

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3696

Appeal PA16-144

Independent Electricity System Operator

January 31, 2017

Summary: The affected party sought access to the name of a requester (the appellant) who filed an access request about it. The Independent Electricity System Operator decided to disclose the appellant's name on the basis that it was professional information in the context of the access request, and not personal information. The appellant argued that the name qualified as "personal information" under section 2(1) and was protected from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Freedom of Information and Protection of Privacy Act*. The decision that the appellant's name is professional rather than personal information is upheld.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of "personal information").

Orders and Investigation Reports Considered: Orders PO-2225 and PO-2764.

OVERVIEW:

[1] This is an appeal of the decision by the Independent Electricity System Operator (IESO) to disclose the identity of the appellant to the affected party. The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the IESO for access to information related to feed-in tariff contracts (the access request). The affected party then submitted a request for disclosure of the identities of the requesters who asked for certain feed-in tariff (FIT) contract information.

[2] The IESO identified the appellant's name and contact information in the access request as being responsive to the affected party's request, and it notified the appellant about the request in accordance with section 28 of the *Act*. The appellant objected to disclosure of the contact information to the affected party and insisted the access request was submitted in the appellant's personal, not professional, capacity. The appellant argued that the contact information qualified as personal information under section 2(1) of the *Act* and was exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[3] The IESO determined that the access request was submitted in the appellant's professional capacity and, as a result, the appellant's name did not qualify as personal information. The IESO then issued a decision granting the affected party access to the appellant's name but denying access to the appellant's telephone number and address on the basis that this contact information qualified as personal information under section 2(1) of the *Act* and was exempt from disclosure under section 21(1).

[4] The appellant filed this appeal with the Office of the Information and Privacy Commissioner (the IPC). The IPC attempted to resolve the issues in the appeal through mediation. A mediated resolution of the appeal was not possible and the appeal was moved to the adjudication stage of the appeal process for a written inquiry under the *Act*.

[5] During my inquiry, I sought and received representations from the IESO and the appellant, and shared these in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction Number 7*.

[6] In this order, I uphold the IESO's decision and order disclosure of the appellant's name.

DISCUSSION:

[7] The sole issue in this appeal is whether the appellant's name, as it appears in the access request, constitutes personal information and if so, whether it is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[8] The first determination I must make is whether the record contains "personal information" which is defined in section 2(1) of the *Act* 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;

[9] 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.¹ Sections 2(3) and (4) also relate to the definition of personal information and state:

(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.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[10] 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

¹ Order 11.

individual.² 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.³ To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

The IESO's representations

[11] The IESO submits that the appellant's name in the access request is information relating to the appellant in a business and professional capacity. The IESO relies on sections 2(3) and 2(4) of the *Act* to argue that the definition of "personal information" does not include the name of an individual that identifies the individual in a business, professional or official capacity. It cites the two-part test for analyzing the personal/business information distinction set out in Order PO-2225, which requires a consideration of the context in which the appellant's name appears and whether this context is inherently personal or removed from the personal sphere. The IESO argues there are three main facts that demonstrate that the context of the appellant's identity, as provided in the access request, is not inherently personal.

[12] First, the appellant requested virtually identical information to that in the access request in the course of past employment and worked in a related field the day that the access request was made. It explains that the appellant has filed several requests for access to information on FIT contracts⁵ while working for a company specializing in engineering, procurement and construction. It asserts that the appellant has been or is in the business of assisting others with the development of FIT contracts and related contracting services. The IESO adds that the appellant advocated for a company's FIT applications on the very same day as the access request. The IESO argues that the fact that the appellant formerly requested similar information in a professional capacity as that requested in the access request, and the fact that the appellant was advocating for FIT applications the day of the access request, demonstrate that the access request was not made in an inherently personal capacity.

[13] Second, the IESO asserts that there is nothing in the access request that suggests it was made for a personal purpose such that the appellant's name should be construed as personal information. The IESO notes that in the access request, the appellant expressly refers to previous requests they⁶ made in a professional capacity by indicating that they have "previously requested this information and received it from the

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v Pascoe*, [2002] OJ No 4300 (CA).

⁵ The IESO explains that FIT contracts are contracts it enters into for the purpose of producing energy through renewable energy sources.

⁶ I will refer to the appellant as "they" in this order to conceal the appellant's gender.

OPA/IESO”.

[14] Third, the IESO states that the contact information used in the access request is identical to the appellant’s professional contact information, with the same business address and telephone number. Based on this, the IESO states that it is obvious that the appellant carries out business or professional responsibilities using the address and telephone number listed on the access request. The IESO argues it would be unreasonable to hold that the appellant used their business or professional address and telephone number, but provided their name in an inherently personal capacity.

