act") authorizes the Commissioner to conduct investigations to ensure compliance with any provision of the FOIP Act. The FOIP Act sets out specific provisions regarding the collection of personal information.

[para 4] Accordingly, the Commissioner authorized me to investigate whether AGLC's collection of personal information is in compliance with the collection provisions of the FOIP Act. This report outlines the findings and analysis of my investigation.

II. PRELIMINARY MATTERS

[para 5] AGLC said it implemented a new and comprehensive application process in February 2002 following an in-depth examination of the due diligence process used by gaming authorities in other jurisdictions. As a result, the Personal Disclosure for Licence/Registration Application form that was in use at the time that the complaints were filed with this Office was replaced by a new application package.

[para 6] Although the application form that initiated this investigation no longer exists, my investigation on this matter continued for the following reasons:

- The application form is simply a "tool" used by AGLC to collect information from applicants when they apply for a licence or registration. The new application package is another tool for the same purpose, i.e., to collect information for the licence/registration application process.

- The new application package did not change the basis of the complaints filed with this Office. The Complainants' issue was the amount of personal information collected by AGLC and AGLC's authority to collect this information. Whether the information was collected from the previous application form or the new application package is irrelevant to the issue of AGLC's authority to collect the personal information in the first instance.
- Neither of the Complainants withdrew their privacy complaints.

[para 7] In my opinion, there is no useful purpose in reviewing a form that no longer exists. Therefore, my investigation reviewed only the personal information that AGLC collects from the application package that was implemented as of February 2002.

III. ISSUE

[para 8] The issue in my investigation is:

Does AGLC's collection of personal information by way of its application package comply with the FOIP Act?

IV. BACKGROUND INFORMATION

A. AGLC's Legislative Powers and Authorities

[para 9] Section 3 of the *Gaming and Liquor Act* sets out AGLC's overall legislative responsibilities, such as:

- To administer the *Gaming and Liquor Act* (section 3(a)).
- To carry out the functions respecting gaming delegated to it by the Lieutenant Governor in Council under the *Criminal Code* (Canada) or conferred on it by the *Gaming and Liquor Act* (section 3(c)).

[para 10] Part 2 of the *Gaming and Liquor Act* sets out the provisions that govern gaming in Alberta, such as:

- No one may conduct or manage a gaming activity or operate a gaming facility unless they are licenced to do so (section 36).
- A person must be registered before that person may provide gaming workers to a gaming licensee (section 39(2)).
- A person must be registered before that person may make, sell, advertise, distribute or possess gaming supplies (section 40).
- A person must be registered before that person may make, sell, advertise, distribute or possess a video lottery terminal (section 46).

[para 11] Section 35 and section 37 of the *Gaming and Liquor Act* authorize AGLC to issue gaming and facility licences.

[para 12] Section 42(1) of the *Gaming and Liquor Act* says AGLC is responsible for registrations and section 42(2) says that registrations are governed by the regulations.

[para 13] Section 129 of the *Gaming and Liquor Act* authorizes the Lieutenant Governor in Council to make regulations:

- Establishing classes of gaming licences, facility licences and liquor licences (section 129(f));
- Establishing classes of registration (section 129(g));
- Respecting application procedures for licences and registration (section 129(h));
- Respecting conditions and eligibility requirements that must be met before a licence is issued or a person is registered (section 129(i));
- Respecting conditions that may be imposed on registrations (section 129(k)).

B. The Application Package

[para 14] The application package for licence/registration is used by AGLC to collect information from applicants who are applying for:

- A casino facility licence;
- A registration to deal in Video Lottery Terminals;
- A registration to deal in gaming supplies; or
- A registration to provide gaming workers.

[para 15] There are three components to the application package:

- a Personal Disclosure;
- an Applicant Disclosure; and
- an Associated Person(s) Disclosure.

[para 16] The person(s) applying for a licence/registration is “the applicant”. Under section 23(3) of the *Gaming and Liquor Regulation*, a casino facility licence may only be issued to an individual, partnership or corporation. AGLC says it is rare for an individual to apply for a casino facility licence. The applicant is typically a corporation or a partnership.

[para 17] Persons associated with the applicant are considered “associated person(s)” and may include owners, partners, investors, promoters, shareholders, directors, officers or key employees.

[para 18] Associated persons may also include individuals who are associated with an “associated person”, such as the associated person’s owners, investors, promoters, directors, key employees, etc.

[para 19] AGLC says it reserves the right to request disclosure from any other person(s) associated with the applicant.

