

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4698

Appeals PA23-00380, PA23-00381, PA23-00606, PA23-00607, PA24-00078,
and PA24-00079

Ontario Power Generation

August 13, 2025

Summary: An organization made six requests under the *Freedom of Information and Protection of Privacy Act* to Ontario Power Generation (OPG) for certain information related to OPG's production and sale of clean energy credits. OPG withheld some responsive information it claimed is commercially sensitive and would harm OPG's economic interests if disclosed, under section 18(1)(c) of the *Act*. The adjudicator upholds OPG's decisions and dismisses the appeals.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 18(1)(c) and 23; *Electricity Act*, S.O. 1998, c. 15, Schedule A, as amended, section 25.24.

Orders Considered: Orders PO-1210, PO-2676, PO-3415, and PO-4345.

Case Considered: *Toronto Star v. AG Ontario*, 2018 ONSC 2586 (CanLII).

OVERVIEW:

[1] This order resolves six appeals from decisions of Ontario Power Generation (OPG) in response to six requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requests were for specified break-downs of information related to OPG's production and sale of clean energy credits (CECs) for various time periods. The detailed wording of these requests is found in the Appendix to this order.

[2] OPG granted partial access to the responsive records. It withheld access to the responsive records, in whole or in part, under the discretionary exemptions at section 18(1)(a) and 18(1)(c) (economic and other interests) of the *Act*.

[3] The requester (now the appellant) appealed each of OPG's decisions to the Information and Privacy Commissioner of Ontario (IPC).

[4] The IPC appointed a mediator to explore resolution of each appeal. During mediation, the appellant raised the application of the public interest override at section 23 of the *Act* as an issue. Mediation did not resolve the appeals and they moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[5] I conducted a joint written inquiry under the *Act* on the issues in the appeals. I sought and received written representations first from OPG, and then from the appellant (sharing the non-confidential portions of OPG's representations with the appellant).¹ OPG and the appellant also provided reply and sur-reply representations.

[6] For the reasons that follow, I uphold OPG's section 18(1)(c) claim in all the appeals. As a result, I do not need to examine the section 18(1)(a) claim, and I dismiss the appeals.

RECORDS:

[7] The information at issue is the pricing information and corporate names of OPG's customers' names (which it also refers to as a customer/buyer list).

ISSUES:

- A. Does the discretionary exemption at section 18 for economic and other interests of the institution apply to the records?
- B. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 18 exemption?

DISCUSSION:

Background information

[8] OPG's representations include background information about the government's purposes in establishing and supporting the CEC program. The appellant questions this program, but the efficacy of the program itself is outside the scope of this appeal.

¹ Portions of OPG's representations were withheld due to confidentiality concerns, under the IPC's *Practice Direction 7* regarding the sharing of representations.

[9] OPG states that CECs are “environmental attributes” in the form of electronic certificates used to demonstrate that a commercial entity has acquired clean energy from Ontario-based generation, meeting their business’ voluntary clean energy consumption targets. The primary goal of CECs is to use the proceeds to invest in clean electricity projects through the Future Clean Electricity Fund. Each CEC represents a megawatt of clean energy generated and is intended to be exclusively bought and claimed (or retired) by a customer within Ontario.² Eligible CEC generators and customers must register to buy and sell CECs in Ontario (the Ontario Program).³ The registry platform allows for the creation, transfer and retirement of CECs.

[10] The Ontario Program complements the basic framework of market rules in the *Electricity Act, 1998 (Electricity Act)*.⁴ The *Electricity Act* requires the Independent Electricity System Operator (IESO) to report on the annual total volume of electricity generated by all generators directly connected to the IESO-controlled grid or a distributor’s distribution system, broken down by energy source and the total number of CECs transferred in the year.⁵ The Ontario Program Rules do not impose any other reporting requirements. OPG states that it must provide information to the IESO for reporting purposes under the *Electricity Act*, but this requirement does not include an obligation to provide commercially sensitive information, such as pricing information or a customer/buyer list, which are the only types of information withheld in these appeals.

Issue A: Does the discretionary exemption at section 18 for economic and other interests of the institution apply to the records?

