Federal Court  Cour fédérale

Date: 21092020

Docket: T-1198-19

Citation: 2020 FC 911

Ottawa, Ontario, September 21, 2020

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

EKENS AZUBUIKE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] In 2012, the Applicant, Mr. Ekens Azubuike, filed a complaint with the Office of the Privacy Commissioner [OPC], alleging that the Canada Border Services Agency [CBSA] disclosed his personal information without his authorization or consent. More specifically, he submitted that CBSA had contravened the *Privacy Act*, RSC 1985, c.P-21 [*Privacy Act*], when it contacted the International Criminal Police Organization [Interpol] seeking verification of the authenticity of a court judgement that Mr. Azubuike had submitted in support of his application for refugee status. The OPC investigated the complaint and, in its Report of Findings dated April

29, 2015 [OPC Findings Report or Report], found that the Applicant's complaint was not well-founded. He seeks judicial review of the OPC Findings Report.

[2] For the reasons that follow, his application for judicial review is dismissed.

Factual background

[3] The Applicant's complaint to the OPC is related to his lengthy immigration history. Accordingly, to place his complaint to the OPC, the OPC Findings Report and his application for judicial review in context, it is helpful to summarize relevant portions of that history.

[4] The Applicant is a citizen of Nigeria. He entered Canada in November 2007 and sought refugee protection on the basis of his claimed fear of persecution at the hands of Nigerian authorities due to his membership and activities in the Movement for the Actualization of the Sovereign State of Biafra [MASSOB]. In support of that claim, the Applicant submitted documentation, including a decision of the High Court of Imo State, Orlu Judicial Division, Federal Republic of Nigeria, dated December 19, 2005 [Nigerian Judgment]. The Nigerian Judgment indicated that the Applicant had been tried *in absentia*, found guilty of treason for his participation in activities as a member of MASSOB and sentenced to imprisonment for life.

[5] On March 26, 2009, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada granted the Applicant's claim for refugee protection.

[6] However, while his claim was pending and before it was determined, CBSA sought verification of the authenticity of the Nigerian Judgment. On December 16, 2010, Interpol advised that the Nigerian Judgment was forged and was not authentic. On February 23, 2011, the Minister of Public Safety and Emergency Preparedness submitted an application to the RPD seeking to have the RPD's 2009 decision granting the Applicant's refugee protection vacated, as his claim was based on material misrepresentations.

[7] On or about June 3, 2014, the RPD accepted the Minister's application and vacated the Applicant's refugee status.

[8] The Applicant brought an application for leave and judicial review of the RPD's vacation decision. By decision dated April 29, 2015, this Court dismissed the application.

[9] The Applicant then applied for a pre-removal risk assessment [PRRA]. He received a negative PRRA decision on February 24, 2015 and was removed to Nigeria on October 6, 2015. The Applicant applied for leave and judicial review of the negative PRRA decision, leave was denied by this Court on June 3, 2015.

[10] Less than two months later, on November 29, 2015 and using a travel document that he had previously claimed to have lost, the Applicant returned to Canada without first having obtained an Authorization to Return to Canada. He subsequently made a second PRRA application which, amongst other things, addressed his claim that he had been detained and tortured by the Nigerian authorities when he was returned to Nigeria. His second PRRA was

refused on May 1, 2018, the deciding enforcement officer noting concerns about the authenticity of documents submitted by the Applicant and his credibility. The Applicant brought an application for leave and judicial review of the second negative PRRA decision, leave was denied by this Court on August 30, 2018.

[11] CBSA's efforts to verify the authenticity of the Nigerian Judgment are the subject of Mr. Azubuike's September 27, 2012 complaint to the OPC, in which he claimed that CBSA disclosed his personal information, including his location, to his country of origin without authorization. The OPC investigated the complaint and, in April 2015, issued its Findings Report, which is the subject of this judicial review.

Decision under review

[12] The OPC Findings Report describes the Applicant's complaint, made under the *Privacy Act*, as an allegation that CBSA improperly disclosed his personal information to his country of origin. Specifically, the Applicant complained that CBSA disclosed the Applicant's personal information without consent to the High Commission of Canada to Ghana [Ghana High Commission], which then used this information to contact Interpol in Lagos, Nigeria, and the Nigerian authorities in order to verify information regarding the Applicant's criminal history.

[13] The Report next sets out a factual summary, including the Applicant's immigration history that led to CBSA seeking verification of the Nigerian Judgment. This summary also sets out facts, stated as confirmed by the OPC, pertaining to the request for assistance in verifying the authenticity of the Nigerian Judgment. Specifically, on February 4, 2009 an enforcement officer

[Enforcement Officer] of CBSA's Security and War Crimes Unit in Montreal, Quebec, sent an email to the First Secretary and Migration Integrity Officer [MIO] at the Ghana High Commission in Accra, requesting assistance in the verification of the Nigerian Judgment. The Enforcement Officer's email indicated that neither the status nor location of the person requesting asylum should be disclosed during the verification process. The Enforcement Officer provided the Applicant's name, the Nigerian court file number, citation and date of the Judgment and the name and contact information for the Applicant's lawyer in Nigeria. In response, the MIO indicated that it would be easier to proceed with the verification if a copy of the Judgment were provided. The Enforcement Officer provided a copy of the Judgement to the MIO.