[15] Turning to the second part of the personal/business distinction in Order PO-2225, the IESO argues that there is nothing about disclosure of the appellant’s name that reveals something of a personal nature about the appellant. It notes that the access request has two parts: a request for all 24 categories of information about “all” FIT contracts, which indicates that the appellant is seeking a summary of all commercial information about the IESO’s dealings with every FIT counterparty; and a request for eight general categories of information about microFIT⁷ project owners. The IESO argues that the appellant’s name, read in conjunction with the appellant’s broad request for entire categories of commercial information, discloses nothing of a personal nature about the appellant.

[16] In support of its submissions, the IESO provides an affidavit from its Freedom of Information Coordinator (FOI Coordinator) that affirms many of the statements in its representations. Attached as exhibits to the affidavit are a copy of the appellant’s professional profile as it appears on a social media website and a printout from the appellant’s former employer’s website describing its business. Both these exhibits indicate that the appellant was and is involved in the solar energy industry.⁸

[17] The affidavit states that the appellant ceased working for their employer shortly before the access request was made, but appears to have continued working for various companies in support of their FIT applications as evidenced by the appellant’s appearance before the council of a specified municipality in the month following the access request.⁹ The final exhibit to the affidavit is a printout of the website for a named company that lists the same address and telephone number as that used by the appellant in the access request. The affiant concludes by noting that the appellant has worked continuously in the energy industry for many years, including with the named company for a substantial portion of that time.

⁷ A specific IESO program under the umbrella of the FIT Program for projects generating less than 10kW.

⁸ The exhibits contain much more detailed information about the appellant’s professional experience and former employer which, if included in this order, may identify the appellant. As the issue in this order is whether the appellant’s name is personal information and exempt from disclosure, it is not appropriate to include information that could identify the appellant herein. Accordingly, I will refrain from doing so both in summarizing the parties’ representations and in setting out my analysis and findings.

⁹ The affidavit contains supporting documentation.

[18] The IESO concludes its representation by relying on Orders PO-2764 and PO-3295 to assert that requests for information about business relationships, such as this one, do not reveal something of a personal nature about an individual.

The appellant's representations

[19] The appellant asserts that the IESO's decision to disclose the appellant's name is incorrect and improper. The appellant argues that IESO selectively provided information in this appeal and neglected to provide a key document that supports the appellant's position: the appellant's original email to the IESO attaching the access request. The appellant states that this email clearly states that the appellant submitted the access request as an individual, and that the appellant no longer worked for the employer for which they had submitted previous similar requests. The appellant provides a copy of the email along with their representations. The appellant argues that because it was clear to the IESO that they submitted the access request as an individual and not in connection with any other group or company, the appellant had a reasonable expectation of protection of their private information.

[20] The appellant adds that the access request differs from their previous requests for access to IESO information in that their previous requests were on their former employer's letterhead and some referred to the president of the company as the requester and the appellant as simply the contact person for the request. The appellant also notes that they signed those previous requests under their title with their former employer, and used their employer's address and their work email address as contact information because it was clear they were acting on behalf of their former employer for these earlier requests.

[21] The appellant takes issue with the IESO's submissions that note the connection between the access request and the appellant's previous requests. They argue that their previous requests should have no bearing on how the IESO interprets the access request as their previous requests are not a part of this inquiry. The appellant stresses that they made the access request on their own as a private citizen and not in connection with any other company or group. The appellant states that they reiterated this point with the IESO's FOI Coordinator by letter and they provide a copy of their letter in support of their assertion.

[22] To establish that the access request was made in a personal context, the appellant points out that they submitted the access request on plain white paper and not letterhead, without reference to their title or position, and used their home address and personal email as contact information. The appellant acknowledges that they have operated the named company out of their home in the past, and that the contact information for the named company is identical to the contact information the appellant provided for the access request. The appellant contends that this is not proof that they submitted the access request on behalf of the named company. The appellant submits that many people operate businesses out of their homes and this does not strip them of

their privacy rights when they make access requests as private citizens outside of their businesses. The appellant notes that they did not use the email address of the named company to make the access request and adds that they have not pursued any new business activities under the named company for some years, even though they continue to operate the website.

[23] In response to the IESO's statement that the appellant advocated for a potential FIT related contract for a specific organization, the appellant argues this has no bearing on the access request that they made as a private citizen relating to existing FIT contracts. The appellant asserts that the IESO has decided that because the appellant had a job that required them to submit requests for information related to FIT projects, their rights as an individual resident and citizen of Ontario no longer exist. The appellant explains that they made the access request as a private citizen because they are also an advocate for social justice and a ratepayer in Ontario. They requested the information for personal reasons in order to understand the actual level of renewable energy being commissioned in the Ontario and as a watchdog to the IESO.

Analysis and finding

[24] The first step in determining whether the appellant's name in the access request constitutes personal information is to consider the context in which the name appears. Previous IPC orders and privacy complaint reports have found that the name of an individual who submits an access request under the *Act* qualifies as that individual's "personal information" under the definition of that term in section 2(1) where the request is made in a personal capacity.¹⁰ However, where a request has been made in a professional, business or official capacity, the IPC has found the name of a requester does not qualify as that individual's "personal information."¹¹ In Order PO-2764, Commissioner Brian Beamish, who was the Assistant Commissioner of the IPC at the time, wrote:

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.