[11] The purpose of section 18 is to protect certain economic and other interests of institutions. It also recognizes that an institution’s commercially valuable information should be protected to the same extent as that of non-governmental organizations.⁶ For the reasons below, I uphold OPG’s claim that section 18(1)(c) applies to the withheld information.

Section 18(1)(c): prejudice to economic interests or competitive position

[12] Section 18(1)(c) states:

A head may refuse to disclose a record that contains,

² Independent Electricity System Operator, Ontario Program, online: Ontario Program (ieso.ca).

³ They must register with the Midwest Renewable Energy Tracking System (“M-RETS”). Once an organization has enrolled into the Ontario Program, the organization can hire a broker or independently buy and sell CECs.

⁴ S.O. 1998, c. 15, Schedule A, Part II.1.

⁵ Section 25.24 of the *Electricity Act*.

⁶ *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen’s Printer, 1980.

(c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution[.]

[13] The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. It recognizes that institutions may have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse to disclose information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.⁷

[14] Section 18(1)(c) is broader than the other exemption that OPG relied on [section 18(1)(a)] and requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.⁸

[15] An institution resisting disclosure of a record on the basis of sections 18(1)(c) cannot simply assert that the harms mentioned in those sections are obvious based on the record. It must provide *detailed* evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, the institution should not assume that the harms are self-evident and can be proven simply by repeating the description of harms in the *Act*.⁹

[16] The institution must show that the risk of harm is real and not just a possibility.¹⁰ However, it does not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.¹¹

Representations

OPG's position

[17] OPG provided representations and an affidavit in support of its position that section 18(1)(c) applies.¹² Some representations were confidential and were not shared with the appellant. Although I considered both the confidential and non-confidential representations, I summarize only the relevant parts of the non-confidential representations, below.

⁷ Orders P-1190 and MO-2233.

⁸ Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

⁹ Orders MO-2363 and PO-2435.

¹⁰ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹¹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

¹² OPG's representations first addressed section 18(1)(a), then section 18(1)(c), so some of the background information about the CEC market (applicable to both exemptions) that I include in this order comes from OPG's discussion under section 18(1)(a).

[18] OPG explains that it spent significant resources on the development of its CECs for commercial purposes, and while it must remit 80% of its sale proceeds to support the Future Clean Electricity Fund, it keeps the remaining 20%.

[19] OPG explains that the records at issue contain information related to its various business arrangements with its customers, including information about CEC sales, customer names, and the amount of CECs that customers bought. The records include specific data about the CEC production broken down by generating station and OPG's corresponding pricing practices for CEC sales.

[20] OPG states that the market for CECs in Canada is not yet mature, so there is a small pool of customers registered to buy CECs. OPG explains that it has spent considerable resources to enter each of its mutually beneficial business arrangements and has consistently treated the withheld information in the records as sensitive, proprietary, and confidential.

[21] OPG explains that a competitor would find the information at issue valuable because analyzing it would reveal parameters that a competitor may leverage to undercut OPG's pricing practices, such as CEC purchasing and demand trends by geography and company size. OPG submits that a competitor could try to use OPG's customer list and pricing information to entice OPG's customers to buy CECs from them instead of OPG. OPG submits that disclosure would erode OPG's customer base and business relationships, and that the loss of even one customer – which OPG has spent considerable resources to solicit – would have a detrimental and measurable financial impact on OPG. In turn, this will harm OPG's ability to earn money in the marketplace and may also undermine the long-term growth of the market and underling government policy purposes of investing in CECs. OPG states that, although there are broader policy goals behind CECs, the CEC market is a voluntary free-enterprise market designed to create new investments, boost competitiveness, attract jobs, and allow CEC sellers (generators) to earn money. CEC buyers and sellers transact in this market on a risk-based analysis considering various economic factors. Therefore, OPG submits that it would be prejudiced if its pricing and customer lists are made public in such a small, competitive market because disclosure could allow competitors to undercut OPG.

[22] OPG also submits that disclosure of the withheld information could reasonably be expected to harm its existing commercial relationships as some OPG customers might be upset if they perceive that their deal is inferior in dollar amounts or some other way. OPG submits that this risks current customers seeking to re-open their agreements with OPG, creating ill will in the relationship and prejudicing the possibility of a suitable renewal transaction. OPG reiterates that competitors could use the withheld information to take OPG's customers, and that this is reasonably foreseeable because of the intensity of the competition in such a narrow market like Ontario's CEC market.