[14] The MIO then wrote to the Commissioner of Police, Interpol Section, Force CID, in Lagos, Nigeria and asked for Interpol's assistance in verifying the authenticity of the Judgment. The MIO's assistant sent a copy of the Judgment to the general email address for the Interpol National Central Bureau [NCB] in Lagos Nigeria, copied to the MIO and to an email address confirmed by CBSA as being for a detective responsible for coordinating requests for assistance within the Interpol NCB. On December 16, 2010, Interpol sent a letter to the Ghana High Commission advising that it had determined the Judgment to be a forged document and attaching a copy of the of the Nigerian Court's report in that regard.

[15] The Findings Report next summarizes the Applicant's complaint and representations, and CBSA's representations.

[16] In his representations to the OPC, the Applicant asserted that CBSA disclosed his personal information without consent to the Ghana High Commission, Interpol and the Nigerian authorities. The Applicant further asserted that because of CBSA's unauthorized disclosure, the Applicant's brother and his lawyer in Nigeria were contacted or visited by Nigerian authorities seeking the Applicant's whereabouts and his apprehension. This included a visit to his brother at his village in Orlu, Imo State, by a person claiming to be a police officer working with the Canadian Embassy in Ghana seeking to verify the Nigerian Judgment. The Applicant provided letters and email communications to support his claim, which the OPC Findings Report describes. The Report notes that the Applicant had also directly complained to the Minister and in an April 27, 2012 response, the Minister highlighted that verifications with Interpol are routine. Further, that Canadian jurisprudence has determined that when information is compiled for the purpose of enforcing the *Immigration and Refugee Protection Act*, SC 2001, c 21 [IRPA], disclosing that information to a foreign state in order to make a decision in that regard constitutes a permissible "consistent use" under the *Privacy Act*. The OPC Findings Report states that in the course of the investigation the Applicant made several submissions to the OPC in support of his allegations, that all of his representations were assessed and, the evidence relevant to his complaint was described in the Report.

[17] As to the CBSA submissions, the OPC Findings Report indicates that CBSA submitted that the verification request and information sharing was made to enforce the IRPA, for refugee determination purposes, and to maintain the integrity of the immigration system. The verification inquiry was taken because other documents submitted by the Applicant in support of his refugee claim were either not authentic or were obtained fraudulently. In its representations, CBSA noted

that the Enforcement Officer did not disclose the Applicant's location or status and that no other information was shared beyond his name, the Judgment and the name and contact information of his lawyer in Nigeria. The communication between the Enforcement Officer and the MIO also specifically instructed that the Ghana High Commission was not to disclose the whereabouts and status of the individual concerned because he had made a claim for refugee status. Further, CBSA noted that only CBSA, the Ghana High Commission and Interpol NCB of Nigeria were involved in the process of verifying the authenticity of the Judgment, the inquiry did not involve the Imo State or the Nigerian authorities. Officials at the Ghana High Commission had confirmed to CBSA that the detective who received the inquiry and a copy of the Judgement was an employee of Interpol at the time of the request for assistance. After receiving the communication, the detective assigned his colleague to respond to the request for verification. CBSA further submitted that Interpol did not make area trips to verify the Judgment; rather verification was conducted through a central registry or by phone. Further, Article 10 of *Interpol's Rules on the Processing of Data* specifically limit NCBs from using information provided for the purposes of international police cooperation for a secondary purpose. Nor was the Nigerian Judgment considered particularly sensitive because, if genuine, it would have been a public record. Finally, CBSA submitted that the information sharing did not require the Applicant's consent because it was authorized by the IRPA for determination purposes and constituted a consistent use under s 8(2)(a) of the *Privacy Act*.

[18] In summarizing CBSA's evidence, the OPC Findings Report referred to the evidence before it, including the affidavit evidence of the Enforcement Officer and his sworn responses to the Applicant's written examination.

[19] The OPC Findings Reports notes in its Application section that ss 3, 7 and 8 of the *Privacy Act* were relevant in considering the complaint. Section 3 defines personal information. Section 7(a) states that personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except for the purpose for which that information was obtained or compiled by the institution or for a use consistent with that purpose. Section 8 provides that such personal information can only be disclosed with an individual's consent or in accordance with the other provisions of that section.

[20] The Analysis section of the Report states the information disclosed by CBSA for the purposes of verifying the authenticity of the Nigerian Judgment, including the Judgment itself, is personal information as defined by s 3 of the *Privacy Act*. At issue was whether CBSA contravened s 8 by disclosing personal information, without consent, to the Ghana High Commission, which then disclosed it to Interpol, for the purpose of requesting assistance in verification of the authenticity of the Judgment.