¹⁰ See Orders PO-3550, PO-3551, PO-3552, PO-3553, PO-3554, PO-2488, P-27, M-32 and P-370. See also Privacy Complaints MC-040012-1, MC-05005-1 and MC-050034-1.

¹¹ See Orders PO-2764, PO-3295 and PO-3573.

[25] In considering the context of the appellant's name in the access request, I too adopt the approach taken in Order PO-2225. I also adopt the reasoning above from Order PO-2764 as that order, like this appeal, involved a request for disclosure of a requester's name to an affected party that knows of both the existence and nature of the filed access request.

[26] The evidence before me is that the appellant has worked for many years in the energy industry and has submitted similar previous requests on behalf of a former employer. Although no longer employed by this former employer at the time of the access request, the appellant acted as an advocate for another company's FIT application on the day it filed the access request. The appellant has also had their own company in the energy industry, which they have operated for a number of years, and they continue to operate their company's website. When the appellant submitted their access request, they did so by personal email listing their home address, and they advised the FOI Coordinator that they were filing their access request "as an individual". After being notified of the affected party's request to access their name, the appellant sent the FOI Coordinator a letter objecting to disclosure of their name and insisting that they made the access request as an "individual and not for any company or other group".

[27] In the face of this evidence, the appellant asserts that they submitted their access request as an individual for personal social justice reasons, as a concerned ratepayer and watchdog. They point to their use of their personal email address, their statement in the access request that they submit the request as an individual, and their objection letter to the FOI Coordinator as facts that establish the personal context of the access request. They provide no further information or evidence to support their assertions.

[28] I accept the appellant's assertion that they filed their access request as an individual, clearly not connected to their former employer. However, for the reasons set out below, I do not accept that the appellant did so in a personal capacity for personal reasons.

[29] The evidence before me leads me to conclude that the appellant filed their access request as an individual acting for their own business interests as a professional who, at the time of the request, carried on business at their residence. While I agree with the appellant that their operation of their company does not amount to proof that they submitted their access request on behalf of the company, this fact, in combination with the other circumstances, supports that conclusion. The information that is the subject of the access request is detailed and extensive contractual information on a particular segment of the provincial energy industry that is closely connected to the appellant professionally and to the appellant's company.

[30] The fact that the appellant submitted their access request on plain white paper using a different email address from the one listed for the company the appellant

operates out of their home is not determinative, and does not persuade me in these circumstances that the appellant made the access request in a personal capacity such that the appellant's name qualifies as personal information. Nor does the appellant's statement that they have not pursued any new business activities under their company for some time sway me.

[31] In respect of the appellant's assertion that they filed their request in a personal capacity as a social justice advocate and watchdog of the IESO with the intention of "understanding the actual level of renewable energy being commissioned" in the province, I am not convinced that this is the case. The appellant provided no evidence of social justice advocacy or "watchdog" type activities in which they have engaged to support their assertion. There is also no indication in the access request itself, including in the covering email the appellant sent, of a watchdog or public interest purpose. The appellant's covering email refers to another active FOI request from a representative of the appellant's former employer and asks that the FOI Coordinator process part of the access request at the same time as the other active FOI request because it is for "the same information".

[32] Considering the very detailed nature and broad scope of the access request, the appellant's employment in the energy sector, their engagement in an energy sector company that is directly connected to the requested information, their existing website for their energy sector business services before, during and after the time of the request, and their advocacy for a company's FIT application on the day that they filed their access request, the appellant's contention that the access request was "unrelated to business purposes" is not convincing.

[33] I find that the appellant's name in the access request appears in a business capacity, as it was made in a professional context. Having found that the appellant's name does not appear in a personal capacity, I must now consider whether the appellant's name would reveal something of a personal nature about the appellant.

[34] The appellant argues that if their name is disclosed in relation to the access request, there is a high probability that they will be viewed in a negative light within the energy industry due to the appellant's watchdog motivation for filing the access request. I have difficulty accepting this submission. As noted above, the access request and the appellant's letter to the IESO objecting to disclosure contain no indication of the appellant's watchdog motivation. This appeal is the first instance in which the appellant raises this point. From my review of the circumstances of the access request, I conclude that disclosure of the appellant's name would not reveal something inherently personal about the appellant in this appeal where the affected party is aware of the details of the access request.

[35] I find that the appellant's name as it appears in the access request does not qualify as "personal information" as that term is defined under section 2(1) of the *Act*. As a result, the name cannot be exempt under section 21(1), which only applies to

personal information, and there is no need for me to consider the possible application of that section in this appeal.

ORDER:

1. I uphold the IESO's decision.
2. I order the IESO to disclose the appellant's name to the original requester by **March 8, 2017**, but not before **March 5, 2017**.

Original Signed by: _____
Stella Ball
Adjudicator

_____ January 31, 2017