[23] In addition, OPG argues that disclosure could reasonably be expected to risk dealings with future potential customers because they may demand business terms at

least as favourable as those that current customers have. OPG submits that this would compromise OPG's negotiating position for new sales.

[24] OPG argues that past IPC orders support its position in these appeals:

- Order PO-4345 – the IPC found that a customer list was exempt from disclosure because disclosure would diminish its monetary value.¹³
- Order PO-2676 – the IPC recognized that when OPG operates in a competitive market, its pricing information for the generation and sale of electricity has value to competitors,¹⁴ so disclosure of OPG's pricing practices could reasonably be expected to prejudice its economic interest."¹⁵
- Order PO-1210 – the IPC recognized "the potential economic and competitive interests of [OPG] ... in pursuing partnership arrangements and contractual agreements are valid and consistent with the requirements for exemption under section 18(1)(c)"¹⁶ and that such an "exemption claim recognizes an inherent public interest."¹⁷
- Order PO-3415 – the IPC recognized that disclosure of OPG's target pricing contracting strategy could reasonably be expected to disadvantage its future negotiations with other parties, impeding its ability to obtain optimum results and prices in future agreements that it enters on behalf of the government. The IPC held that ". . . *these harms to OPG's competitive position, and ultimately to its ability to carry out its mandate of ensuring the supply of low-cost electricity in Ontario*, are the sorts of harms contemplated by the exemption at section 18(1)(c)."¹⁸ [Emphasis added by OPG]

[25] OPG argues that its position aligns also with the Legislature's intention to require public reporting of certain information under the *Electricity Act*, as explained above – but not pricing information and customer lists. OPG argues that this suggests that the Legislature intended to protect a seller/generator's commercially sensitive information. OPG states that it disclosed all information in the responsive records that is not commercially sensitive in compliance with the reporting requirements of the *Electricity Act*, and will continue to do so.

The appellant's initial representations

[26] The appellant submits that OPG improperly applied the exemption and has not demonstrated a real risk of harm from disclosure. The appellant submits that OPG's

¹³ In its representations about section 18(1)(a).

¹⁴ Order PO-2676, at page 7.

¹⁵ *Ibid.*

¹⁶ Order P-1210, at pages 3-4.

¹⁷ *Ibid.*

¹⁸ Order PO-3415, at para. 31

concerns about having its customers poached are “wholly speculative,” arguing that it “defies common sense” that OPG’s customers did not shop around in the limited CEC market before buying CECs from OPG. Therefore, the appellant argues that it is “not a reasonable risk to OPG’s commercial interests that disclosing this information would lead to the loss of customers and lower CEC prices.” The appellant argues that the exemption does not apply to a break-down of CEC revenues by generating station, as this is not a customer list or price list.

[27] The appellant also rejects OPG’s argument about the Legislature’s intent regarding what information it must report publicly (versus the pricing and customer list information that it need not report). The appellant asserts that OPG’s reporting requirements are not determinative of whether the exemption applies to the information withheld.

OPG’s reply

[28] In its reply, OPG states that the appellant misunderstands the sensitivity of breaking down the CEC revenues by generating station. It explains that “while not sensitive on its own, this information could be used with other publicly available information to calculate the price that OPG charges for CECs (which is competitive pricing information).” OPG reiterates that for every megawatt hour of clean energy generated and sold, a corresponding CEC may be created and sold; therefore, disclosing the total CEC revenues by generating station would allow OPG’s competitors to calculate the OPG price per CEC and, thereby, obtain the very commercially sensitive information that will harm OPG’s economic and other interests. OPG submits that its pricing information is exempt, as is its information that would let someone easily calculate that pricing information. Therefore, OPG submits that it applied the exemption appropriately to the requested revenue break-downs.

The appellant’s sur-reply

[29] The appellant asserts that the CEC market is small, but that it is hardly open, free, or competitive, so there is “not a real or even reasonable risk” to OPG’s commercial interests from disclosure that would lead to a loss of customers or lower prices.