[21] The Report states that the OPC investigation concluded that the disclosure of the Applicant's personal information for the purpose of verifying the Nigerian Judgment during the refugee application process was a consistent use under s 8(2)(a) of the *Privacy Act*. The OPC was satisfied that the sharing of information with officials at the Ghana High Commission was for the specific purpose of seeking assistance to verify the authenticity of the Nigerian Judgment that had been submitted by the Applicant as part of the refugee determination process. The Report found that "the information shared with the High Commission was necessary and relevant to provide context to the request, including sharing a copy of the Judgment". Further, the OPC

investigator concluded that the subsequent disclosure of the Applicant's personal information by the Ghana High Commission to Interpol was for the specific purpose of seeking assistance in verifying the authenticity of the Judgment. That disclosure was appropriately limited to the information necessary for Interpol to verify its authenticity.

[22] The Findings Report states that the OPC investigation revealed no evidence that Interpol was provided with any information beyond that contained in the Judgment, or that Interpol was advised by CBSA that the request for verification was being made in the context of the Applicant's claim for protection in Canada. Consequently, the OPC was satisfied that the disclosure of the Applicant's personal information to the Ghana High Commission and Interpol was permitted under s 8(2)(a) of the *Privacy Act* as it was necessary to fulfill the original purpose for which the information was collected by CBSA – refugee determination purposes and the enforcement of the IRPA.

[23] As to the Applicant's allegation that his lawyer and his brother were contacted by Nigerian authorities in relation to his whereabouts, the Report notes that this concerned the possible secondary disclosure of personal information by Interpol NCB to the Nigerian authorities. While the OPC had jurisdiction to examine the disclosure by CBSA to Interpol, it did not have jurisdiction over the personal information handling practices of Interpol or the Nigerian police force. Further, that CBSA had submitted that no one from the Ghana High Commission went to the Imo State in Nigeria or communicated about the Applicant with the Nigerian authorities and that Interpol did not make any area trips to verify the Judgment. The Report also

notes that Interpol members are restricted in the use of information provided for the purpose of international police cooperation for a secondary purpose.

[24] In its Findings section, the OPC concluded that it was satisfied, based on its investigation, that the disclosure of the Applicant's personal information was for a purpose consistent with that which originally justified its collection. The disclosure was therefore authorized by s 8(2)(a) of the *Privacy Act* and the complaint was, accordingly, not well-founded.

[25] The Report provided comments and raised concerns as to the manner in which the disclosure occurred and the need for CBSA procedures in that regard. The OPC took the opportunity to remind the CBSA of its obligations under the *Privacy Act* to ensure the ongoing protection of the personal information disclosed in furtherance of the legislative mandate under the IRPA, particularly in the context of requests for assistance to international counterparts such as Interpol.

Legislation

[26] The relevant sections of the *Privacy Act*, RSC 1985, c.P-21 are found in Annex "A" of these reasons.

Issues and Standard of Review

[27] The Applicant is a self-represented litigant. His memorandum of fact and law filed in support of his application for judicial review is lengthy, 198 single-spaced small font paragraphs.

The majority of the Applicant's submissions address his immigration history and take issue with prior immigration determinations, in particular his view that his refugee status was wrongly vacated. The submissions also set out the substance of his complaint as made to the OPC regarding CBSA's disclosure of his personal information, the Applicant's view that the disclosure of his personal information was a breach of s 8(2) of the *Privacy Act* and what he sees as the ramifications of that disclosure. The Applicant does not identify specific issues pertaining to the OPC Findings Report to be addressed on judicial review.

[28] The Respondent does not identify issues as such but submits that the standard of review of the OPC decision is reasonableness and that the Court should not interfere with the decision unless it is not transparent, intelligible or falls outside the range of possible, acceptable outcomes in light of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Daley v Canada (Attorney General)*, 2016 FC 1154 at para 31; *Sauvé v Attorney General of Canada*, 2016 FC 401 at para 99; *Privacy Commissioner v Alberta Teacher's Association*, 2011 SCC 61 at paras 48-55).

[29] Having considered the submissions of both parties, it is my view that the only questions properly before this Court are whether the OPC investigation was conducted in a procedurally fair manner, and whether, based on that investigation, the determination that the complaint was not well-founded is reasonable.

[30] The standard of review for issues of procedural fairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[31] Review of the OPC's determination that the complaint was not well-founded has previously been held to be reviewable on the reasonableness standard (*E.W. v The Privacy Commissioner of Canada*, 2015 FC 1420 at paras 33-36 [*E.W.*]; *Daley v Canada*, 2016 FC 1154 at para 31). The application of that standard is also in conformity with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] which held that there is a presumption that reasonableness is the applicable standard whenever a Court reviews an administrative decision. And, although *Vavilov* held that the presumption may be rebutted in the circumstances it described, they do not arise in this matter.

[32] A review for reasonableness means that a reviewing court must determine whether the decision as a whole is reasonable. To make that determination, the reviewing court "asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 15, 99).

