



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2764

Appeal PA07-477

Ontario Realty Corporation



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NATURE OF THE APPEAL:

The Ontario Realty Corporation (ORC) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to submission and evaluation records relating to a specific Request for Qualification (RFQ). An RFQ is a procurement tool used by the ORC as a precursor to the Request for Proposals (RFP). The purpose of an RFQ is to select a list of qualified bidders who will be entitled to submit proposals in response to the RFP.

The ORC identified the responsive records related to the request and notified several affected parties to obtain their views regarding disclosure of the records.

Subsequently, one of the affected parties made a separate request to the ORC under the *Act* for access to the identity of the individual who originally requested the information. The ORC identified the written freedom of information request submitted by the original requester as the responsive record and notified that individual that there was a request for access to his/her identity. The ORC asked the original requester to submit his views regarding disclosure of the responsive record. The ORC did not receive a response.

The ORC then issued a final decision granting access in full to the responsive record. Before releasing the record, however, the ORC advised the original requester that he had the opportunity to appeal the ORC's decision to this office.

The original requester, now the appellant, appealed the ORC's decision to disclose his identity claiming that his name was "personal information" and was "irrelevant to the original request."

During mediation, the appellant confirmed that he did not want his identity disclosed. No other issues were resolved and this matter proceeded to the adjudication stage of our appeal process.

I began my inquiry by issuing a Notice of Inquiry inviting the ORC and the affected party who made the request for the appellant's identity to submit representations. I received representations from the ORC. The affected party did not submit representations. I then issued a Notice of Inquiry inviting the appellant to submit representations and I provided the appellant with a complete copy of the representations of the ORC. I received representations from the appellant.

Subsequently, I instructed staff in my office to contact the ORC and ask a number of questions. The questions and the answers provided are as follows:

1. Was the appellant and/or a business in which the appellant was involved a participant in the RFQ process that was the subject of his request? The ORC advised that the appellant's business was an unsuccessful participant in the RFQ process.
2. If the answer is yes, what was the appellant's title and/or position in the business at the time that the request was made? The ORC advised that the appellant was Vice President of the Ontario Operations Group for the company that participated in the RFQ process.

RECORDS:

The record at issue is the initial freedom of information request filed by the appellant pursuant to the *Act*. The request includes the name and contact details of the appellant and describes the nature of the request. As the requester seeks access to the name of the appellant only, the portions of the record that include the contact details and the description of the request are not responsive.

DISCUSSION:

PERSONAL INFORMATION

The ORC claims that the name of the appellant is not his personal information as defined in the *Act*. I must therefore first determine whether the record contains “personal information” as defined in section 2(1) and, if so, to whom does it relate. That term is defined in section 2(1) as follows:

“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,
- (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 where 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Effective April 1, 2007, the *Act* was amended by adding sections 2(3) and 2(4). Section 2(3) modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

Representations

The ORC states that the name of the appellant in the circumstances of this appeal does not reveal information about him in a personal capacity nor does it reveal anything of a personal nature. The appellant made the request for access to information as the owner of a business and was therefore acting in a business capacity. It refers to the information in the request form as "business identity information" and states that Order PO-2649 applies.

It distinguishes Order PO-2488 where Adjudicator Daphne Loukidelis found the identity of a requester to be his "personal information" and found it to be exempt under section 21(1) (personal privacy). The ORC submits that the evidence before the adjudicator in that order is distinguishable from the evidence and circumstances of this appeal.

The appellant denies that he made the request in a business capacity. He states that it was a personal request and that he "merely used [his] business coordinates for ease of communications."

Analysis and Findings

Some previous orders and Privacy Complaint Reports issued by this office have taken the position that someone's identity as a requester under the *Act* qualifies as that individual's personal information under section 2(1) of the *Act* (Orders PO-2488, P-27, M-32, P-370, Privacy Complaints MC-040012-1, MC-05005-1, MC-050034-1).

However, previous orders have also found that information associated with an individual in a professional, official or business capacity will generally not be considered to be "about" the individual, and is, therefore, not "personal information". This principle has been codified in the recent amendment to the *Act* in section 2(3) which was enacted before the request and this appeal were filed.

In Order PO-2225, former Assistant Commissioner Tom Mitchinson enunciated the approach taken by this office in determining the personal information/business information distinction:

Based on the principles expressed in these [previously discussed] orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

...

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

While a name alone cannot be considered personal information, where a name appears in the context of a request for access to information under the *Act*, disclosure of the name would reveal both (a) the fact that the individual made a request under the *Act*, and (b) the nature of the request [see Orders M-32, PO-2488]. In this appeal, the affected party knows that a request was filed and what the nature of the request was. Therefore, the issue is whether the appellant's name as the original requester is "personal information" in the circumstances of this appeal. In order to determine the answer to this question, I adopt the approach taken by the former Assistant Commissioner Mitchinson in Order PO-2225, referred to above.

The context in which the request form was filed and the information contained in the request form itself is relevant. The appellant sought access to submission and evaluation records relating to an identified RFQ process initiated by the ORC in which his employer and/or a business that he owned participated. Therefore, he sought access to information relating to the *business* relationship between the ORC and his own business and that of a number of other businesses.

The appellant also admits to having used his business contact details on the request form, a circumstance that is also relevant and to which I assign significant weight. Although I understand the appellant's position to be that he used his "business coordinates" for convenience, having regard to all the circumstances of this appeal, including the fact that the appellant offered no other evidence to support his position or to explain why he might have a personal, as compared to a business, interest in the information that was the subject of his request, I am not persuaded that he chose to use his business address simply for this reason.

I also find that there is nothing about the appellant's name in the context of this appeal that, if disclosed, would reveal something of a personal nature about the appellant. He has offered no explanation for the request or other evidence to support a finding that the request was filed for personal reasons. All other evidence before me points, in my view, to a finding that he filed his request for business reasons. The only information that would be revealed by the requested disclosure is his name and the fact that he filed an access to information request in connection with a business transaction with which his employer and/or his business was involved. For these reasons, I also find that the disclosure of this information would not reveal anything of a personal nature about the appellant.

Accordingly, I find that the appellant's name as it appears in the request form is not "personal information" because it relates to the appellant in a business capacity and not a personal capacity.

As I have found that the requester's name is not his "personal information" in the circumstances of this appeal, the mandatory exemption in section 21(1) does not apply. Neither the appellant nor the ORC have claimed that any discretionary exemptions apply and I find that no other mandatory exemptions apply to this information. In these circumstances, I agree with the ORC and I uphold its decision to disclose this information to the requester.

ORDER:

I uphold the decision of the ORC and order it to disclose the name of the appellant to the original requester by **April 7, 2009** but not before **April 2, 2009**.

Original signed by: _____
Brian Beamish
Assistant Commissioner

_____ March 3, 2009