

Federal Court



Cour fédérale

Date: 20180228

Docket: T-1415-16

Citation: 2018 FC 224

Ottawa, Ontario, February 28, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

AYUSHEE TOMAR

Applicant

and

PARKS CANADA AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ayushee Tomar, [Ms. Tomar], an employee of the Respondent, Parks Canada Agency [Parks Canada], seeks a review under section 41 of the *Access to Information Act*, RSC 1985, c A-1 [ATIA] of the alleged failure of Parks Canada to disclose all records responsive to her access to information requests made under section 6 of the ATIA. Ms. Tomar has been self-represented throughout all proceedings below and in this Court. She also seeks costs.

[2] Ms. Tomar was employed in the Calgary Compensation Office as a Compensation Advisor. She sought access to certain Human Resources decisions made between 2007 and 2014 relating to her work at Parks Canada. This was done through an access to information and privacy [ATIP] request. Her fundamental concern is that she has been denied access to complete documents in that not all responsive documents were disclosed. She believes other responsive documents should exist because “[t]he requested documents should be part of a standard process for it to be fair and transparent”.

[3] Specifically, Ms. Tomar seeks access to undisclosed records related to each of the following six matters:

- Assessment notes and records of the merit appointment of D Walker in Sept. 2014;
- Correspondence amongst all concerned managers for the Expression of Interest Acting Compensation & Benefits Manager, Calgary Closing date 17 Sept 2014;
- All correspondence for the basis of extending T Helten acting in March 2013 and denying Ms. Tomar;
- All correspondence for the basis of denying Ms. Tomar’s request for consideration for an assignment but, at the same time, extending another advisor’s assignment within the Compensation unit;
- All correspondence for not considering Ms. Tomar for the PeopleSoft data integrity assignment in July 2012 and, when Ms. Tomar disapproved of the decision, then splitting the assignment between them;
- Discussion and emails between the managers involved when changing Ms. Tomar’s initial appointment in July 2007 from an AS 02 to AS 01; and, within that:
 - the names of appointments made from the eligibility list prior to her appointment;
 - any record to show prior candidates were asked to start at AS 01 even though the eligibility selection process criteria was AS 02, there was an interview and a written test;

- the reason for extending special treatment to Ms. Tomar and not to other successful candidates

[4] The relief that Ms. Tomar seeks is “[a]n order that the applicant be entitled to access the complete files,” responsive to her request for each of the six processes she itemized.

[5] Further, Ms. Tomar believes, based on part of a handwritten note which says “come back with a plan if Ayushee leaves”, that the management of Parks Canada might have been trying to get her to leave her job. She wishes to receive more information related to this belief.

[6] Legislation referred to herein is excerpted in the attached Annex.

II. **Background Facts**

[7] Prior to the ATIP request, Ms. Tomar lodged a harassment complaint on November 28, 2014 against the acting Human Resources Director in the Calgary office [Acting HR Director] in connection with a PeopleSoft project. An extensive investigation of the complaint was carried out by two people from The Ancien Group Inc. who interviewed, in addition to Ms. Tomar and the Acting HR Director, a total of 12 witnesses (employees and former employees) of which they considered 2 as independent subject matter experts. A 35-page, 208 paragraph report was produced by the investigators.

[8] This summary from the Harassment Investigation Report [the Report] outlines the nature of the various complaints. As the underlying events subsequently became the subject of the ATIP request, the Report provides further background information to assist in understanding Ms. Tomar’s ATIP requests. In the Report, the Acting HR Director is referred to as the

Respondent. The results of the investigation are paraphrased below, with the findings indented beneath each complaint:

1. The Complainant alleges the Respondent denied her an opportunity to work on a PeopleSoft project, then allowed her to share the project with a co-worker, then gave her co-worker extra time, and then removed her [the Complainant] from the project before her allotted time was up.

No improper conduct was established and the allegation was not supported.

2. The Complainant alleges she was denied an assignment due to operational requirements, but her co-worker was allowed an acting assignment extension during the same period.

No improper conduct was established and the allegation was not supported.

3. The Complainant alleges the Respondent:

(1) witnessed harassment and failed to stop it, and then failed to address it when it was reported to her;

The evidence did not establish on a balance of probabilities that the alleged comments were made and that the Acting HR Director witnessed them. This part of the allegation is not supported.