Preliminary Issues

i. Remedies Sought

[33] In his Notice of Application, the Applicant requests the following relief on judicial review:

> - that the Court declare the decision of the Privacy Commissioner to be invalid, quash the decision and refer the case back to the OPC for re-investigation and the making a new report;
>
> - that the Court order the Privacy Commissioner to properly serve the Applicant with the decision (the Findings Report); and
>
> - that the Court order the Privacy Commissioner to serve the Applicant with a copy of the recommendation issued to the CBSA.

[34] With respect to the second request for relief, I note that the Applicant claims that he did not receive the April 29, 2015 Findings Report until it was sent by email on July 9, 2019. Further, in August 2019 he filed a motion, pursuant to Rule 317, requesting disclosure of a "clear readable Certify Copy of the contested report" of his complaint against CBSA and the separate recommendations report of the Privacy Commissioner originating from the complaint. Prothonotary Steele, the case management judge, heard the motion and issued an Order dated September 30, 2019. For the reasons she set out, she upheld the Privacy Commissioner's objection to the Applicant's disclosure request made under Rule 317 and dismissed the motion.

[35] A clear copy of the Findings Report is found in the Applicant's Record. Further, the Respondent submits that prior to the email transmission of the Report it had already been sent to the Applicant on two occasions. In that regard, the Respondent refers to the affidavit of Ketsia Dorceus, declared on September 23, 2019, which attaches as Exhibit A the Affidavit of Claudia Rutherford, a paralegal with the OPC, affirmed on October 31, 2017 and filed in Court File T-

76-15 (*Ekens Azubuike v Privacy Commissioner of Canada*). Claudia Rutherford's affidavit deposes that the OPC sent the Applicant a copy of the Findings Report by regular mail on or about April 29, 2015 and that an additional copy was sent by expedited post on May 13, 2015. Attached as Exhibit G of the Rutherford Affidavit is a copy of the Canada Post tracking receipt confirming delivery on May 13, 2015.

[36] I find that the Applicant is in possession of the Findings Report. Section 35(2) of the *Privacy Act* requires only that the Privacy Commissioner shall, after investigating a complaint under the Act, report the results of the investigation to the complainant. The record confirms that the Applicant was sent and has received the Findings Report. Thus, the requirement of s 35(2) has been satisfied. There is also no legal basis for his request, in this application for judicial review, that Court order the Privacy Commissioner to "properly serve" him with the Findings Report. His request for relief in that regard is accordingly denied.

[37] As to the Applicant's request that the Court order the Privacy Commissioner to serve him with a copy of the recommendations issued to CBSA, this request was also addressed in his denied Rule 317 motion. It is not open to the Applicant to re-litigate that request. Accordingly, that request for relief is also denied. Moreover, it is not apparent that the OPC actually made any separate recommendations; while the Report notes how CBSA could improve its information sharing procedures, no reference in the Report is made to a distinct set of, or to any, recommendations. Further, s 35(1)(a) of the *Privacy Act* refers to a report being made to the head of the government institution that has control of the personal information when a complaint is found to be well-founded. That report will contain the findings of the investigation "and any

recommendations that the Commissioner considers appropriate". Here the OPC Findings Report concluded that the Applicant's complaint was not well-founded and therefore the reporting requirements under s 35(1)(a) are not engaged.

[38] I note in passing that Prothonotary Steele found that the case law was clear that Rule 317 of the *Federal Courts Rules*, SOR/98-106 is not triggered by a judicial review of an investigation report and recommendations (citing *Oleinik v The Privacy Commissioner of Canada* (May 7, 2012), Ottawa T-272-12 (FC) at para 9). Rule 317 permits a party to request material relevant to an application for judicial review that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the requesting party, by serving on the tribunal and filing a written request, identifying the material sought. Further, Prothonotary Steele noted that the documents sought by the Applicant both stemmed from an investigation conducted by the OPC under the *Privacy Act*, specific provisions of which preclude the Privacy Commissioner from disclosing such documents (citing *Ekens Azubuike v Privacy Commissioner of Canada*, (March 23, 2015, Ottawa, T-76-15). In any event, other than the two items dealt with in the denied motion, the Applicant does not appear to have requested disclosure of the OPC's investigative record under Rule 317.

ii. Scope of judicial review of OPC reports

[39] The Respondent notes that the Privacy Commissioner is an independent officer of Parliament who investigates complaints from individuals who allege that personal information held by a government institution has been collected, used or disclosed improperly (*Privacy Act*, ss 29, 34). The jurisdiction of the Privacy Commissioner to hear complaints is governed by s

29(1)(a) of the *Privacy Act*. When an investigation is concluded, the OPC prepares a report of findings and recommendations, which are not legally binding (s 35). The *Privacy Act* does not provide the Privacy Commissioner with any order making powers. Rather, the OPC's role is comparable to that of an ombudsman.