[para 20] The following is one example of how the three components of the application package would work:

- Corporation X applies for a casino facility licence. Corporation X is the applicant and is required to complete the Applicant Disclosure.
- The owners, directors, shareholders and key employees of Corporation X are considered “associated persons”. Each individual is required to complete a Personal Disclosure.
- One of the shareholders is a company. The company is an “associated person” and is required to complete an Associated Person Disclosure. The directors, owners, shareholders and key employees of the company are also “associated persons” as they are associated with the company, which is associated with Corporation X. These individuals may complete either an Associated Person Disclosure or a Personal Disclosure.

C. What is the Applicant Disclosure form?

[para 21] The Applicant Disclosure form is a 26-page document requesting information from the applicant on such matters as the applicant’s business, corporate structure, financial information, etc.

[para 22] The Applicant Disclosure form also includes a Company Representative Statutory Declaration, Company Owner or President Statutory Declaration, Release and Indemnity of All Claims statement, and a Consent to Release Information form.

D. What is the Associated Person(s) Disclosure form?

[para 23] The Associated Person(s) Disclosure form is a 22-page document. Information collected from this form is similar to information collected from the Applicant Disclosure form.

[para 24] The Associated Person(s) Disclosure form also includes a Company Representative Statutory Declaration, Company Owner or President Statutory Declaration, Release and Indemnity of All Claims statement, and a Consent to Release Information form.

E. What is the Personal Disclosure form?

[para 25] The Personal Disclosure form is a 48-page document. Information collected from this form includes:

- Information about the applicant or associated person;
- Information about their current and previous spouse/partners;
- Information about their children, step-children and adopted children (dependent or not);
- Information about any relatives engaged in, or employed by, the gaming industry;
- Employment/work history information about the applicant or associated person and their spouse or partner;
- Criminal/litigation/disciplinary information (including a criminal record check for the applicant or associated person and their spouse/partner); and
- Financial information of the applicant or associated person, their spouse/partner and their dependent(s).

[para 26] The Personal Disclosure form also includes a Statutory Declaration, a Release and Indemnity of All Claims statement, and a Consent to Release Information form.

V. INVESTIGATION FINDINGS AND ANALYSIS

A. Application of the FOIP Act

[para 27] The FOIP Act sets out the provisions under which a public body may collect personal information. Section 1(n) of the FOIP Act defines personal information as “recorded information about an identifiable individual”.

[para 28] I find that AGLC collects both business and personal information from its application package. The FOIP Act does not apply to the collection of business information, such as the nature of the business, operating and cash flow budgets of the business, etc. However, AGLC’s collection of personal information is subject to the collection provisions set out in the FOIP Act.

[para 29] In order to fulfill the collection provisions of the FOIP Act, AGLC must:

1. Have the authority to collect personal information under section 33 of the FOIP Act, and
2. Collect personal information directly from the individual the information is about unless the collection falls within one of the exceptions allowing indirect collection, as listed under section 34(1) of the FOIP Act.

[para 30] AGLC says its collection of personal information from the application package is authorized under section 33(a) and section 33(c) of the FOIP Act, which read:

33 No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,...

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

B. Does AGLC have authority to collect personal information under section 33(a) of the FOIP Act?

[para 31] Section 33(a) of the FOIP Act requires that the personal information collected must be expressly authorized by an enactment.

[para 32] Section 28(1)(m) of the *Interpretation Act* (RSA 2000) defines an “enactment” as “an Act or a regulation or any portion of that Act or regulation”. Therefore, the *Gaming and Liquor Regulation* is an “enactment”.

[para 33] Part 1, Division 2 of the *Gaming and Liquor Regulation* sets out the provisions regarding background checks. I find that Division 2 has three primary objectives:

1. It sets out AGLC’s authority to conduct background checks;
2. It defines background check; and
3. It sets out AGLC’s authority to decide about whom it will conduct a background check.

AGLC’s authority to conduct background checks

[para 34] Section 9 and section 9.1 of the *Gaming and Liquor Regulation* state:

9 In this Division and in section 28, "background check" means an inquiry or investigation conducted by the Commission to enable the Commission to determine the eligibility of an applicant, licensee or a registrant to hold a license or be registered or to continue to hold a license or be registered, and includes but is not limited to an inquiry or investigation relating to the honesty and integrity, financial history and competence of any of the following:

(a) the applicant;

(b) the licensee;

(c) the registrant;

(d) the employees and associates of the applicant, the licensee or the registrant;

(e) any person with connections to the applicant, licensee or the registrant.