(2) failed to correct overall inappropriate/disruptive behaviour by Ms. Carlin and shot her (the Complainant) down in a meeting when she raised her concerns about it;

No evidence that the Acting HR Director was aware of the disruptive behaviour until raised at a meeting in 2014. No evidence that the Acting HR Director shut her down or was disrespectful. The person addressed the noise-related concerns of which she was aware. Improper conduct was not established.

(3) without consultation or forewarning, skipped her in the acting rotation and gave the assignment to Ms. Walker.

There was no set rotation for acting assignments and pay records show the complainant received her fair share of acting assignment days. Improper conduct was not established.

4. The Complainant alleges the Respondent unfairly and without due process appointed Ms. Walker to an acting assignment.

The Individual Merit process was appropriate, conducted properly and there was no wrongdoing by the Acting HR Director in relation to it. The complaint that the process was unfair is not supported.

Three subsidiary complaints related to the process were also found to not be supported.

[9] The Report did not deal with the initial appointment of Ms. Tomar in 2007 to a position at Parks Canada as it was not part of her harassment complaint.

A. *The Access to Information Request*

[10] On January 5, 2015 Ms. Tomar submitted the ATIP request to the Access to Information and Privacy Office of Parks Canada. The ATIP Coordinator for Parks Canada [ATIP Coordinator] forwarded the request to the Chief Human Resources Officer, Human Resources Directorate and the Vice President, Western and Northern Canada at Parks Canada.

[11] In responding to Ms. Tomar the ATIP Coordinator redacted some of the documents under subsection 19(1) of the ATIA which requires the exemption of personal information as defined under the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*] and disclosed the remainder to her. The disclosure was made on March 3, 2015.

[12] After reviewing the documents that she received on March 3, 2015 Ms. Tomar found they were not completely responsive. She left a voicemail with the ATIP Coordinator who then met with a representative of the Human Resources Directorate. A second search found more documents which were disclosed to Ms. Tomar on March 11, 2015.

[13] After reviewing the additional documents, Ms. Tomar still believed that documents which ought to have been part of a staffing file had not been disclosed to her. Ms. Tomar sent

another email to the ATIP Coordinator on March 12, 2015 that clarified the documents she was seeking. In Ms. Tomar's view, 90% of what she was sent was correspondence initiated by her. The clarification provided more detailed examples of what information she was seeking under each of the 6 matters.

[14] On March 16, 2015 Ms. Tomar was advised in an email from the ATIP Coordinator that her original request was quite clear from the beginning. As she had now provided additional details not originally covered in her request, the ATIP Coordinator would follow up with the program officials. Ms. Tomar responded that she had not requested additional information. At that time she also requested that her information request be expedited as two months had passed since the initial request.

[15] The ATIP Coordinator, having met again with Human Resources as well as with the Director, Workplace Management and Data Systems, confirmed to Ms. Tomar on March 30, 2015, that no additional documents were located and program officials had conducted an exhaustive search. Ms. Tomar was advised of her right to complain to the Office of the Information Commissioner [OIC].

B. *Complaint to the Office of the Information Commissioner*

[16] On April 12, 2015, Ms. Tomar filed a complaint with the OIC alleging that more records should exist. On July 9, 2015, Ms. Tomar confirmed with the OIC that she also wished to complain about the exemptions applied by Parks Canada. The OIC therefore opened two files for Ms. Tomar – one for the exemption and one for missing records.

[17] On the exemption file, after discussions with Parks Canada, the OIC felt that Parks Canada made greater redactions than were warranted or necessary. As a result of the OIC's recommendations, Parks Canada released previously withheld documents to Ms. Tomar on March 21, 2016 and June 22, 2016.

[18] On July 5, 2016 the OIC issued its reports in respect of the two files.

[19] Regarding the exemption file, the OIC found that the complaint was well-founded but had been resolved as the previously withheld documents had been released to Ms. Tomar.

[20] The OIC reviewed the remaining refusals. It was satisfied that the information still being withheld contained information about identifiable individuals other than Ms. Tomar and it fell within the scope of the disclosure exemption in subsection 19(1) of the *ATIA*.