[40] The Respondent submits that s 41 of the *Privacy Act* outlines when a decision may be subject to judicial review before this Court, primarily being reviews of decisions where access to personal information has been refused (*Murdoch v Canada (Royal Canadian Mounted Police)*, 2005 FC 420 [*Murdoch*]). However, in situations such as this one, where a complainant alleges that personal information was disclosed without authorization, the Court's review powers stem from s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 which grants the Court a broader jurisdiction to hear reviews of a federal board, commission or other administrative tribunals. In circumstances where the Court's review powers stem from s 18.1 of the *Federal Courts Act*, the Respondent submits that the Court's remedial powers are limited. Since the Privacy Commissioner has very limited powers to remedy a breach of privacy under the *Privacy Act* – being the making of non-binding findings and recommendations – the Respondent submits that this Court is also so limited (*Murdoch* at para 19; *Morneault v Canada (Attorney General)* [2001] 1 FCR 30 (FCA) at para 41 [*Morneault*]).

[41] The Respondent also submits that the scope of judicial review of OPC reports is limited. While the investigation process is subject to review, the recommendations of the OPC are not (*Oleinik v Canada (Privacy Commissioner)*, 2011 FC 1266 at para 11 [*Oleinik*]). The Court's remedial powers on judicial review under s 18.1 of the *Federal Courts Act* also permit the Court

to provide remedies in the event that the OPC were to unlawfully refuse to investigate or report its findings on a complaint or if it conducted its investigation in an unfair manner (*Love v Office of the Privacy Commissioner of Canada*, 2014 FC 643 at para 82 [*Love*]). However, in this application for judicial review, the Court "can only focus on those narrow grounds discussed by Justice Rennie in *Oleinik* and Justice Russell in *Love*" (*E.W.* at para 28).

Analysis

[42] Because the Applicant's submissions are wide ranging, in my view it is important to address at the outset the scope of this judicial review.

[43] First, pursuant to s 41 of the *Privacy Act*, had the Applicant been refused access to requested personal information by a government institution, and made a complaint in that regard to the OPC, then he would have been entitled to seek judicial review of the matter. In the event that the Court found that the refusal by the head of the government institution was unauthorized, or that the head of the government institution did not have reasonable grounds for refusing disclosure, then pursuant to ss 48 and 49, respectively, the Court would be authorized to order the head of the institution to disclose the personal information sought. This, however, is the Court's only such remedial power (*Keita v Canada (Minister of Citizenship and Immigration)*, 2004 FC 626 at para 12 [*Keita*]; *Cumming v Canada (Royal Mounted Police)* 2020 FC 271 at para 25). But that is not the situation in this case. Here the Applicant did not request disclosure of his personal information and ss 41, 48 and 49 are not engaged.

[44] The jurisprudence of this Court is also clear that the validity of the Privacy Commissioner's recommendations are not subject to the Court's powers of review (*Keita* at paras 20-22 referencing *Canada* (*Attorney General) v Bellemare* [2000] FCJ No 2077 (FCA) at paras 11-13; *Oleinik* at para 7). In this matter, the OPC Findings Report does not contain any formal recommendations and the Applicant does not challenge the OPC's stated concerns, which it characterized as findings.

[45] However, an OPC investigation and report are subject to judicial review by this Court if the investigation was procedurally unfair or if the OPC report had "material omissions, reached unreasonable conclusions, contained unsustainable inferences, misconstrued the factual and legal context or evinced a bias or pre-disposition on the part of the investigator…" (*Oleinik* at para 11; see also *E.W.* at para 27-28). Similarly in *Love*, Justice Russell held that "this Court's remedial powers on judicial review under s 18.1 of the *Federal Courts Act* are sufficiently broad to provide remedies if the OPC were to unlawfully refuse to investigate or report its findings on a complaint, or were to conduct its investigation in an unfair manner" (*Love* at para 82).

[46] Accordingly, I agree with the Respondent that the scope of this application for judicial review is concerned only with whether the investigation was conducted in a procedurally fair manner, and with the reasonableness of the Report's determination that the Applicant's complaint was not well-founded (see *E.W.* at para 27-28, 30). This judicial review is not concerned with past immigration decisions and other matters raised by the Applicant in his submissions.

[47] Further, here the Applicant's allegation is not the withholding of requested personal information, but the disclosure of that information without authority. The Court's jurisdiction therefore arises from s 18.1 of the *Federal Courts Act* and, in the event that the process was found to be procedurally unfair or the Report's findings unreasonable, the only remedy that the Court can provide is to remit the matter back to the OPC for redetermination (see *Murdoch*).

Was the OPC investigation conducted in a procedurally fair manner and, based on that investigation, was the determination that the complaint was not well founded reasonable?