[30] The appellant also argues that lower CEC prices would mean less money available to the Government of Ontario for clean energy development, which, it argues, is not an economic issue for OPG. The appellant questions how information related to CEC prices charged by OPG can be commercially sensitive to OPG if the purpose of CECs is not to create profits but to invest in clean electricity projects through the Future Clean Electricity Fund. The appellant submits that more competitive, lower CEC pricing does not harm OPG’s economic interests because OPG would have already been paid for the energy generated. It says a CEC is a surcharge, not a base charge for energy consumed, and OPG only remits proceeds from the sales but could still recover any

costs incurred as a result of CEC sales.

Analysis and findings

The exemption at section 18(1)(c) applies to the information at issue

[31] Based on my review of the evidence before me, I find that disclosure of the information at issue in these appeals could reasonably be expected to prejudice OPG's economic interests or competitive position and is, therefore, exempt from disclosure under section 18(1)(c) of the *Act*.

[32] OPG has provided sufficient evidence explaining why information related to its pricing and customer lists is commercially valuable to it and would be commercially valuable to competitors if it were disclosed. I accept that the CEC market is small, not fully matured, and very competitive. I agree that OPG's competitors could use the CEC sale and revenue information at issue to undercut OPG's pricing and poach OPG's customers, thereby eroding OPG's customer base and business relationships and harming OPG's ability to earn money in the marketplace. I accept that OPG has spent significant resources to gain each of its customers, so the loss of even one customer would be significant. I agree that disclosure could reasonably be expected to harm OPG's economic interests and competitive position if existing OPG customers sought to renegotiate their commercial agreements with OPG to obtain terms contained in other agreements, creating ill will in the commercial relationship and prejudicing OPG's negotiation and agreement renewal efforts.

[33] I agree with OPG that the reasoning in the IPC orders it cites is relevant and applies in these appeals. Specifically: disclosure of the commercially valuable CEC sale and revenue information at issue would diminish its value for OPG and would benefit OPG's competitors (Orders PO-4345 and PO-2676); disclosure could reasonably be expected to disadvantage OPG's future negotiations with other parties, impeding its ability to obtain optimum results and prices in future agreements that it enters on behalf of the government and these harms to OPG's competitive position, and ultimately to its ability to carry out its mandate of ensuring the supply of low-cost electricity in Ontario, are the sorts of harms contemplated by the exemption at section 18(1)(c) (Order PO-3415).

[34] OPG's representations refute the appellant's submissions, which I find unpersuasive. The appellant's argument that OPG improperly applied the exemption to the break-down of CEC revenues by generating station, and his submission that this is not a customer list or price list, is not convincing. As noted by OPG, the detailed information sought by the appellant would allow the appellant to calculate the OPG price per CEC, which is, in effect, a price list. I also find unpersuasive the appellant's arguments that OPG's concerns about having its customers poached are speculative and it is not reasonable to expect that disclosure would lead to the loss of customers and lower CEC prices. OPG's representations, including its confidential representations,

establish that its concerns are not speculative and that its economic interests and competitive position could reasonably be expected to be prejudiced if the information at issue were disclosed.

[35] Regarding OPG's exercise of discretion, the appellant submits that it is not clear what OPG considered in exercising discretion. The appellant argues that OPG conflated its legal reporting requirements with disclosure in the public interest. I disagree.

[36] OPG explains that, in deciding whether to apply section 18(1)(c), it considered both the public interest in disclosure and the broader impacts of disclosure, both explicit and inferred, to OPG's ability to earn money in this immature market and to the government's clean energy future policy objectives. OPG explains that, on balance, given the specific information at issue, it decided that the requests are purely of a commercial nature. As explained above, the information at issue contains detailed, confidential information about OPG's customers and pricing, and includes the ability to "reverse engineer" how many CECs OPG produces for sale. OPG notes that this is not the requester's personal information, and given the strictly commercial nature of this information, the requester has no sympathetic or compelling need for the information. Relying on the IPC orders cited above, OPG submits that the responsive records fall within what the exemption intended to protect. OPG submits that in exercising its discretion, it also did not consider any irrelevant factors.

[37] Considering the parties' representations and the information that OPG withheld, I find that OPG exercised its discretion under section 18(1)(c). I accept on the evidence before me that it did so properly, and in good faith, considering only relevant considerations. I accept that OPG considered factors that are squarely relevant to these appeals: the principle that information should be made available to the public, and the purpose of the exemption that it claimed (the protection of its ability to make money and compete in a marketplace). OPG granted the appellant access to some requested information, determining that that information did not fall within the section 18(1)(c) exemption. I accept that there is no sympathetic or compelling need for the information withheld in the records. Therefore, I uphold OPG's exercise of discretion in applying section 18(1)(c).