[21] The OIC next considered whether any of the three conditions set out in subsection 19(2), which would allow discretionary disclosure of personal information, applied. The OIC was satisfied none of those conditions applied and that the complaint was resolved.

[22] On the question of whether additional documents should exist, the OIC found that after the supplementary searches for records it was satisfied that Parks Canada had conducted reasonable searches and no other records could be located. The OIC determined that the missing records complaint was not well-founded.

[23] In arriving at that conclusion, the OIC noted that three searches had been conducted by Parks Canada and that on March 11, 2015, prior to her contacting the OIC, an additional thirty-one pages of records had been delivered to Ms. Tomar. When the OIC became involved it

confirmed with Parks Canada that Human Resources and Operations in the Western Region and the National Capital Region had been involved in looking for records.

[24] The OIC specifically addressed Ms. Tomar's belief that there should be records related to her initial hiring in 2007 and her belief that the position had been reclassified from AS-02 to AS-01. The information the OIC received from Parks Canada was that there were no re-classification documents for the position because, in that time period, the position was not reclassified.

[25] In determining that the missing records complaint was not well-founded the OIC also reviewed the offer letter sent to Ms. Tomar dated July 4, 2007. It stated that "[a]s discussed, since you have not yet completed your developmental training you will be initially appointed to a Compensation Advisor 1, at the AS-01 group and level."

[26] The OIC advised Ms. Tomar of her right to seek review in this Court of the Parks Canada decisions which she has proceeded to do.

III. **Issues**

[27] In her memorandum of fact and law Ms. Tomar identifies five points in issue which I restate as follows:

1. She only received an undated copy of Ms. Walker's assessment record and, she did not receive her own assessment report or notes;
2. Her 2007 offer letter from Parks Canada was for an AS-02 position, she resigned her previous position and then received an amended letter for an AS-01 position because she did not meet the qualifications for the job;
3. A handwritten note on Sept. 4, 2014 by Ms. Parent says "come back with a plan if Ayushee leaves" and no documentation has been provided as to why the note was written or who else was present and briefing Ms. Parent when the note was written;

4. Ms. T. Helten received an extension in her acting assignment while Ms. Tomar's assignment came to an end and Ms. Tomar was not provided supporting documentation as to why the decision was made;
5. Similar to issue 4, no supporting documentation was received as to why the Compensation Manager denied support to Ms. Tomar for an assignment while at the same time extending the acting assignment of Ms. T. Helten.

[28] Ms. Tomar then asks for an Order that expands upon the nature of the Order she sought in her Notice of Application. In addition to allowing the application, with costs, Ms. Tomar seeks:

- Review of the decision by the OIC dated July 5, (referred to in the memorandum as being July 25, which is presumably a typographical error);
- An order be issued to Parks Canada pursuant to section 50 of the *ATIA* to disclose notes/emails/any other information leading to the 2007 management decision for the differential and discriminatory treatment towards her (which I take as referring to the AS-02 versus AS-01 classification for her initial job);
- Release of information pursuant to section 50 of the *ATIA* to show what was being planned by management to create a situation for Ms. Tomar to leave thereby revealing their real intentions.

[Paraphrased]

[29] Parks Canada states the only issue is whether or not this Court may order Parks Canada to conduct another search for records that it states do not exist. Parks Canada specifically says that Ms. Tomar has not challenged the exemptions claimed by Parks Canada. With respect to the redactions, Parks Canada has filed with this Court a confidential affidavit containing unredacted copies of the redacted documents sent to Ms. Tomar.

[30] I agree that it is not entirely clear whether Ms. Tomar is challenging the legitimacy of the section 19 exemptions claimed by Parks Canada. However considering that she is self-represented and given her references to section 50 of the *ATIA* as well as the fact that one of the OIC reports addressed the exemptions claimed by Parks Canada I will consider that one of

Ms. Tomar's issue is whether an exemption under subsection 19(1) of the *ATIA* was properly claimed by Parks Canada. In doing so, I fully acknowledge that Parks Canada believes that Ms. Tomar is not challenging the exemptions claimed by Parks Canada.