Applicant's Position

[48] As noted above, the Applicant's submissions are broad and wide-ranging. In a nutshell, the Applicant submits that it was "an abuse of discretion" for the Ghana High Commission to share his personal information with Interpol. And, because the Ghana High Commission communicated with the Nigerian Interpol NCB, Canada inappropriately consulted with his country and agent of persecution. The Applicant seeks condemnation of CBSA's "using an agent of persecution or persecutory state as a source of information in refugee determination…". According to the Applicant, the sharing of his personal information led to his brother and lawyer being contacted by Nigerian authorities. It also led to the inappropriate revocation of his refugee status and his deportation to Nigeria where he was tortured, in violation of ss 7 and 12 of *Canadian Charter of Rights and Freedoms* and international conventions. The Applicant revisits, in considerable detail, his immigration history, and sets out his view as to errors made in various decisions rendered, including the finding that he was inadmissible to Canada, the vacation of his refugee status, detention hearings and his PRRAs. He also asserts various acts of

retribution that he alleges were taken against him by Canadian authorities, including CBSA, and claims that there was inappropriate interference in his case by the Department of Justice.

[49] With respect to the *Privacy Act*, he asserts that s 8(2) of that Act was breached and he revisits the documents and submissions that he claims to have made to the OPC in support of his complaint.

[50] As to any errors of fact or law, the Applicant states that he "hereby affirmed that he is categorically challenging the constitutionality and the legality of the collaboration between the Canadian Government as a democratic state and the Nigerian authority as the country of origin of the refugee applicant against the international protections ascribed in the Convention refugee…". The Applicant further submits that the Canadian authorities "acted in error and in bias manner by directly disclosing applicant refugee and asylum application file to aggressors", the alleged agents of his persecution. He submits that the entire process leading up to the vacation of his refugee status failed to provide procedural safeguards and to protect him from removal to torture.

[51] When appearing before me the Applicant reasserted that CBSA erred in directly releasing his personal information to his claimed agent of persecution, the Nigerian police. He also argued that the OPC failed to validate this error, failed to consider all of his evidence and was biased towards CBSA.

Respondent's Position

[52] The Respondent notes that the Applicant's submissions are essentially silent as to the OPC's Findings Report, the review of which is the subject of his application for judicial review. Instead, the Applicant's submissions focus on the Applicant's dissatisfaction with previous immigration decisions and decision makers, all of which have been previously challenged and resolved. The Respondent submits that the Applicant's various arguments about credibility issues before the RPD, numerous complaints filed against myriad decision makers, alleged errors in the vacation of his refugee status, his prior deportation to Nigeria and generic *Charter* arguments have little to do with the soundness of the investigative process. The Respondent also submits that the Applicant failed to demonstrate any errors in the OPC's investigative process and failed to show that the OPC Findings Report contains material omissions or that the investigation merits review (*Oleinik* at para 11). Rather, the Applicant has made a circuitous and misdirected attempt to challenge anew the actions and decisions of CBSA through his judicial review of the OPC's non-binding Report (*Olenik* at para 9).

Analysis

[53] While the Applicant disagrees with the OPC's Findings Report, his written submissions do not clearly or persuasively engage with the procedural fairness of the investigative process or why he is of the view that the Report's determination that his complaint is not well-founded is unreasonable. His written submissions do not suggest that the OPC overlooked material evidence or made other reviewable errors.

[54] With respect to procedural fairness, the Applicant makes some broad and general assertions of bias, but did not develop these in his submissions. He claims, in essence, that CBSA

was unfairly targeting him and that the Privacy Commissioner was collaborating with, and biased in favour of, CBSA. However, he points to no evidence that would meet the test for bias, being whether an informed person, viewing the matter realistically, being fully informed of all of he facts and having thought the matter through, would conclude that the decision maker was biased (*Oleinik* at para 15 citing *Committee for Justice and Liberty et al v National Energy Board et al* [1978] 1 SCR 369 at p 394). In my view, the Applicant has not established that the investigation process or the investigation was biased or otherwise conducted in a procedurally unfair manner.

[55] The Applicant, in his written submissions, does not point to any material omissions or errors of fact or law that would support a view that the OPC Findings Report is unreasonable. When appearing before me the Applicant asserted that the OPC had failed to consider all of the evidence that he submitted and erred in its evaluation of the evidence.

[56] In the absence of a certified tribunal record, I am unable to determine whether many of the documents found in the Applicant's Record filed in this application for judicial review were before the OPC. That said, the OPC Finding Report states that its investigation considered all of the Applicant's submissions, but had described only those that were relevant to his complaint. I note that decision makers are not required to explicitly address every submission made by a party (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). They are also presumed to have considered all of the evidence before them (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 para 16 – 17; *Placide v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1056, at para 44).

[57] Further, and significantly, the issue before the OPC was whether CBSA had breached s 8 of the *Privacy Act* by the disclosure of personal information, without consent, to the Ghana High Commission, which then disclosed it to Interpol, for the purpose of requesting assistance in verification of the authenticity of the Nigerian Judgement. Thus, the OPC was concerned only with evidence relevant to the disclosure issue. Specifically, it was concerned with evidence demonstrating what information had been disclosed and for what purpose.