9.1 *The Commission may conduct any background check that it considers necessary or appropriate.*

[para 35] I find that section 9 and section 9.1 expressly authorize AGLC to conduct background checks.

What is a background check?

[para 36] The wording in section 9.1, “any background check” that AGLC “considers necessary or appropriate”, also grants AGLC broad discretion and latitude to decide what constitutes a background check.

[para 37] Section 9 defines a “background check” as an “inquiry or investigation” that may include (but is not limited to) an inquiry or investigation of an individual’s honesty and integrity, financial history and competence. In my view, section 9 reiterates AGLC’s authority and discretion in deciding what background check it will conduct when reviewing an application for a licence/registration.

[para 38] Section 10(1) of the *Gaming and Liquor Regulation* allows AGLC to refuse to issue a licence/registration if “the applicant, any of the applicant’s employees or any of the applicant’s associates fail to pass a records check”. Under section 10(2), a records check relates to:

- Charges and convictions for offences under the *Criminal Code* (Canada), the *Excise Act* (Canada), the *Food and Drugs Act* (Canada), or the *Controlled Drugs and Substances Act* (Canada);
- Charges or convictions for offences under a substantially similar foreign Act or regulation; or
- Terms of imprisonment.

[para 39] It seems to me that the use of different terminology between section 9 and section 10 of the *Gaming and Liquor Regulation* is deliberate. A “records check” appears to be specific to criminal records/history whereas a “background check” is broader and encompasses information in addition to criminal records/history.

[para 40] Both section 9 and section 10 are under Part 1, Division 2 of the *Gaming and Liquor Regulation* which is specific to background checks. Therefore, it seems to me that a “background check” would include a number of components, one of which is a records check. This is supported by other provisions under Division 2 such as: section 11 [contraventions of the *Gaming and Liquor Act* and its regulations]; section 12 [prior cancellation or refusal of a licence/registration] and section 13 [detriment to gaming or liquor activities]. Therefore, I find that a “background check” could include a records check but it is not limited to a records check.

[para 41] A background check, by its nature, involves the collection of information. The purpose of the application package is to collect information to enable AGLC to decide whether or not to grant a licence/registration. This is consistent with section 9 which states that a background check is conducted “to enable the Commission to determine the eligibility of an applicant, licensee or a registrant...”. Section 9 also says the background check may include “but is not limited” to an inquiry or investigation of an individual’s honesty and integrity, financial history and competence. Section 9.1 says AGLC may conduct “any background check” that it considers necessary or appropriate. Therefore, I find that the personal information collected from the application package falls under the “background check” authorized under section 9 and section 9.1 of the *Gaming and Liquor Regulation*.

AGLC’s authority to decide about whom it will conduct a background check

[para 42] Section 9 authorizes AGLC to conduct a background check relating to the honesty and integrity, financial history and competence of any of the following: the applicant; licensee; the registrant; the employees and associates of the applicant, the licensee, or the registrant; and any other person with connections to the applicant, the licensee, or the registrant. Section 9.1 authorizes AGLC to conduct “any background check” that it considers “necessary or appropriate”. I find that both section 9 and section 9.1 expressly authorize AGLC to decide about whom it can conduct a background check.

[para 43] Under section 1(5)(a) and section 1(5)(b) of the *Gaming and Liquor Regulation*, an “applicant”, “licensee” and “registrant” would encompass each partner of a partnership or the officers and directors of a corporation.

[para 44] “Employees” of the applicant, licensee or registrant is defined in section 1(6) of the *Gaming and Liquor Regulation*, which states:

1(6) For the purposes of the Act and this Regulation, a reference to an applicant's employees, a licensee's employees or a registrant's employees means

(a) in the case of an application, license or registration relating to a facility or premises, the manager of the facility or premises, and

(b) the person holding a position specified by the board in the business of the applicant, licensee or registrant.

[para 45] Under section 1(6)(b), AGLC has the authority to specify which positions in the business of an applicant, licensee or registrant would fall under the definition of “employees”.

[para 46] The application package requires disclosures from “key employees”. In the information that accompanies the application package, “key employees” are defined as including:

- Individual(s) that exercise influence or control over the day-to-day operations or decision-making;

- Individuals employed in senior management positions such as CEO, CFO, controller, senior compliance officers, individuals on contract or management consultants; and
- For casino facility licenses, casino management staff and security management staff.

[para 47] AGLC says the above are examples of individuals that would typically be considered “key employees”. However, dependent upon a company’s organizational structure and operations, there may be other individuals that AGLC would consider “key employees”. Therefore, the decision as to which individuals would be “key employees” would be considered by AGLC on a case by case basis.