[31] In my view, based on the facts and arguments of the parties, two issues are raised:

1. Whether the Court should order further disclosure by Parks Canada because it did not have reasonable grounds to refuse to disclose records or parts thereof based on the presence of personal information in the record;
2. Whether the Court has jurisdiction to order Parks Canada to conduct a further search for records and, if such jurisdiction exists, whether a further search ought to be so ordered.

IV. **Standard of Review**

[32] The standard of review of the refusal of the head of a government institution to disclose relevant records based on that record containing personal information is correctness. Either the record falls within the disclosure exemption or it does not: *Canada (Information Commissioner) v Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8 at para 19, [2003] 1 SCR 66; *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at paras 21-22, [2011] 2 SCR 306.

[33] Review of the exercise of discretion resulting in the refusal to release exempted information is subject to reasonableness review: *Blank v Canada (Justice)*, 2016 FCA 189 at para 24, 7 Admin LR (6th) 30 [*Blank 2016*].

[34] In a correctness review the reviewing court does not show deference to the decision maker's reasoning process. The court undertakes its own analysis of the question and decides whether or not it agrees with the determination of the decision maker. If it does not agree then

the court will provide the correct answer: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, [2008] 1 SCR 190 [*Dunsmuir*].

[35] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir* at para 47. If the reasons, when read as a whole, “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met”: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16, [2011] 3 SCR 708.

V. **Analysis**

A. *Did Parks Canada have reasonable grounds to refuse to disclose records or parts thereof to Ms. Tomar based on the presence of personal information?*

[36] On judicial review of the Parks Canada decision to continue to redact parts of documents the role of this Court under section 41 is limited to considering whether under sections 48 and 49 of the *ATIA* a valid exclusion and reasonable refusal to disclose a record, or part of a record, has been established by the government institution. Section 48 of the *ATIA* places the burden of proof on the government institution to show that it is authorized to refuse to disclose the requested record or part thereof.

[37] Relying on section 19 of the *ATIA*, some of the records disclosed to Ms. Tomar were redacted by the ATIP Coordinator with respect to personal information. Ms. Tomar complained to the OIC that the exemptions were not appropriate. As a result of interventions by the OIC, Parks Canada released additional records to Ms. Tomar, on March 21, 2016 and June 22, 2016.

[38] The OIC report to Ms. Tomar with respect to the subsection 19(1) exemptions indicates that the OIC “reviewed and thoroughly analysed all responsive records withheld under subsection 19(1)” and, following the release of the additional documents to Ms. Tomar, the OIC was satisfied that the information that remained withheld fell within the scope of the exemption in subsection 19(1) as it contained personal information about identifiable individuals other than Ms. Tomar.

[39] The OIC went on to consider whether any of the conditions in subsection 19(2), which would allow discretionary disclosure of the redacted information, were present. The OIC was satisfied that the conditions did not apply. As a result, the OIC found that while the complaint was well founded, it was resolved when the additional documents were disclosed to Ms. Tomar.

[40] This Court owes significant deference to the expertise of the OIC and the investigations it conducts. The primary oversight of the *ATIA* has been given by Parliament to the OIC, reserving to the Court only the power to order access to a specific record when access has been denied contrary to the *ATIA*: *Blank 2016* at paras 15, 36.

[41] In my view, having reviewed the contents of the redactions made in the 23 pages provided by Parks Canada it is clear that the redacted information is personal information (within the definition in section 3 of the *Privacy Act*) in respect of individuals other than Ms. Tomar. It is also clear that the redacted information does not fall into any of the three categories set out in subsection 19(2) of the *ATIA*. It is not publicly available, no consents have been obtained to its release and none of the provisions of section 8 of the *Privacy Act* apply to permit discretionary disclosure.

[42] Considering the deference owed to the OIC and the nature of the personal information contained in the redacted records it is my view that Parks Canada was correct in finding the redacted information was personal information. It is also my view, for the reasons already given, that it has met the onus to show that it reasonably refused to disclose the personal information that it redacted.

B. *Does the Court have jurisdiction to order Parks Canada to conduct a further search for records and, if such jurisdiction exists, should a further search be so ordered?*

[43] Parks Canada has conducted three searches for records. The OIC has investigated Ms. Tomar's allegation that there are still records missing and has determined that the allegation is not well-founded. Nonetheless, Ms. Tomar still believes there are records which ought to be released to her. Other than her belief, there is no evidence that the additional records exist.