[58] In that regard, the OPC noted that the Applicant had submitted that his lawyer and his brother were contacted by Nigerian authorities in relation to the Applicant's whereabouts and that he had provided four documents, then described by the OPC, in support of his claim. These included: a letter from the Applicant's lawyer alleging that he was visited in his office in Imo State by an individual seeking to verify the Nigerian Judgement; a letter allegedly from the Nigerian Police Force summonsing the Applicant's lawyer to be interviewed concerning the Applicant's whereabouts and alleging that a Migration Integrity Officer at the High Commission of Canada in Accra confirmed that the Applicant is in Canada seeking political asylum; and, an email from the Applicant's brother alleging that he was visited in his village in Imo State by a police officer from Lagos, working with the Canadian Embassy in Ghana seeking to verify the Nigerian Judgment.

[59] Accordingly, I am not persuaded that the OPC erred by failing to consider the Applicant's evidence relevant to the issue before it. Rather, the OPC clearly preferred the evidence of CBSA, which established that the email from the MIO to the Ghana High Commission requested the assistance in the verification of the Nigerian Judgement. The email

provided only the citation and other identifying information as to the Judgement, identified the Applicant's lawyer in Nigeria, and explicitly stated that neither the status nor location of the Applicant was to be disclosed. In turn, the Ghana High Commission requested Interpol's assistance, asking that Interpol advise if the Nigerian Judgment was genuine and providing a copy of that document. Further, CBSA's evidence was that only the Ghana High Commission and Interpol NCB were involved in the verification process and that Interpol NCB did not make area trips in order to verify the Judgement. And, neither the Ghana High Commission nor CBSA replied to the Interpol NCB letter confirming that the Nigerian Judgement was fraudulent, and advising that it would appreciate any information that could assist in the apprehension and persecution of the author of the forged document.

[60] The OPC Findings Report states that, based on the evidence before it, the OPC was satisfied that no other document or information concerning the Applicant was forwarded to the Ghana High Commission. More specifically, that its investigation revealed no evidence that Interpol was provided with any information beyond that contained in the Nigerian Judgement or that Interpol was advised by the CBSA that the request for verification was being made in the context of the Applicant's claim for refugee protection in Canada.

[61] The OPC stated that it was satisfied the disclosure of the Applicant's personal information to the Ghana High Commission and Interpol NCB was permitted under s 8(2)(a) of the *Privacy Act* as it was necessary to fulfil the original purpose for which the information was collected by CBSA – refugee determination and enforcement of the IRPA. The Applicant's consent to disclosure was not required in that circumstance.

[62] In short, the OPC considered the Applicant's evidence that his presence in Canada and his refugee claim had been disclosed to his country of origin, but preferred the evidence of CBSA. It is not the role of this Court to reweigh the evidence (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61). The OPC also noted that it did not have jurisdiction over the personal information handling practices of Interpol or the Nigerian police force.

[63] In my view, given that the issue before the OPC was whether CBSA had breached s 8 of the *Privacy Act* by the disclosure, without consent, of the Applicant's personal information, the OPC's reasons provide a complete answer to his complaint, which the OPC reasonably found to be not well-founded.

[64] The OPC was not required to take into consideration: the Applicant's assertions that the disclosure was unconstitutional and in breach of the *Charter*; his claims that because of the disclosure he was subjected to torture upon his return to Nigeria based on his asserted political affiliation (which was rejected by the second PRRA decision); his submission that Canada was in breach of its international obligations by disclosing his personal information as to his refugee status (which disclosure the OPC was satisfied did not occur). The OPC was similarly not required to consider evidence such as the United Nations High Commissioner for Refugees advisory opinion on the rules of confidentiality regarding asylum information, country condition reports and other documents not relevant to the determination that the OPC was required to make. Nor was the OPC bound by or required to consider unrelated – or any – vacation decisions of the RPD in making its decision. If this and similar evidence found in the Applicant's Record

was before it, the OPC did not err in failing to mention or consider it, as it is not material or relevant.

[65] I agree with the Respondent that this matter is on all fours with *Oleinik* where Justice Rennie held:

> [11] In consequence, the OPC investigation itself is amenable to review. If the report had material omissions, reached unreasonable conclusions, contained unsustainable inferences, misconstrued the factual and legal context or evinced a bias or pre-disposition on the part of the investigator, the Court could intervene. Here, however, no particular challenge is taken with the report. Indeed, the applicant did not point to errors in the reasoning or to facts that might support intervention. The report, on its face, is balanced and thorough. No omissions, let alone material omissions, were identified by the applicant. The applicant simply seeks a different outcome.

[66] Because the Applicant has not established that the investigation was conducted in a procedurally unfair manner or that it was based on errors of fact or law, his application cannot succeed. Moreover, the determination of the OPC Findings Report that the Applicant's *Privacy Act* complaint was not well-founded is transparent, intelligible and is justified in relation to the relevant factual and legal constraints that bear on that decision (*Vavilov* at paras 15, 99). Accordingly, it is reasonable.