[para 48] Under section 1(7)(a) of the *Gaming and Liquor Regulation*, an “associate” of an applicant, licensee or registrant may include any person that has a financial interest:

- in the applicant, licensee or registrant;
- in the business of the applicant, licensee or registrant; or
- in the facility or premises to which the application, licence or registration relates.

[para 49] Section 1(7)(b) of the *Gaming and Liquor Regulation* says that if the applicant, licensee or registrant is an individual or a partnership in which one or more of the partners is an individual, “associates” may include:

- The spouse of the individual;
- Any relative of the individual or of the spouse if the relative has the same residence as the individual;
- Any corporation controlled by the individual (including the corporation’s officers and directors) and any person that has a financial interest in that corporation; and
- Any corporation affiliated with the corporation that is controlled by the individual (including the affiliated corporations’ officers and directors) and any person that has a financial interest in the affiliated corporation.

[para 50] If the applicant, licensee or registrant is a corporation or a partnership, in which one or more of the partners is a corporation, then “associate” could include any other corporation affiliated with the applying corporation/partnership, including the affiliated corporation’s officers and directors and any person that has a financial interest in the affiliated corporation (section 1(7)(c) of the *Gaming and Liquor Regulation*).

[para 51] Under section 9(e), AGLC is authorized to conduct a background check on “any person with connections to the applicant, the licensee or the registrant”. This encompasses any other individual that is not an applicant, employee or associate as defined in the *Gaming and Liquor Regulation*.

[para 52] Furthermore, section 9 does not confine AGLC to conducting a background check only on the individuals listed. The wording "...is not limited to an inquiry or investigation relating to the honesty and integrity, financial history and competence of any of the following..." authorizes AGLC to conduct any background check in relation to the individuals on the list, which could include the collection of information about other persons who may be related to the individuals on the list.

Summary Comments on section 33(a) of the FOIP Act

[para 53] In summary, I find that section 9 and section 9.1 of the *Gaming and Liquor Regulation* expressly authorize AGLC to conduct background checks and to decide about whom it will conduct a background check. The application form used by AGLC to collect personal information for licence/registration is part of the background check conducted by AGLC. Therefore, AGLC's collection of personal information by way of its application package is in accordance with section 33(a) of the FOIP Act.

C. Does AGLC have authority to collect personal information under section 33(c) of the FOIP Act?

[para 54] As I have already determined that the collection of personal information by AGLC from its application package is in accordance with section 33(a) of the FOIP Act, it is not necessary for me to consider section 33(c) of the FOIP Act.

D. Did AGLC have authority under section 34(1) of the FOIP Act to indirectly collect the personal information set out in its disclosure forms?

[para 55] Section 34(1) of the FOIP Act requires that a public body collect personal information directly from the individual the information is about unless one of the exceptions that allows indirect collection under section 34(1) applies.

[para 56] When an individual provides their information to AGLC in the disclosure forms, this is a direct collection and is in accordance with section 34(1) of the FOIP Act.

[para 57] The application package also asks individuals to sign consent statements authorizing AGLC to collect information about them from other sources for the purpose of verifying the information provided by that individual. This is an indirect collection that is in accordance with section 34(1)(a)(i) of the FOIP Act, which reads:

34(1) A public body must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(i) that individual,

[para 58] However, I believe that AGLC is also authorized to indirectly collect the individual's personal information under section 34(1)(a)(ii) of the FOIP Act, which reads:

34(1) *A public body must collect personal information directly from the individual the information is about unless*

(a) *another method of collection is authorized by*

(ii) *another Act or a regulation under another Act,...*

[para 59] Section 9.1 of the *Gaming and Liquor Regulation* authorizes AGLC to “conduct any background check it considers necessary or appropriate”. In my view, section 9.1 allows AGLC to collect information about an individual from other sources.

[para 60] The application package may collect information about individuals other than the applicant or associated person, such as spouses, dependents, or relatives. Information about these individuals is their personal information. As these individuals are not the source of the information collected by AGLC, this is also an indirect collection.

[para 61] AGLC says the indirect collection of these individuals’ personal information is in accordance with section 34(1)(a)(ii) of the FOIP Act [authorized by another Act or a regulation under another Act].

[para 62] As noted earlier, section 9.1 of the *Gaming and Liquor Regulation* authorizes AGLC to conduct “any background check that it considers necessary or appropriate”. As stated above, I find that section 9.1 of the *Gaming and Liquor Regulation* provides AGLC with the authority to collect personal information from sources other than the individual the information is about.