[44] Unfortunately, the Court record does not contain copies of all disclosed documents. Ms. Tomar put in evidence some of the documents, and Parks Canada only submitted documents that had been subject to redactions, other than those where only phone numbers were redacted.

[45] A statement that a record does not exist is not a refusal to disclose a record. Equally so, a mere suspicion or belief that a record exists is not, in and of itself, sufficient to establish the premise that further records do exist. Some evidence beyond mere suspicion is required: *Olumide v Canada (AG)*, 2016 FC 934 at para 18, [2016] 6 CTC 1.

[46] None of Ms. Tomar's beliefs or suspicions that further records should exist are supported by any evidence. They also do not stand up to scrutiny.

[47] Regarding her initial hiring, Ms. Tomar states that the other candidates for the job all had the same experience and training as her, but they were given roles as AS-02 while she was given an AS-01 role. She does not understand why this happened and believes there should be emails or notes about the decision to treat her differently. In that respect Ms. Tomar is overlooking the fact the job was not re-classified, rather her AS-01 assignment was made until she completed the necessary training to qualify for an AS-02 position. Any differential treatment Ms. Tomar received appears to have been in her favour as she was hired despite lacking full qualifications at the date of hiring.

[48] Regarding the handwritten note, Ms. Tomar states she has never indicated an intention of leaving Parks Canada and does not understand why there would be a discussion about her leaving. She wants more information behind why this discussion took place. That assumes there was more discussion and there is no evidence of such further discussions before this Court.

[49] The notation “if Ayushee leaves” is followed by the phrase “or too much for Diana W.”. That could mean almost anything. For example, a reasonable explanation could be that as Ms. Tomar did not receive the initial acting appointment she might leave; and, as Diana Walker was just starting the job, it might be too much for her to handle. A manager would need to foresee those possible events and make plans for next steps should either of them occur. The notation does not necessarily point to a conversation about trying to cause Ms. Tomar to leave nor does it lead to a conclusion that more records exist.

[50] Regarding the acting assignment complaints, Ms. Tomar says there are no supporting documents behind the decisions: to conclude Ms. Tomar’s assignment and not support a new assignment while extending another employee’s assignment; and to not give her an acting

assignment in the role Diana Walker was assigned. The Harassment Investigation Report sheds some light on these complaints. It determined that there was no set rotation for allocating acting assignments and, based on payroll records, Ms. Tomar did receive her fair share of such assignments. The investigation also noted that, in the time period Ms. Tomar complained of Ms. Walker receiving the acting assignment, Ms. Tomar was already “heavily burdened” with a project. In my view, these are everyday management decisions that are not necessarily documented.

[51] Finally, regarding the hiring of Ms. Walker, a formal assessment of her qualifications was done before she was appointed to the position of Acting Compensation Manager, and that record, in redacted form, was released to Ms. Tomar.

[52] In terms of whether Ms. Tomar was assessed for the position it appears from the Harassment Investigation Report that after she complained internally about the process, Parks Canada was prepared to open it up and have each candidate take a written test as well as have a formal interview conducted by a full board to be run by someone from outside of the directorate. When the proposed process was explained to Ms. Tomar she indicated she was still not satisfied but she failed to identify how her concerns could be resolved. Shortly thereafter Ms. Tomar went on extended leave and did not participate in the proposed assessment process. Ms. Walker was therefore appointed to the acting assignment based on the assessment of her that had previously been undertaken. While Ms. Tomar speculates that other records responsive to her requests should exist, the Court cannot respond to speculation.

[53] Legally, Ms. Tomar has a right of access to the records as they exist in the hands of the head of a government institution. If there are no such records then, absent evidence of tampering

or similar egregious behaviour, there is no authority in this Court to order a further and better search for records. The Court only has the power to order access to a specific record when access has been denied contrary to the *ATIA: Blank 2016* at para 36.