Issue B: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 18 exemption?

[38] The appellant argues that the information at issue should be disclosed under section 23, the public interest override. I disagree.

[39] Section 23 of the *Act* provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[40] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[41] The *Act* does not state who bears the onus of establishing that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.¹⁹

Compelling public interest

[42] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government.²⁰ The IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.²¹

[43] The IPC has defined the word “compelling” as “rousing strong interest or attention”.²² The IPC must also consider any public interest in *not* disclosing the record.²³ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling.”²⁴

[44] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation;²⁵
- the integrity of the criminal justice system is in question;²⁶
- there are public safety issues relating to the operation of nuclear facilities;²⁷

¹⁹ Order P-244.

²⁰ Orders P-984 and PO-2607.

²¹ Orders P-984 and PO-2556.

²² Order P-984.

²³ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

²⁴ Orders PO-2072-F, PO-2098-R and PO-3197.

²⁵ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

²⁶ Order PO-1779.

- disclosure would shed light on the safe operation of petrochemical facilities²⁸ or the province's ability to prepare for a nuclear emergency;²⁹ and
- the records contain information about contributions to municipal election campaigns.³⁰

[45] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations;³¹
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;³²
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;³³ and
- the records do not respond to the applicable public interest raised by appellant.³⁴

Outweighs the purpose of the exemption

[46] The existence of a compelling public interest is not enough to trigger disclosure under section 23. This interest must also *clearly* outweigh the purpose of the exemption in the specific circumstances.

[47] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³⁵

Representations

OPG's position

[48] OPG also reiterates that the Legislature has considered what information about the CEC program should be publicly disclosed and has included it under the reporting requirements of the *Electricity Act*, which would allow the inference that these

²⁷ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

²⁸ Order P-1175.

²⁹ Order P-901.

³⁰ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

³¹ Orders P-123/124, P-391 and M-539.

³² Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

³³ Order P-613.

³⁴ Orders MO-1994 and PO-2607.

³⁵ Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

parameters were contemplated to avoid reasonably harming a generator's economic interests. OPG notes again that it has already disclosed relevant portions of the responsive records in accordance with the legislation, satisfying the public interest in disclosure. OPG says that it has only withheld strictly commercial/economic information to protect its financial position and secure its commercial viability in the CEC marketplace – and that this aligns with a compelling public interest in *non*-disclosure.

The appellant's position

[49] The appellant submits that there is a compelling public interest behind its requests: to “shine a light on the operations of the controversial [CEC] program.” The appellant submits that many environmental groups critiqued CECs as “greenwashing,” and have critiqued the efficacy of the CEC program, for example, arguing that selling CECs to companies does nothing to make Ontario's grid cleaner. The appellant argues that there is a strong public interest in knowing “which companies are falsely claiming to use clean electricity when this is not strictly true.” The appellant submits that the public has an interest in “understanding how CECs are working or, rather, how they are not working.” It concludes with this:

The information in this request directly serves the purpose of informing citizens about the activities of the OPG, a crown corporation, and the Ontario government. The CEC registry is a key climate policy of the current government. This information will help [the appellant] better analyse how the program is or is not working, test OPG and the government's claims about the efficacy of the program and better communicate this information to the public. In a climate crisis, the public's interest in understanding whether a key climate program is actually working clearly outweighs the speculative financial risks to a crown corporation.

OPG's reply

[50] OPG maintains its position and states that the information withheld has no relevance to the appellant's implied objective of helping the public understand how CECs work. OPG also states that the appellant's arguments misrepresent the CEC market and how it works. It states, for example, that it has never been suggested that CEC sales by themselves would make Ontario's electricity grid cleaner; rather, the main goal is to use the proceeds of sales to invest in clean electricity projects through the Future Clean Electricity Fund.