[67] Further, the Applicant cannot seek judicial review of the OPC's non-binding Findings Report to, in essence, challenge his prior negative immigration decisions. The record establishes that the Applicant has employed every opportunity to challenge those decisions and has not been successful. This application for judicial review of the OPC Findings Report is, as indicated

above, of limited scope. It cannot be utilized as a collateral attack on prior immigration decisions or as a platform to launch a constitutional challenge of the refugee and immigration regime.

[68] For the reasons above, the application is dismissed.

[69] However, I feel it is significant to observe, as a final point, that the OPC Findings Report made findings and comments concerning verification requests made by CBSA and the related potential risks to refugees, which is the point of principle being made by the Applicant in this application for judicial review.

[70] The Report expressed concern that, at the time the request for verification was made in the Applicant's case, such requests were not governed by any established CBSA procedure. It acknowledged that, subsequent to the making of the request to the Ghana High Commission in this matter, the CBSA had effected *CPIC Access and Warrant Management, and Interpol Procedures*. However, the Report noted that this procedure document was primarily concerned with requests for criminal history checks.

[71] The OPC Findings Report commented that the disclosure of personal information in the context of requests for assistance to international counterparts should take place according to clear and comprehensive procedures that are strictly followed. Clear procedures for information sharing would minimize potential risk of harm to refugee claimants and their families, in particular, by minimizing the risk that authorities in their country of origin will become aware of the individual's status and location. The Report states that its comments were made with the goal

of strengthening the verification process, particularly in the context of requests for assistance to international counterparts such as Interpol.

[72] Thus, while this application for judicial review cannot succeed, the general concern highlighted by the Applicant in his complaint to the OPC was acknowledged by the OPC and addressed in its Finding Report.

JUDGMENT IN T-1198-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. The Respondent shall have its costs in the all-inclusive, lump sum amount of $1000.

"Cecily Y. Strickland"
Judge

Annex "A"

***Privacy Act,* RSC 1985, c.P**

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)** …..,
>
> **(f)** correspondence sent to a 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)** …,
>
> **(h)** ….
>
> **(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…

Use of personal information

7 Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except

> **(a)** for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose; or
>
> **(b)** for a purpose for which the information may be disclosed to the institution under subsection 8(2).

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;
>
> **…**

Information obtained by Privacy Commissioner

(1) The Privacy Commissioner shall refuse to disclose any personal information requested under this Act that was obtained or created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by, or under the authority of, the Commissioner or that was obtained by the Commissioner in the course of a consultation with the Information Commissioner under subsection 36(1.1) or section 36.2 of the *Access to Information Act*.

Exception

(2) However, the Commissioner shall not refuse under subsection (1) to disclose any personal information that was created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by, or under the authority of, the Commissioner once the investigation and all related proceedings, if any, are finally concluded.

…

Receipt and investigation of complaints

29(1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints

> **(a)** from individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8;
>
> …

Findings and recommendations of Privacy Commissioner

35(1) If, on investigating a complaint under this Act in respect of personal information, the Privacy Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution that has control of the personal information with a report containing

> **(a)** the findings of the investigation and any recommendations that the Commissioner considers appropriate; and
>
> **(b)** where appropriate, a request that, within a time specified therein, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

Report to complainant

(2) The Privacy Commissioner shall, after investigating a complaint under this Act, report to the complainant the results of the investigation, but where a notice has been requested under paragraph (1)(b) no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.

Matter to be included in report to complainant

(3) Where a notice has been requested under paragraph (1)(b) but no such notice is received by the Commissioner within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will

not be taken in a reasonable time, the Commissioner shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

Access to be given

(4) Where, pursuant to a request under paragraph (1)(b), the head of a government institution gives notice to the Privacy Commissioner that access to personal information will be given to a complainant, the head of the institution shall give the complainant access to the information forthwith on giving the notice.

Right of review

(5) Where, following the investigation of a complaint relating to a refusal to give access to personal information under this Act, access is not given to the complainant, the Privacy Commissioner shall inform the complainant that the complainant has the right to apply to the Court for a review of the matter investigated.

Review by Federal Court where access refused

41 Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy 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 Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.

…

48 Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of a provision of this Act not referred to in section 49, the Court shall, if it determines that the head of the institution is not authorized under this Act to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

49 Where the head of a government institution refuses to disclose personal information requested under subsection 12(1) on the basis of section 20 or 21 or paragraph 22(1)(b) or (c) or 24(a), the Court

shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the personal information, order the head of the institution to disclose the personal information, subject to such conditions as the Court deems appropriate, to the individual who requested access thereto, or shall make such other order as the Court deems appropriate.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1198-19
STYLE OF CAUSE:	EKENS AZUBUIKE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
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APPEARANCES:

Ekens Azubuike	FOR MR. AZUBUIKE (ON HIS OWN BEHALF)
Andrea Shahin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice Canada Montréal, Quebec	FOR THE RESPONDENT