[54] There is no evidence of record tampering or any egregious behaviour by Parks Canada with respect to Ms. Tomar's complaints. Having reviewed the Court record, it is my view that there is no indication that Parks Canada acted improperly in handing the ATIP request. The fact that the OIC came to the same conclusion further supports the conclusion that there are no records responsive to Ms. Tomar's requests that have not been disclosed to her.

VI. **Costs**

[55] Parks Canada has been successful and seeks costs. Ms. Tomar, had she been successful, also sought costs. In the circumstances of this case, I am not prepared to award costs.

VII. **Conclusion**

[56] This is not a case of records being either withheld or missing. There is no evidence that there were any records to disclose other than what was given to Ms. Tomar. In addition, although not necessary to the outcome, there are plausible explanations for why that may be the case.

[57] Without evidence that Parks Canada controls records it has not disclosed or formally withheld, the Court does not have jurisdiction to question the reasonableness of its search or to order a further search of the records: *Blank 2016* at para 36.

[58] The redactions made by Parks Canada fall squarely within the obligation it has with respect to personal information under the *ATIA*. It was reasonable for Parks Canada to determine

that none of the discretionary provisions permitting release of the redacted personal information exist.

[59] The application is dismissed, without costs.

JUDGMENT IN T-1415-16

THIS COURT'S JUDGMENT is that the application is dismissed, without costs.

“E. Susan Elliott”

Judge

Annex - Legislation

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

<p>Request for access to record</p> <p>6 A request for access to a record under this Act shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record.</p> <p>...</p> <p>Personal information</p> <p>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.</p> <p>Where disclosure authorized</p> <p>(2) The head of a government institution may disclose any record requested under this Act that contains personal information if</p> <p style="padding-left: 2em;">(a) the individual to whom it relates consents to the disclosure;</p> <p style="padding-left: 2em;">(b) the information is publicly available; or</p> <p style="padding-left: 2em;">(c) the disclosure is in accordance with section 8 of the Privacy Act.</p> <p>...</p>	<p>Demandes de communication</p> <p>6 La demande de communication d'un document se fait par écrit auprès de l'institution fédérale dont relève le document; elle doit être rédigée en des termes suffisamment précis pour permettre à un fonctionnaire expérimenté de l'institution de trouver le document sans problèmes sérieux.</p> <p>...</p> <p>Renseignements personnels</p> <p>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.</p> <p>Cas où la divulgation est autorisée</p> <p>(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :</p> <p style="padding-left: 2em;">a) l'individu qu'ils concernent y consent;</p> <p style="padding-left: 2em;">b) le public y a accès;</p> <p style="padding-left: 2em;">c) la communication est conforme à l'article 8 de la Loi sur la protection des renseignements personnels.</p>
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Review by Federal Court

41 Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

...

Burden of proof

48 In any proceedings before the Court arising from an application under section 41 or 42, the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned.

Order of Court where no authorization to refuse disclosure found

49 Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof on the basis of a provision of this Act not referred to in section 50, the Court shall, if it determines that the head of the

...

Révision par la Cour fédérale

41 La personne qui s'est vu refuser communication totale ou partielle d'un document demandé en vertu de la présente loi et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à l'information peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 37(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

...

Charge de la preuve

48 Dans les procédures découlant des recours prévus aux articles 41 ou 42, la charge d'établir le bien-fondé du refus de communication totale ou partielle d'un document incombe à l'institution fédérale concernée.

Ordonnance de la Cour dans les cas où le refus n'est pas autorisé

49 La Cour, dans les cas où elle conclut au bon droit de la personne qui a exercé un recours en révision d'une décision de refus de communication totale ou partielle d'un document fondée sur des dispositions de la présente loi autres que celles mentionnées à l'article 50,

institution is not authorized to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.

Order of Court where reasonable grounds of injury not found

50 Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof on the basis of section 14 or 15 or paragraph 16(1)(c) or (d) or 18(d), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.

ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le document en litige d'en donner à cette personne communication totale ou partielle; la Cour rend une autre ordonnance si elle l'estime indiqué.

Ordonnance de la Cour dans les cas où le préjudice n'est pas démontré

50 Dans les cas où le refus de communication totale ou partielle du document s'appuyait sur les articles 14 ou 15 ou sur les alinéas 16(1)c) ou d) ou 18d), la Cour, si elle conclut que le refus n'était pas fondé sur des motifs raisonnables, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le document en litige d'en donner communication totale ou partielle à la personne qui avait fait la demande; la Cour rend une autre ordonnance si elle l'estime indiqué.