[para 63] Section 9 of the *Gaming and Liquor Regulation* authorizes AGLC to conduct background checks relating to the honesty and integrity, financial history and competence of the individuals specified. In my opinion, section 9 grants AGLC the discretion to collect information directly from these individuals or to collect information about these individuals from other sources.

[para 64] Therefore, AGLC’s collection of personal information complies with section 34(1) of the FOIP Act.

VI. SUMMARY AND CONCLUDING REMARKS

[para 65] In summary, I find:

- AGLC’s collection of personal information from its application package is expressly authorized under section 9 and section 9.1 of the *Gaming and Liquor Regulation*. This is in accordance with section 33(a) of the FOIP Act.
- AGLC collects personal information directly from the individual to whom the information is about – this is in accordance with section 34(1) of the FOIP Act.
- AGLC’s authority to collect personal information indirectly is in accordance with section 34(1)(a)(i) and section 34(1)(a)(ii) of the FOIP Act.

[para 66] Therefore, I conclude that AGLC's collection of personal information by way of its application package for licence/registration is in compliance with the collection provisions set out in the FOIP Act.

[para 67] I understand the Complainants' concerns regarding the amount of personal information collected by AGLC. I also understand that the Complainants may have a concern that the application process extends to include information about others such as spouses, dependents, relatives, etc.

[para 68] However, the *Gaming and Liquor Regulation* grants the AGLC considerable powers with regards to the collection of personal information. As indicated earlier, section 9 and section 9.1 expressly authorizes the AGLC to conduct background checks in relation to an application for a licence or registration. In addition to the express authorization set out in section 9 and section 9.1, AGLC also has a "general" authority to collect personal information under section 2(1)(b) of the *Gaming and Liquor Regulation*, which states:

2(1) An applicant for a licence or registration must submit to the Commission

(b) any information, affidavits and documents required by the Commission or board that relate to the application,...

[para 69] In Order 98-002, the Commissioner said:

[para 152.] I must give the Public Body considerable latitude in deciding that the collection of personal information is necessary,... Provided this determination is not patently unreasonable, it is not likely I would interfere...

[para 70] Therefore, while the Complainants may question the amount of personal information collected by AGLC in relation to an application for a licence/registration, the Commissioner has ruled that the decision regarding what information is necessary and what information is relevant rests with the decision-maker.

[para 71] AGLC does not dispute that the amount of personal information collected is extensive and that it is understandable that some may view the amount of personal information collected as invasive. However, AGLC says:

"...The AGLC is responsible for maintaining the integrity of gaming activities in Alberta. The gaming industry is an industry that is vulnerable in terms of being targeted or infiltrated by organized crime and other criminal elements. The high level of due diligence exercised in the licensing process is indicative of the standard of care required to prevent criminal interests, or those who would otherwise be a detriment to the integrity or lawful conduct of gaming in the province, from obtaining a license. It is also necessary to ensure that those who will be licensed to participate in the gaming industry have the financial business management ability to operate successfully in a complex, multi-billion dollar industry.

As Alberta's gaming control authority, the AGLC is responsible through its licensing and enforcement functions, to prevent any possible infiltration by parties that may have a detrimental effect on the gaming industry, such as organized crime. Therefore, the licensing

of each applicant is supported by a due-diligence process that involves the most current techniques in background investigation.

[para 72] The powers and authorities granted to AGLC by the *Gaming and Liquor Act* and the *Gaming and Liquor Regulation* support AGLC's claims regarding the potential for organized crime and other criminal elements infiltrating the gaming industry are valid and acknowledged by the Legislature. For example: relevant parts of section 13 of the *Gaming and Liquor Regulation* read as follows:

13 The board may refuse to issue a licence to an applicant or to register an applicant if the board is satisfied that the applicant, any of the applicant's employees or associates or any other person with connections to the applicant

(a) is a person who has not acted or may not act in accordance with the law, with honesty and integrity or in the public interest, having regard to the past conduct of the person,

(b) would be a detriment to the integrity or lawful conduct of gaming activities or provincial lotteries,

(c) is a person whose background, reputation and associations may result in adverse publicity for the gaming industry in Alberta, ...

[para 73] In my opinion, AGLC's authority to collect personal information from its application package for licenses/registrations has been addressed by this investigation. Therefore, this case can now be closed.

Submitted by,

Marylin Mun
Team Leader, FOIP