[51] OPG also submits that the appellant's position about “greenwashing” is not relevant to the commercially sensitive information that the appellant is seeking. OPG states that it is discharging a government mandate to advance policies regarding a clean energy future by helping to build the CEC market and remit a large portion of its sales to the Future Clean Electricity Fund. OPG also submits:

If the appellant believes that business entities may be misrepresenting their purchase of CECs as anything other than their investment into clean energy initiatives, then OPG encourages the appellant to seek the appropriate information from those business entities. But that has nothing to do with OPG's commercially sensitive information.

[52] OPG submits that the appellant's concerns appear to be related to the public policy underlying the CECs themselves, based on a misunderstanding of the CEC market, and says these concerns should be raised with the Ontario government and/or the IESO, not by seeking OPG's commercially sensitive information through freedom of information appeals.

The appellant's sur-reply

[53] The appellant submits that OPG raises an artificial distinction between having concerns about the public policy underlying the CEC program and the relevance of the information at issue to those concerns. The appellant says that it does have concerns about the program and the information it is seeking will shed light on whether those concerns are valid, in practice. The appellant says it requests the information "to evaluate whether the government's policy is having the intended impact and/or being implemented effectively." The appellant submits that without the requested information, it is "restricted to hypothetical arguments only, which is certainly not in the public interest." The appellant submits that OPG "is attempting to shield itself against public scrutiny with inflated claims of economic harm," and in "a climate crisis, the public's interest in understanding whether a key climate program is actually working clearly outweighs the speculative financial risks to a crown corporation."

Analysis and findings

No compelling public interest in the specific information at issue

[54] Although there is a public interest in clean energy and the efficacy of government programs intended to achieve that, I find that there is no compelling public interest in the specific information that is at issue in these appeals. While OPG and the appellant discuss the effectiveness of the CEC program in fulfilling its goals, that issue falls outside the scope of this appeal. The information at issue is not about the CEC program as a whole or its efficacy; the law already requires a significant amount of information about this program to be publicly reported, which is a factor that weighs against finding that section 23 applies. Rather, the information at issue is the commercially sensitive information of one member of a small, very competitive marketplace. As discussed under Issue A, it is reasonable to expect that its disclosure would prejudice OPG's commercial interests. I agree with OPG, and I find, that there is a public interest in non-disclosure of this information, to protect the competitiveness of a government institution in the marketplace and its ability to make money in it. Moreover, I find that the public interest in non-disclosure of the information at issue

brings the public interest argued by the appellant below the threshold of “compelling.” Although this means I do not need to consider whether this public interest in the information clearly outweighs the purpose of the exemption at section 18(1)(c), I will do so for the sake of completeness.

Any such interest is not clearly outweighed by the purpose of section 18(1)(c)

[55] Even if I had found that the public interest argued by the appellant is compelling, that is not enough to trigger disclosure under section 23: this interest must also *clearly* outweigh the purpose of the exemption in the specific circumstances.

[56] As discussed, an important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³⁶ Here, denying access to the information withheld is entirely consistent with the purpose of the exemption at section 18(1)(c). The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. It recognizes that institutions may have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse to disclose information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.³⁷ OPG is not a private business, so any money that it can make on its own relieves taxpayers of having to provide such money. I have already found that OPG provided detailed evidence of how disclosure of the withheld information would reasonably be expected to prejudice its economic interests and competitive position. Therefore, I do not accept the appellant’s position, that what is being balanced here is “inflated claims of economic harms” against transparency into the efficacy of a government program (or the aspect of it relating to OPG’s participation in it). The purpose of the section 18(1)(c) exemption is clearly being served by applying the exemption to the information withheld here and I find that the appellant has not provided persuasive evidence that this is clearly outweighed by its general assertions and concerns about the CEC program.

[57] For these reasons, I find that there is insufficient evidence to establish that section 23 applies to override section 18(1)(c) in these appeals. As a result, I uphold OPG’s respective decisions, and dismiss the appeals.

ORDER:

I uphold OPG’s decisions, and dismiss the appeals.

Original Signed by: _____

Marian Sami

August 13, 2025

³⁶ Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

³⁷ Orders P-1190 and MO-2233.

