

Federal Court



Cour fédérale

Date: 20160202

Docket: T-1371-14

Citation: 2016 FC 117

Ottawa, Ontario, February 2, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

HUSKY OIL OPERATIONS LIMITED

Applicant

and

**CANADA-NEWFOUNDLAND AND
LABRADOR OFFSHORE PETROLEUM
BOARD AND INFORMATION
COMMISSIONER OF CANADA**

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] This is a review of an Access to Information decision to release the names and titles of two individuals because those names and titles were publicly available on the internet.

[2] The decision is that of the Canada-Newfoundland and Labrador Offshore Petroleum Board [Board]. Husky Oil Operations Limited [Husky] objected to the Board's decision.

The Information Commissioner was added as a party to these proceedings.

[3] The pertinent provisions at issue are s 19 of the *Access to Information Act*, RSC 1985, c A-1 [Access Act] and s 3 of the *Privacy Act*, RSC 1985, c P-21.

Access to Information Act, RSC 1985, c A-1

19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the *Privacy Act*.

(2) The head of a government institution may disclose any record requested under this Act that contains personal information if

(a) the individual to whom it relates consents to the disclosure;

(b) the information is publicly available; or

(c) the disclosure is in accordance with section 8 of the *Privacy Act*.

19 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant les renseignements personnels visés à l'article 3 de la *Loi sur la protection des renseignements personnels*.

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :

a) l'individu qu'ils concernent y consent;

b) le public y a accès;

c) la communication est conforme à l'article 8 de la *Loi sur la protection des renseignements personnels*.

[Emphasis added by Court]

Privacy Act, RSC 1985, c P-21

3 In this Act,	3 Les définitions qui suivent s'appliquent à la présente loi.
...	...
<i>personal information</i> means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,	<i>renseignements personnels</i> Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment : ...
...	

II. Background

[4] The Board received, in February 2014, an access request as follows:

1. Please provide the submitted application forms, correspondence, board response, work credit amounts granted, and all associated items and attachments for each program number on the attached March 13, 2012 CNLOPB letter (attached).
2. Provide all records of any viewing, disclosure, borrowing and copies being made of these same program numbers (attached) including but not limited to liability agreements, correspondence, transmittals, copy disposition forms, emails, and invoices.

[5] The documents related to Husky's request for geophysical reports and related correspondence between the Board and Husky employees.

[6] Husky provided its submissions to the Board on the releasability of the documents identified as responsive to the access request. Those documents included those attached to the Board's letter of March 31, 2014, and are the subject documents in this litigation.

[7] Husky took the position that documents identified in a Board letter of March 28, 2014, were privileged under s 119 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, SC 1987, c 3, and not releasable under s 4 of the Access Act.

Husky also submitted that the documents attached to the March 31, 2014 letter from the Board contained the names and titles of Husky personnel and were therefore prohibited from release under s 19(1) of the Access Act.

[8] The Board's decision was that the March 28, 2014 attachments were prohibited from disclosure on the grounds advanced by Husky.

However, the Board concluded against Husky on the March 31 attachments, finding that the names and titles were available on the internet and exercised its discretion under s 19(2) to release those records.

[9] It is important to note that Husky accepts that the names and titles were available on the internet; however, surprisingly no such evidence (for example, a screenshot) was even put before the Court.

While the Board's decision must be reasonable, and one would expect that the internet evidence was critical to that conclusion, the burden ultimately falls on Husky to show that the internet evidence did not support the Board's conclusion.

[10] Husky's position throughout is that although the names and titles were on the internet, the fact that these individuals were involved in the projects at issue and submitted records to the

Board was not disclosed on the internet. Therefore, their names and titles remained personal information because there was no nexus disclosed between these individuals and the records.

[11] The Board's disclosure decision was based on the fact that the employees and their association with Husky can be confirmed on the internet; therefore, there was no reason to not disclose that information.

III. Analysis

[12] The law is clear as to the standard of review on an Access Act s 44 review involving s 19(1) and (2). Whether the information is "personal information" pursuant to s 19(1) is a correctness standard; but whether the information is publicly available and may be disclosed is a reasonableness standard (*Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403).

[13] Husky cites no decisions and the Court knows of none that impose on the decision-maker (in this case, the Board) the onus to establish that the subject information is "publicly available". Such a proposition ignores the purpose of the Access Act and the burden placed on the person resisting disclosure. It is for Husky to show that the Board erred, either in fact or law, or was unreasonable in its exercise of discretion (*Toronto Sun Wah Trading Inc v Canada (Attorney General)*, 2007 FC 1091, 161 ACWS (3d) 517).

[14] The information at issue is the name and position of each of two employees. It is conceded that that information was public on the internet in Zoominfo at the time of the access request.

[15] The Board had the discretion to release the information. Husky has not advanced any evidence or analysis as to why the Board should not release this information.

[16] Husky's concern appears to be that the requestor will link the names and positions to the projects or information filed with the Board and that somehow Husky suffers some disadvantage. However, that type of concern is one usually used in s 20 of the Access Act – an issue not raised in these proceedings.

[17] Therefore, I can find no reason for the Court to interfere with the Board's decision.

IV. Conclusion

[18] This judicial review will be dismissed with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
with costs.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1371-14

STYLE OF CAUSE: HUSKY OIL OPERATIONS LIMITED v CANADA-
NEWFOUNDLAND AND LABRADOR OFFSHORE
PETROLEUM BOARD AND INFORMATION
COMMISSIONER OF CANADA

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: NOVEMBER 10, 2015

JUDGMENT AND REASONS: PHELAN J.

DATED: FEBRUARY 2, 2016

APPEARANCES:

Peter Shea	FOR THE APPLICANT
Amy Crosbie	FOR THE RESPONDENT, CANADA NEWFOUNDLAND AND LABRADOR OFFSHORE PETROLEUM BOARD
Carolina Mingarelli	FOR THE RESPONDENT, INFORMATION COMMISSIONER OF CANADA

SOLICITORS OF RECORD:

Cox and Palmer
Barristers and Solicitors
St. John's, Newfoundland and
Labrador

FOR THE APPLICANT

Curtis Dawe
Barristers and Solicitors
St. John's, Newfoundland and
Labrador

FOR THE RESPONDENT,
CANADA-NEWFOUNDLAND AND LABRADOR
OFFSHORE PETROLEUM BOARD

Office of the Information
Commissioner of Canada
Gatineau, Quebec

FOR THE RESPONDENT,
INFORMATION COMMISSIONER OF CANADA