Privacy Act, RSC 1985, c P-21

Definitions

3 In this Act,

...

personal information means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education or the medical, 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, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(f) correspondence sent to a

Définitions

3 Les définitions qui suivent s'appliquent à la présente loi.

...

renseignements personnels Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment :

a) les renseignements relatifs à sa race, à son origine nationale ou ethnique, à sa couleur, à sa religion, à son âge ou à sa situation de famille;

b) les renseignements relatifs à son éducation, à son dossier médical, à son casier judiciaire, à ses antécédents professionnels ou à des opérations financières auxquelles il a participé;

c) tout numéro ou symbole, ou toute autre indication identificatrice, qui lui est propre;

d) son adresse, ses empreintes digitales ou son groupe sanguin;

e) ses opinions ou ses idées personnelles, à l'exclusion de celles qui portent sur un autre individu ou sur une proposition de subvention, de récompense ou de prix à octroyer à un autre individu par une institution fédérale, ou subdivision de celle-ci visée par règlement;

government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual,

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the Access to Information Act, does not include

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an

f) toute correspondance de nature, implicitement ou explicitement, privée ou confidentielle envoyée par lui à une institution fédérale, ainsi que les réponses de l'institution dans la mesure où elles révèlent le contenu de la correspondance de l'expéditeur;

g) les idées ou opinions d'autrui sur lui;

h) les idées ou opinions d'un autre individu qui portent sur une proposition de subvention, de récompense ou de prix à lui octroyer par une institution, ou subdivision de celle-ci, visée à l'alinéa e), à l'exclusion du nom de cet autre individu si ce nom est mentionné avec les idées ou opinions;

i) son nom lorsque celui-ci est mentionné avec d'autres renseignements personnels le concernant ou lorsque la seule divulgation du nom révélerait des renseignements à son sujet;

toutefois, il demeure entendu que, pour l'application des articles 7, 8 et 26, et de l'article 19 de la Loi sur l'accès à l'information, les renseignements personnels ne comprennent pas les renseignements concernant :

j) un cadre ou employé, actuel ou ancien, d'une institution fédérale et portant sur son poste ou ses fonctions, notamment :

(i) le fait même qu'il est

officer or employee of the government institution,	ou a été employé par l'institution,
(ii) the title, business address and telephone number of the individual,	(ii) son titre et les adresse et numéro de téléphone de son lieu de travail,
(iii) the classification, salary range and responsibilities of the position held by the individual,	(iii) la classification, l'éventail des salaires et les attributions de son poste,
(iv) the name of the individual on a document prepared by the individual in the course of employment, and	(iv) son nom lorsque celui-ci figure sur un document qu'il a établi au cours de son emploi,
(v) the personal opinions or views of the individual given in the course of employment,	(v) les idées et opinions personnelles qu'il a exprimées au cours de son emploi;
(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,	k) un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale et portant sur la nature de la prestation, notamment les conditions du contrat, le nom de l'individu ainsi que les idées et opinions personnelles qu'il a exprimées au cours de la prestation;
(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and	l) des avantages financiers facultatifs, notamment la délivrance d'un permis ou d'une licence accordés à un individu, y compris le nom de celui-ci et la nature précise de ces avantages;
(m) information about an individual who has been dead for more than twenty years;	m) un individu décédé depuis plus de vingt ans. (personal information)
	...
	Communication des renseignements personnels

(renseignements personnels)

...

Disclosure of personal information

8 (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or

8 (1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article.