Adjudicator

APPENDIX

Appeal number	Request
PA23-00380	<p>Please provide the following historical information about OPG's clean energy credits for: i) 2021; ii) 2022; and iii) the first quarter of 2023:</p> <ul style="list-style-type: none">a) Total number of clean energy credits sold and total quantity (MWh) of electricity generation that these credits represent broken-out according to the following categories: i) nuclear; ii) hydro-electric; iii) solar; iv) wind; v) biofuels, biogas and biomass.b) A break-out [of] the number of clean energy credits sold according to generating station that produced them (e.g., Pickering Nuclear Station, Sir Adam Beck Generating Station).c) OPG's total revenues from the sale of clean energy credits. Please break-out these revenues according to the generating station that produced them. <p>We further request continuing access to the above information for the following future time periods as soon as it becomes available; i) second quarter of 2023; ii) third quarter of 2023; and iii) fourth quarter of 2023; and iv) each quarter of 2024. For greater clarity, this means seven (7) additional requests.</p>
PA23-00381	<p>With respect to each corporation that purchased a clean energy credit from OPG, please provide the following historical information for: i) 2021; ii) 2022; and iii) the first quarter of 2023:</p> <ul style="list-style-type: none">a) The name of the corporation.b) The number of clean energy credits that it purchased.c) A break-out of the clean energy credits it purchased according to the generating station that produced them.d) The price it paid for the clean energy credits that it purchased broken-out according to the generating station that produced them. <p>We further request continuing access to the above information for the following future time periods as soon as it becomes</p>

	available; i) second quarter of 2023; ii) third quarter of 2023; and iii) fourth quarter of 2023; and iv) each quarter of 2024. For greater clarity, this means seven (7) additional requests.
PA23-00606	<p>"Please provide the following historical information about OPG's clean energy credits for:</p> <p>A) Total number of clean energy credits sold and total quantity (MWh) of electricity generation that these credits represent broken-out according to the following categories:</p> <p>i) Nuclear; ii) hydro-electric; iii) solar; iv) wind; v) biofuels, biogas and biomass.</p> <p>B) A break-out the number of clean energy credits sold according to generating station that produced them (e.g., Pickering Nuclear Station, Sir Adam Beck Generating Station).</p> <p>C) OPG's total revenues from the sale of clean energy credits. Please break-out these revenues according to the generating station that produced them."</p> <p>The required information is for Q3 2023.</p>
PA23-00607	<p>For Q3 2023 please provide:</p> <p>With respect to each corporation that purchased a clean energy credit from OPG, please provide the following historical information for:</p> <p>a) The name of the corporation</p> <p>b) The number of clean energy credits that it purchased</p> <p>c) A break-out of the clean energy credits it purchased according to the generating station that produced them</p> <p>d) The price it paid for the clean energy credits that it purchased broken-out according to the generating station that produced them.</p>
PA24-00078	<p>Please provide the following historical information about OPG's clean energy credits for: i) 2021; ii) 2022; and iii) the first quarter of 2023:</p> <p>a) Total number of clean energy credits sold and total</p>

	<p>quantity (MWh) of electricity generation that these credits represent broken-out according to the following categories: i) nuclear; ii) hydro-electric; iii) solar; iv) wind; v) biofuels, biogas and biomass.</p> <p>b) A break-out [of] the number of clean energy credits sold according to generating station that produced them (e.g., Pickering Nuclear Station, Sir Adam Beck Generating Station).</p> <p>c) OPG's total revenues from the sale of clean energy credits. Please break-out these revenues according to the generating station that produced them.</p> <p>We further request continuing access to the above information for the following future time periods as soon as it becomes available; i) second quarter of 2023; ii) third quarter of 2023; and iii) fourth quarter of 2023; and iv) each quarter of 2024. For greater clarity, this means seven (7) additional requests.</p>
PA24-00079	<p>With respect to each corporation that purchased a clean energy credit from OPG, please provide the following historical information for: i) 2021; ii) 2022; and iii) the first quarter of 2023:</p> <p>a) The name of the corporation.</p> <p>b) The number of clean energy credits that it purchased.</p> <p>c) A break-out of the clean energy credits it purchased according to the generating station that produced them.</p> <p>d) The price it paid for the clean energy credits that it purchased broken-out according to the generating station that produced them.</p> <p>We further request continuing access to the above information for the following future time periods as soon as it becomes available; i) second quarter of 2023; ii) third quarter of 2023; and iii) fourth quarter of 2023; and iv) each quarter of 2024. For greater clarity, this means seven (7) additional requests.</p>