Cas d'autorisation

(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les cas suivants :

a) communication aux fins auxquelles ils ont été recueillis ou préparés par l'institution ou pour les usages qui sont compatibles avec ces fins;

b) communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication;

c) communication exigée par *subpoena*, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de renseignements;

d) communication au procureur général du Canada pour usage dans des poursuites judiciaires intéressant la Couronne du chef du Canada ou le

- the Government of Canada;
- (e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;
- (f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation — as defined in subsection 2(1) of the *First Nations Jurisdiction over Education in British Columbia Act* —, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;
- (g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;
- (h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person
- gouvernement fédéral;
- e) communication à un organisme d'enquête déterminé par règlement et qui en fait la demande par écrit, en vue de faire respecter des lois fédérales ou provinciales ou pour la tenue d'enquêtes licites, pourvu que la demande précise les fins auxquelles les renseignements sont destinés et la nature des renseignements demandés;
- f) communication aux termes d'accords ou d'ententes conclus d'une part entre le gouvernement du Canada ou l'un de ses organismes et, d'autre part, le gouvernement d'une province ou d'un État étranger, une organisation internationale d'États ou de gouvernements, le conseil de la première nation de Westbank, le conseil de la première nation participante — au sens du paragraphe 2(1) de la *Loi sur la compétence des premières nations en matière d'éducation en Colombie-Britannique* — ou l'un de leurs organismes, en vue de l'application des lois ou pour la tenue d'enquêtes licites;
- g) communication à un parlementaire fédéral en vue d'aider l'individu concerné par les renseignements à résoudre un problème;
- h) communication pour vérification interne au personnel de l'institution ou pour vérification comptable

or body specified in the regulations for audit purposes;

(i) to the Library and Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of

au bureau du contrôleur général ou à toute personne ou tout organisme déterminé par règlement;

i) communication à Bibliothèque et Archives du Canada pour dépôt;

j) communication à toute personne ou à tout organisme, pour des travaux de recherche ou de statistique, pourvu que soient réalisées les deux conditions suivantes :

(i) le responsable de l'institution est convaincu que les fins auxquelles les renseignements sont communiqués ne peuvent être normalement atteintes que si les renseignements sont donnés sous une forme qui permette d'identifier l'individu qu'ils concernent,

(ii) la personne ou l'organisme s'engage par écrit auprès du responsable de l'institution à s'abstenir de toute communication ultérieure des renseignements tant que leur forme risque vraisemblablement de permettre l'identification de l'individu qu'ils concernent;

k) communication à tout gouvernement autochtone, association d'autochtones, bande d'Indiens, institution fédérale ou subdivision de celle-ci, ou à leur

locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

Personal information disclosed by Library and Archives of Canada

(3) Subject to any other Act of Parliament, personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

Copies of requests under paragraph (2)(e) to be retained

(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such

représentant, en vue de l'établissement des droits des peuples autochtones ou du règlement de leurs griefs;

l) communication à toute institution fédérale en vue de joindre un débiteur ou un créancier de Sa Majesté du chef du Canada et de recouvrer ou d'acquitter la créance;

m) communication à toute autre fin dans les cas où, de l'avis du responsable de l'institution :

(i) des raisons d'intérêt public justifieraient nettement une éventuelle violation de la vie privée,

(ii) l'individu concerné en tirerait un avantage certain.

Communication par Bibliothèque et Archives du Canada

(3) Sous réserve des autres lois fédérales, les renseignements personnels qui relèvent de Bibliothèque et Archives du Canada et qui y ont été versés pour dépôt ou à des fins historiques par une institution fédérale peuvent être communiqués conformément aux règlements pour des travaux de recherche ou de statistique.

Copie des demandes faites en vertu de l'al. (2)e)

(4) Le responsable d'une institution fédérale conserve, pendant la période prévue par les règlements, une copie des

period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

Notice of disclosure under paragraph (2)(m)

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

demandes reçues par l'institution en vertu de l'alinéa (2)e) ainsi qu'une mention des renseignements communiqués et, sur demande, met cette copie et cette mention à la disposition du Commissaire à la protection de la vie privée.

Avis de communication dans le cas de l'al. (2)m)

(5) Dans le cas prévu à l'alinéa (2)m), le responsable de l'institution fédérale concernée donne un préavis écrit de la communication des renseignements personnels au Commissaire à la protection de la vie privée si les circonstances le justifient; sinon, il en avise par écrit le Commissaire immédiatement après la communication. La décision de mettre au courant l'individu concerné est laissée à l'appréciation du Commissaire.

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Ayushee Tomar

APPLICANT

Kerry E.S. Boyd

FOR THE RESPONDENT

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Edmonton, Alberta

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